that beef and coal be placed on the free list—to the Committee on Ways and Means.

Also, resolutions of the National German-American Alliance, favoring the appointment of an immigration commission—to the Committee on Immigration and Naturalization.

By Mr. RYAN: Petitions of the New York Produce Exchange and the National Live Stock Association, favoring certain amendments to the interstate-commerce law—to the Committee on Interstate and Foreign Commerce.

Also, petition of the legislative board of Locomotive Firemen of New York, for the passage of the eight-hour law, the conspiracy and anti-injunction bill, and Senate bill 3560—to the Committee on the Judiciary.

Also, resolutions of Local Union No. 369, Brotherhood of Carpenters and Joiners, of North Tonawanda, N. Y., favoring the repeal of the stone, timber, desert land, and homestead commutation acts—to the Committee on the Public Lands.

By Mr. SHALLENBERGER: Petition of C. F. Linehart and others, of Norman, Nebr., for reduction of tax on distilled spirits—to the Committee on Ways and Means.

Also, papers to accompany House bill 4175, granting an increase of pension to Alpheus D. Brown—to the Committee on Invalid Pensions.

By Mr. SHERMAN: Paper to accompany House bill granting an increase of pension to Henry P. Mesick—to the Committee on Invalid Pensions.

By Mr. SPARKMAN: Resolutions of the Ocala (Fla.) Board of Trade, asking for appropriate legislation for the Territory of Alaska—to the Committee on the Territories.

Also, resolutions of Kit Carson Post, No. 26, Grand Army of the Republic, St. Petersburg, Fla., for the establishment of a branch home for disabled soldiers, sailors, and marines in the State of Florida—to the Committee on Military Affairs.

By Mr. SULZER: Resolutions of the New York Board of Trade and Transportation, in relation to the selection of a new post-office site in the city of New York—to the Committee on the Post-Office and Post-Roads.

By Mr. TAWNEY: Resolution of the St. Paul Chamber of Commerce, for the repeal of all import duties on anthracite and bituminous coal—to the Committee on Ways and Means.

By Mr. THAYER: Petition of citizens of Worcester, Mass., asking for the removal of the tariff on certain glass products—to the Committee on Ways and Means.

Also, petitions of retail druggists of Southbridge, Mass., in favor of House bill 178, for reduction of tax on distilled spirits—to the Committee on Ways and Means.

Also, petition of B'nai Joseph Lodge, No. 275, Order of B'rith Abraham, of Worcester, Mass., relative to immigration—to the Committee on Immigration and Naturalization.

By Mr. VANDIVER: Papers to accompany House bill granting a pension to Anton Southoff—to the Committee on Invalid Pensions.

By Mr. WEEKS: Petition of J. F. Holden, Joseph Schauber, and others, of Mount Clemens and vicinity, Michigan, favoring House bill 178—to the Committee on Ways and Means.

By Mr. WILLIAMS of Illinois: Petition of E. Musgrave & Co., Raleigh, Ill., urging the passage of House bill 178, for the reduction of the tax on alcohol—to the Committee on Ways and Means.

SENATE.

THURSDAY, *January 15, 1903.*

Prayer by Rev. F. J. PRETTYMAN, of the city of Washington.

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

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

A. A. WADE.

The PRESIDENT pro tempore laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting a certified copy of the findings filed by the court in the cause of A. A. Wade, administrator of S. L. Carpenter, deceased, *v.* The United States; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

ENROLLED BILLS SIGNED.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President pro tempore:

A bill (H. R. 325) granting an increase of pension to John Compton;

A bill (H. R. 624) granting a pension to Dorcas McArdle;

A bill (H. R. 636) granting an increase of pension to Benjamin S. Bogardus;

A bill (H. R. 699) granting an increase of pension to Robert Miller;

A bill (H. R. 1328) granting an increase of pension to Gotthard Koerner;

A bill (H. R. 1453) granting an increase of pension to Thomas Kirwan;

A bill (H. R. 1528) granting an increase of pension to Charles Dalrymple;

A bill (H. R. 1530) granting an increase of pension to Eliza A. Rickards;

A bill (H. R. 1733) for the relief of John A. Mason;

A bill (H. R. 2223) granting an increase of pension to John Laughlin;

A bill (H. R. 2224) granting an increase of pension to David T. Nuttle;

A bill (H. R. 2542) granting an increase of pension to Lysander D. Trent;

A bill (H. R. 2849) granting an increase of pension to Charles S. Ely;

A bill (H. R. 3269) granting a pension to Ida M. Kinney;

A bill (H. R. 3304) granting an increase of pension to William Burke;

A bill (H. R. 3514) granting an increase of pension to Theresia Ziegenfuss;

A bill (H. R. 3672) granting a pension to Emily S. Barrett;

A bill (H. R. 3755) granting an increase of pension to Lawson Williams;

A bill (H. R. 3868) granting an increase of pension to Isadora F. Maxfield;

A bill (H. R. 4184) granting an increase of pension to John Glenn;

A bill (H. R. 4454) granting an increase of pension to James H. Watts;

A bill (H. R. 4509) granting an increase of pension to Eliza Knight;

A bill (H. R. 4983) granting an increase of pension to Lucy G. Smith;

A bill (H. R. 5159) granting a pension to William A. Miller;

A bill (H. R. 5205) granting an increase of pension to Hiram S. Leffingwell;

A bill (H. R. 5321) granting a pension to Lillie May Fifield;

A bill (H. R. 5869) granting an increase of pension to Benjamin White;

A bill (H. R. 5887) granting an increase of pension to Morris M. Comstock;

A bill (H. R. 6006) granting an increase of pension to John Canty;

A bill (H. R. 6727) granting an increase of pension to Remembrance J. Williams;

A bill (H. R. 6897) granting an increase of pension to William G. Buchanan;

A bill (H. R. 7021) granting an increase of pension to Henry Forcht;

A bill (H. R. 7239) granting an increase of pension to William Christian;

A bill (H. R. 8237) granting an increase of pension to John Robinson;

A bill (H. R. 8309) granting an increase of pension to Sylvester Holiday;

A bill (H. R. 8542) granting an increase of pension to Parmenas F. Harris;

A bill (H. R. 8576) granting a pension to John S. Upshaw;

A bill (H. R. 8707) granting an increase of pension to James R. Ambrose;

A bill (H. R. 9016) granting an increase of pension to Jane Brosnan;

A bill (H. R. 9402) granting an increase of pension to Alexander Curd;

A bill (H. R. 9977) granting a pension to Minerva Robinson;

A bill (H. R. 10010) granting a pension to Mina Weirauch;

A bill (H. R. 10339) granting an increase of pension to John L. Moore;

A bill (H. R. 10494) granting an increase of pension to Jonathan H. Slocum;

A bill (H. R. 11180) granting an increase of pension to Henry W. Gaskill;

A bill (H. R. 11212) granting an increase of pension to James D. Sims;

A bill (H. R. 11286) granting a pension to Ellen F. Pook;

A bill (H. R. 11311) granting an increase of pension to Andrew J. Hertzog;

A bill (H. R. 11748) granting an increase of pension to Samuel Ashmore;

A bill (H. R. 12039) granting an increase of pension to Nelson Brown;
A bill (H. R. 12109) granting an increase of pension to Frederick Benefeldt;
A bill (H. R. 12132) granting an increase of pension to Allen C. Davis;
A bill (H. R. 12155) granting an increase of pension to Joseph W. Robertson;
A bill (H. R. 12424) granting an increase of pension to Wallace K. May;
A bill (H. R. 12430) granting a pension to Abner H. Lester;
A bill (H. R. 12575) granting a pension to Edward A. Branham;
A bill (H. R. 12700) granting an increase of pension to Eberhard P. Lieberg;
A bill (H. R. 12745) granting an increase of pension to Edmond Likes;
A bill (H. R. 12968) granting an increase of pension to John T. Mull;
A bill (H. R. 13000) granting an increase of pension to Magnus J. Cohn;
A bill (H. R. 13143) granting an increase of pension to Susan Parker;
A bill (H. R. 13174) granting an increase of pension to Ransford T. Chase;
A bill (H. R. 13227) granting an increase of pension to Elizabeth J. Emery;
A bill (H. R. 13324) granting an increase of pension to John J. Cross;
A bill (H. R. 13332) granting an increase of pension to William G. Cantley;
A bill (H. R. 13411) granting an increase of pension to Clarence D. Hess;
A bill (H. R. 13479) granting a pension to Ira P. Smith;
A bill (H. R. 13505) granting an increase of pension to William F. Stanley;
A bill (H. R. 13510) granting an increase of pension to James P. Thomas;
A bill (H. R. 13529) granting an increase of pension to Francis C. Baker;
A bill (H. R. 13565) granting a pension to Mary V. Scriven;
A bill (H. R. 13594) granting an increase of pension to Robert Hargreaves;
A bill (H. R. 13621) granting an increase of pension to Anson Greenman;
A bill (H. R. 13669) granting an increase of pension to James H. McVicker;
A bill (H. R. 13727) granting a pension to Fannie E. Strohauer;
A bill (H. R. 13815) granting an increase of pension to James J. Wilson;
A bill (H. R. 13891) granting a pension to Hiram A. Sheldon;
A bill (H. R. 14024) granting an increase of pension to John R. Curry;
A bill (H. R. 14058) granting an increase of pension to Emil Pfeiffer;
A bill (H. R. 14067) granting an increase of pension to John Wright;
A bill (H. R. 14136) granting an increase of pension to John D. Thompson;
A bill (H. R. 14242) granting a pension to Charles E. Peake;
A bill (H. R. 14312) granting an increase of pension to John W. Huckelberry;
A bill (H. R. 14831) granting an increase of pension to Robert Clark;
A bill (H. R. 15392) granting an increase of pension to Harry C. Fay;
A bill (H. R. 15588) granting an increase of pension to Samuel S. Smith; and
A bill (H. R. 16649) to provide rebate of duties on coal, and for other purposes.

PETITIONS AND MEMORIALS.

Mr. PLATT of New York presented a petition of Carpenters and Joiners' Local Union No. 1107, of Gloversville; of Local Union No. 151, of Binghamton; of Local Union No. 340, of New York; of Typographical Union No. 443, of Herkimer; of Carpenters and Joiners' Union No. 1261, of Ilion, and of Laborers' Protective Union No. 8856, of Middletown, all of the American Federation of Labor, in the State of New York, praying for the passage of the so-called eight-hour bill; which were ordered to lie on the table.

He also presented memorials of the United Indurated Fiber Company, of Lockport; of the Hammond Typewriter Company, of New York; of G. W. Mandrill, of Gloversville, and of the Hubbard & Eldredge Company, of Rochester, all in the State of New York, remonstrating against the passage of the so-called eight-hour bill; which were ordered to lie on the table.

He also presented the petition of William R. Woodbridge, of Salamanca, N. Y., and the petition of F. G. Clarke, of Oxford, N. Y., praying for the enactment of legislation to recognize and promote the efficiency of Army chaplains; which were referred to the Committee on Military Affairs.

He also presented petitions of Ludwig Nissen & Co., of New York; of James Thompson & Co., of Valley Falls; and, of Cluett, Peabody & Co., of Troy, all in the State of New York, praying for the establishment of a department of commerce; which were ordered to lie on the table.

He also presented a petition of the Merchants' Association, of New York City, N. Y., and a petition of the Buffalo Lumber Exchange, of Buffalo, N. Y., praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which were referred to the Committee on Interstate Commerce.

Mr. DRYDEN presented a petition of James B. Morris Post, No. 46, Department of New Jersey, Grand Army of the Republic, of Long Branch, N. J., praying for the enactment of legislation to increase the pensions of the soldiers and sailors of the war of the rebellion; which was referred to the Committee on Pensions.

He also presented a petition of the Innkeepers' Protective Association, of Hoboken, N. J., praying for the enactment of legislation to amend the internal-revenue laws so as to reduce the tax on distilled spirits; which was ordered to lie on the table.

He also presented the memorial of Thomas J. Mead, of Newark, N. J., remonstrating against the issuance of revenue stamps on eighth kegs of beer; which was referred to the Committee on Finance.

He also presented the memorials of Louis A. Thebaud, of Morristown; of A. G. Keasby, of Newark; of Caroline Phoenix, of Mendham; of William B. Lord, of Morristown; and of Robert H. McCurd, of Morristown, all in the State of New Jersey, remonstrating against the enactment of legislation relative to the interstate transportation of live stock; which were referred to the Committee on Interstate Commerce.

He also presented the memorial of A. T. Smith, of New York, N. Y., and the memorial of Edward C. Lyon, of Montclair, N. J., remonstrating against the enactment of legislation giving to Port Arthur, Tex., all the privileges of a port of entry; which were referred to the Committee on Commerce.

He also presented petitions of the Brotherly Benevolent Association, of Hudson County, and of the Hebrew Sick Benefit Association, of Bayonne, all in the State of New Jersey, praying for the enactment of legislation to modify the methods and practice pursued by immigration officers at the port of New York; which were ordered to lie on the table.

He also presented the petitions of H. L. Roberts, of Riverside; of H. L. Roberts, of Jersey City; of the George Jonas Glass Company, of Minotola, and of P. Rielly & Son, of Newark, all in the State of New Jersey, praying for the establishment of a Department of Commerce; which were ordered to lie on the table.

He also presented the memorials of Rev. J. E. Davis, of Bound Brook; of William K. Richman, of Daretown; of Allan A. Foster, of Daretown; of Thomas Hartman, of Paulsboro; of J. B. S. Haledon, of Paterson; of John C. Sunderlin, of Blairstown; of Nathaniel Butler, of Glenridge; of Ella Carloon, of Camden; of Dr. F. D. Vreeland, of Paterson, and of the congregations of the Beulah Methodist Protestant and Knox Presbyterian churches, of Kearney, all in the State of New Jersey, remonstrating against the repeal of the present anticanteen law; which were referred to the Committee on Military Affairs.

He also presented petitions of Local Union No. 133, International Brotherhood of Stationary Firemen, of Bayonne; of Division No. 53, Brotherhood of Locomotive Firemen, of Jersey City; of Council No. 184, of Newark; of Viola Council No. 20, of Penngrove; of General Putnam Council, No. 137, of Newark, all of the Junior Order of United American Mechanics; of P. J. Grace, of Newark; of the Wagon Workers' International Union, of Trenton; of the Machine Printers and Color Mixers' Association, of Brunswick; of the Metal Polishers, Buffers, Platers, Brass Molders, and Brass Workers' Union, of Newark; of Carpenters and Joiners' Local Union No. 131, of Bridgeton; of the Bricklayers and Plasterers' Local Union, of Long Branch; of the American Federation of Labor, of Englewood; of the Carpenters and Joiners' Local Union, of Vineland; of the Painters, Decorators, and Paperhangers' Local Union, of Newark; of the Coopers' International Union, of Harrison; of the Carpenters and Joiners' Local Union, of East Orange; of the Garment Workers' Local Union, of Rosenhayne; of the Bricklayers and Masons' Local Union, of Newark; of the Central Labor Union of Hoboken; of the Cigar Makers' Local Union, of Trenton; of the Carpenters and Joiners' Local Union, of Paterson; of the United Trades and Labor Council of Paterson; and of the Painters, Decorators, and

Paperhangers' Local Union, of Passaic, all of the American Federation of Labor; of I. P. Towne, of Jersey City; of the Prohibition Alliance, of Jersey City; and of Fred P. Meeks, of Edgewater, all in the State of New Jersey; of the Woman's Christian Temperance Union of Evanston, Ill.; and of the Central Labor Union, American Federation of Labor, of Washington, D. C., praying for the passage of the so-called eight-hour bill; which were ordered to lie on the table.

He also presented a memorial of the Mutual Trust Company, of Orange, N. J., remonstrating against the enactment of legislation to restrict immigration; which was ordered to lie on the table.

He also presented a memorial of the Angle Lamp Company, of New York City, N. Y., remonstrating against the passage of the so-called eight-hour bill; which was ordered to lie on the table.

He also presented the petition of John B. Rhoads, of Philadelphia, Pa., praying for the adoption of an amendment to the bill to promote the efficiency of the militia so as to provide an exemption clause based on conscientious scruples; which was ordered to lie on the table.

He also presented a petition of the Paint Grinders' Association, American Federation of Labor, of Chicago, Ill., praying for the enactment of legislation providing a uniform classification of freight rates; which was referred to the Committee on Interstate Commerce.

He also presented the petition of G. E. M. Carleton, of Malden, Mass., praying for the enactment of legislation to increase the pensions of soldiers and sailors who lost limbs in the service; which was referred to the Committee on Pensions.

Mr. PERKINS. I present a joint resolution adopted by the senate of the State of California, in opposition to the passage of the bill relating to jurisdiction on appeals in the court of appeals in the District of Columbia and transcripts on appeal in that court to quiet title to public lands. I move that the joint resolution be printed in the RECORD and referred to the Committee on the Judiciary.

There being no objection, the joint resolution was referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

SACRAMENTO, CAL., *January 14, 1903.*

Hon. GEORGE C. PERKINS,
Senator, Washington, D. C.:

In accordance with instructions, I send you copy of senate joint resolution No. 1, adopted this day senate. Senate joint resolution No. 1.

Introduced by Senator Belshaw, January 13, 1903.

Made special order for Wednesday, January 14, 1903, after reading of Journal.

Senate joint resolution No. 1, relative to House resolution 14898, entitled "An act relating to jurisdiction on appeals in the court of appeals in the District of Columbia, and transcripts on appeal in said court, and to quiet title to public lands."

Whereas a bill introduced in the first session of the Fifty-seventh Congress, known as House resolution 14898, entitled "An act relating to jurisdiction on appeals in the court of appeals in the District of Columbia, and transcripts on appeal in said court, and to quiet title to public lands," did on the 17th day of June, 1902, pass the House of Representatives, and was referred to the Judiciary Committee of the Senate of the United States; and

Whereas such bill in our judgment, if enacted into law, would become a menace to the mineral industry of our State, particularly to the petroleum mining industry; Now, therefore, be it

Resolved by the senate and the assembly of the State of California jointly, That our Congressmen be requested and our Senators instructed to use all honorable means to prevent the passage of said bill.

Resolved, That the secretary of the senate be, and he is hereby, instructed to transmit a copy of this resolution, by telegraph, to our Senators and Representatives in Congress.

The above is a true copy of senate joint resolution No. 1, as adopted by the senate and assembly this 14th day of January, 1903.

FRANK J. BRANDON,
Secretary of Senate.

Mr. FOSTER of Washington presented a petition of Local Union No. 1060, United Brotherhood of Carpenters and Joiners, of Spokane, Wash., praying for the passage of the so-called eight-hour bill; which was ordered to lie on the table.

Mr. LODGE. I present a memorial of 85 fishermen, captains of fishing vessels of Boston, Mass., remonstrating against the ratification of the Hay-Bond treaty with Newfoundland on account of the disastrous effect it would have on their business. I move that the memorial be printed as a document, and referred to the Committee on Foreign Relations.

The motion was agreed to.

Mr. MITCHELL presented sundry papers in support of the bill (S. 6405) granting an increase of pension to Mortimer Hallett; which were referred to the Committee on Pensions.

He also presented the petition of Israel Benner, of Portland, Oreg., praying that he be granted an increase of pension; which was referred to the Committee on Pensions.

He also presented a petition of sundry citizens of Baker City, Oreg., praying for the passage of the so-called eight-hour bill; which was ordered to lie on the table.

Mr. CLAPP presented memorials of the John Hauenstein Brewing Company, of New Ulm; of the Duluth Brewing and Malting Company, of Duluth; of the Fergus Falls Brewery, of Fergus Falls; of the Standard Brewing Company, of Mankato; of the C. Birkhofer Brewing Company, of Minneapolis; of the Iron Range Brewing Association, of Tower; of the Minneapolis Brewing Company of Minneapolis; of the Gluck Brewing Company, of Minneapolis; of A. Fitger & Co., of Duluth; of the Schuster Brewing Company, of Rochester; of Drewry & Sons, of St. Paul; of the Glencoe Brewing Company, of Glencoe; of the Brainerd Brewing Company, of Brainerd; of the Jacob Schmidt Brewing Company, of St. Paul; of the Theo. Hamm Brewing Company, of St. Paul; of Albert Minars, of Browerville, and of W. Schellhas, of Winona, all in the State of Minnesota, remonstrating against the issuance of revenue stamps on eighth kegs of beer; which were referred to the Committee on Finance.

Mr. KEAN presented the memorial of Edward Q. Keasbey, of Morristown, N. J., remonstrating against the enactment of legislation relative to the interstate transportation of live stock; which was referred to the Committee on Interstate Commerce.

He also presented a petition of the Chevrah Ohav Sholem Aushe Sfard, of Bayonne, N. J., praying for the enactment of legislation to modify the methods and practice pursued by immigration officers at the port of New York; which was referred to the Committee on Immigration.

He also presented petitions of the United Trades and Labor Council of Paterson; of Local Union No. 185, International Brotherhood of Blacksmiths, of Perth Amboy; of the Central Labor Union of Hudson County, all in the State of New Jersey, and of the Angle Lamp Company of New York City, N. Y., praying for the passage of the so-called eight-hour bill; which were ordered to lie on the table.

He also presented memorials of John C. Sunderlin, of Blairstown, of J. Byron Stagg Haledon, and sundry other citizens of Paterson; of Thomas W. Hartman, of Paulsboro, of Dr. George H. Fitch, of Daretown, and of Rev. George B. Shaw, of Plainfield, all in the State of New Jersey, remonstrating against the repeal of the present anticanteen law; which were referred to the Committee on Military Affairs.

Mr. DEPEW presented petitions of Local Union No. 232, International Brotherhood of Blacksmiths, of Norwich; of Waiters' Local Alliance No. 196, of Buffalo; of Local Union No. 74, Journeymen Plumbers, Gasfitters, and Steamfitters, of Geneva; of Defender Union, No. 100, of New York City; of Wire and Cable Workers' Local Union No. 9847, of Schenectady; of Ship Carpenters and Joiners' Local Union No. 7, of Port Richmond; of Local Branch No. 620, Amalgamated Society of Engineers, of Troy; of Coopers' Local Union No. 2, of New York City; of Dyers and Finishers' Local Union No. 271, of Jamestown; of Brewery Workers' Local Union, of Rochester; of Wood Workers' Local Union No. 636, of Troy; of Stove Mounters' Local Union No. 3, of Geneva; of the Central Textile District Council, of Jamestown; of Laborers' Protective Union, No. 9512, of Ticonderoga; of Pulp, Sulphite, and Paper Mill Workers' Union, of Ticonderoga, and of Metal Polishers and Brass Workers' Local Union No. 41, of Dunkirk, all in the State of New York, praying for the passage of the so-called eight-hour bill; which were ordered to lie on the table.

Mr. KITTREDGE presented a petition of Cigar Makers' Local Union No. 387, of Yankton, S. Dak., praying for the passage of the so-called eight-hour bill; which was ordered to lie on the table.

Mr. FRYE presented a memorial of the Humane Society of Colorado, remonstrating against the enactment of legislation relative to the interstate transportation of live stock; which was referred to the Committee on Interstate Commerce.

Mr. QUAY. I present a memorial of 629 adult members of the Seneca Nation of New York Indians, remonstrating against the passage of House bill No. 12270, to provide for the allotment of the lands in severalty to the Indians in the State of New York, and to extend the protection of the laws of the United States and of the State of New York over such Indians, and for other purposes. I move that the memorial be printed as a document and referred to the Committee on Indian Affairs.

The motion was agreed to.

Mr. QUAY. I also present a memorial of 12 adult members of the general council of the Tuscarora Indians of New York, remonstrating against the passage of House bill No. 12270, to provide for the allotment of the lands in severalty to the Indians in the State of New York, and to extend the protection of the laws of the United States and of the State of New York over such Indians, and for other purposes. I move that the memorial be printed as a document and referred to the Committee on Indian Affairs.

The motion was agreed to.

STATEHOOD BILL.

Mr. QUAY. I present two telegrams in reference to the statehood bill, which I ask may be read.

There being no objection, the telegrams were read, and ordered to lie on the table, as follows:

[Telegram.]

RATON, N. MEX., *January 14, 1903*

Hon. M. QUAY,
United States Senator, Washington, D. C.:

People of Raton a unit for omnibus bill. Senate committee report grossly partial as to existing conditions in New Mexico.

CHARLES M. BAYNE, *Mayor.*
J. LEADHY, *District Attorney.*

[Telegram.]

TUCSON, ARIZ., *January 12, 1903.*

Hon. M. S. QUAY,
United States Senate, Washington, D. C.:

There is no division of sentiment here regarding omnibus bill. Everyone favors it.

M. P. FREEMAN,
President Consolidated National Bank.

Mr. BATE. I present some telegrams on the subject of the statehood bill, and I ask that two of them, which I will indicate, may be read.

There being no objection, the Secretary read as follows:

[Telegram.]

PHOENIX, ARIZ., *January 12, 1903.*

Senator WILLIAM B. BATE, *Washington, D. C.:*

People of Arizona are entitled to statehood and are anxious for it. Committee's report is unjust and misleading. We petition Senate to pass omnibus bill unamended.

R. L. MCDONALD,
Superintendent Phoenix Schools.

[Telegram.]

TUCSON, ARIZ., *January 12, 1903.*

Hon. W. B. BATE, *United States Senate, Washington, D. C.:*

Failure to pass omnibus bill in view of misleading report of majority Committee on Territories would be regarded as confirmation of indictment, and would be of incalculable injury to invested capital and every interest in this Territory. There is no division of sentiment among the people on this subject.

N. P. Freeman, president Consolidated National Bank; J. Knox Corbett, postmaster; John B. Wright, city attorney; B. M. Jacobs, president Arizona National Bank; H. M. Fenner, M. D.; William Angus, county school superintendent; John H. Bauman, receiver United States land office; M. R. Moore, register United States land office; Mark A. Rodgers, M. D.; E. F. Burton, M. D.; L. H. Manning, president Chamber of Commerce; Geo. Selby, rector Grace Church; David B. Loofbourrow, pastor Methodist Church; H. K. Booth, pastor Congregational Church; C. F. Schumacher, mayor of Tucson; Fred. Roustadt, board of supervisors.

The PRESIDENT pro tempore. The telegrams will lie on the table.

Mr. BATE. I beg to state that there are a good many of these telegrams of similar import, and I call attention especially to the last one. They are signed by officers generally, superintendents of schools, sheriffs of counties, presidents of chambers of commerce, etc. I ask that they be inserted in the RECORD without reading.

There being no objection, the telegrams were ordered to lie on the table and to be printed in the RECORD, as follows:

[Telegram.]

PHOENIX, ARIZ., *January 13, 1903.*

Senator WILLIAM B. BATE, *Washington, D. C.:*

People of Arizona are entitled to statehood and anxious for it. In our own rights gross injustice is done our interest by committee's misleading report. We petition Senate to pass omnibus bill unamended.

W. W. COOK, *Sheriff Maricopa County.*

[Telegram.]

PHOENIX, ARIZ., *January 12, 1903.*

Senator WILLIAM BATE, *Washington, D. C.:*

Arizona asks for statehood without being joined to any other Territory. Committee's report is grossly unfair to our best interests. We call on you to stand for omnibus bill unamended.

C. H. AKERS,
President Phoenix Mining Exchange.

[Telegram.]

PHOENIX, ARIZ., *January 13, 1903.*

Senator WILLIAM B. BATE, *Washington, D. C.:*

Committee's report does our best interests gross injustice by its misleading statements. Our people are anxious for statehood and entitled to it. We petition Senate to pass omnibus bill unamended.

E. B. GAGE,
President Phoenix National Bank.

[Telegram.]

PHOENIX, ARIZ., *January 10, 1903.*

Senator WILLIAM B. BATE, *Washington, D. C.:*

People of Arizona are anxious for statehood and entitled to it. Committee's report is unjust and misleading. We petition Senate to pass omnibus bill unamended.

A. H. FULTON,
School Superintendent Maricopa County.

[Telegram.]

TUCSON, ARIZ., *January 12, 1903.*

Hon. W. B. BATE, *United States Senate, Washington, D. C.:*

I most earnestly plead for your best efforts to pass omnibus bill. In view of injuriously misleading report of majority of committee failure to pass the bill would be disastrous to every industry in existence or projected.

O'BRIEN MOORE.

ISTHMIAN CANAL COMMISSION.

Mr. MORGAN. I present certain communications from the Secretary of State and the Secretary of the Treasury relative to the expenditures of the Isthmian Canal Commission. I move that the communications be printed as a document and referred to the Committee on Interoceanic Canals.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. PLATT of New York, from the Committee on Printing, to whom was referred the amendment submitted by Mr. ELKINS on the 12th instant, proposing to increase the amount to be appropriated for expenses of compiling, preparing, and indexing the Congressional Directory from $1,200 to $1,800, intended to be proposed to the legislative, executive, and judicial appropriation bill, reported favorably thereon, and moved that it be referred to the Committee on Appropriations and printed; which was agreed to.

Mr. COCKRELL, from the Committee on Military Affairs, to whom was referred the bill (H. R. 15449) to increase the efficiency of the Army, reported it with amendments.

He also, from the same committee, to whom was referred the bill (H. R. 11621) to correct the military record of H. J. Rowell, submitted an adverse report thereon, which was agreed to; and the bill was postponed indefinitely.

Mr. COCKRELL. I am also instructed by the Committee on Military Affairs, to whom was referred the bill (S. 552) for the relief of Levi Jones, to ask that the claim therein made be not allowed, and that the bill be postponed indefinitely.

The report was agreed to.

Mr. BERRY, from the Committee on Commerce, to whom was referred the bill (H. R. 15767) to authorize Washington and Westmoreland counties, in the State of Pennsylvania, to construct and maintain a bridge across the Monongahela River, in the State of Pennsylvania, reported it without amendment.

He also, from the same committee, to whom was referred the bill (H. R. 15711) to authorize the construction of a bridge across the Clinch River, in the State of Tennessee, by the Knoxville, Lafollette and Jellico Railroad Company, reported it without amentment.

He also, from the same committee, to whom was referred the bill (S. 6569) to authorize the construction of a bridge across the Missouri River at a point to be selected within 10 miles of the corporate limits of the city of St. Charles, in St. Charles County, Mo., and in St. Louis County, Mo., and to make the same a post route, reported it with amendments, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (H. R. 143) to authorize the construction by the Wadley and Mount Vernon Railroad Company of a bridge across the Oconee River, in the State of Georgia, reported it without amendment.

He also, from the same committee, to whom was referred the bill (S. 6847) to increase the number of light-house districts, reported it without amendment, and submitted a report thereon.

Mr. BERRY. I am also directed by the Committee on Commerce, to whom was referred the bill (H. R. 13208) to authorize the United States and West Indies Railroad and Steamship Company, of Florida, to construct a bridge across the Manatee River, in the State of Florida, to report it adversely. I will state that it is an exact copy of a bill passed at the last session, which was approved on the 7th of May, 1902. The committee recommend that the bill be indefinitely postponed.

The report was agreed to.

Mr. SCOTT, from the Committee on Military Affairs, to whom was referred the bill (H. R. 15510) to promote the efficiency of the Philippine constabulary, to establish the rank and pay of its commanding officers, and for other purposes, reported it without amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (S. 6358) to permit officers of the United States Army to serve as chief and assistant chiefs of the constabulary of the Philippine Islands, submitted an adverse report thereon; which was agreed to, and the bill was postponed indefinitely.

Mr. LODGE. Do I understand that the bill in regard to the Philippine constabulary has been indefinitely postponed?

Mr. SCOTT. I will state to the Senator from Massachusetts that we have reported favorably a House bill, which passed the House.

Mr. LODGE. That is all right.

Mr. SCOTT. The House bill is exactly the same as the Senate bill.

Mr. LODGE. I understand.

Mr. QUARLES, from the Committee on Military Affairs, to whom was referred the bill (S. 2402) to remove the charge of desertion from the military record of William F. Barrett, submitted an adverse report thereon, which was agreed to; and the bill was postponed indefinitely.

Mr. ALGER, from the Committee on Military Affairs, to whom was referred the amendment submitted by himself on the 14th instant, proposing to appropriate $128,400 for the construction of barrack accommodations for four companies of infantry at Fort Brady, Mich., to replace those destroyed by fire, intended to be proposed to the urgent deficiency appropriation bill, reported it with an amendment as an amendment to the general deficiency appropriation bill, and submitted a report thereon, and moved that it be referred to the Committee on Appropriations and printed; which was agreed to.

Mr. MARTIN, from the Committee on Commerce, to whom was referred the bill (S. 6666) for the relief of Joseph M. Simms, captain, United States Revenue-Cutter Service (retired), reported it without amendment, and submitted a report thereon.

Mr. TURNER, from the Committee on Commerce, to whom was referred the bill (S. 6848) to establish a life-saving station at Cape Nome, Alaska, reported it with an amendment, and submitted a report thereon.

Mr. ELKINS, from the Committee on Commerce, to whom was referred the amendment submitted by Mr. QUARLES on the 12th instant, providing for the appointment of surgeons and assistant surgeons for the Revenue-Cutter Service, intended to be proposed to the legislative, executive, and judicial appropriation bill, reported favorably thereon, and moved that it be referred to the Committee on Appropriations and printed; which was agreed to.

Mr. NELSON, from the Committee on Commerce, to whom was referred the amendment submitted by Mr. FRYE on the 13th instant, proposing to appropriate $150,000 for improving the harbor of San Luis d'Apra, Island of Guam, intended to be proposed to the naval appropriation bill, reported favorably thereon, and moved that it be referred to the Committee on Naval Affairs, and printed; which was agreed to.

URGENT DEFICIENCY APPROPRIATIONS.

Mr. HALE. I report back from the Committee on Appropriations, without amendment, a little deficiency bill, which I ask may be considered and passed. It embraces small routine items.

The PRESIDENT pro tempore. The bill will be read to the Senate.

The Secretary read the bill (H. R. 16642) making appropriations to supply additional urgent deficiencies in the appropriations for the fiscal year ending June 30, 1903; and by unanimous consent the Senate, as in Committee of the Whole, proceeded to its consideration.

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

VALUE OF NICARAGUA CANAL AND FUTURE OF THE PACIFIC.

Mr. PLATT of New York, from the Committee on Printing, to whom was referred the resolution submitted by Mr. MORGAN on the 5th instant, reported it without amendment; and it was considered by unanimous consent, and agreed to, as follows:

Resolved by the Senate, That there be reprinted for the use of the Senate the "Views of Commodore George W. Melville, Chief Engineer of the Navy, as to the strategic and commercial value of the Nicaraguan Canal, the future control of the Pacific Ocean," etc.

And in connection therewith an article by the same author published in the North American Review of March, 1898, "On the future of the Pacific."

EARLY MISSIONARY WORK IN OREGON.

Mr. PLATT of New York, from the Committee on Printing, to whom was referred the resolution submitted by Mr. MITCHELL on the 6th instant, reported it without amendment; and it was considered by unanimous consent, and agreed to, as follows:

Resolved, That there be printed for the use of the Senate 2,500 additional copies of Senate Executive Document No. 37, Forty-first Congress, third session, the same being a letter from the Secretary of the Interior to Hon. Schuyler Colfax, President of the Senate, of date February 8, 1871, directing the Secretary of the Interior to furnish any information in the possession of his Department pertaining to the "early labors of the missionaries of the American Board of Commissioners for Foreign Missions in Oregon, commencing in 1836."

REPORT OF GOVERNOR OF ALASKA FOR 1902.

Mr. PLATT of New York, from the Committee on Printing, reported the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That there be printed from stereotyped plates 1,500 additional copies of the report of the governor of Alaska for 1902 for the use of the Department of the Interior.

RECORD OF DEEDS, ETC., IN INDIAN TERRITORY.

Mr. JONES of Arkansas. I am directed by the Committee on Indian Affairs, to whom was referred the amendment of the House of Representatives to the bill (S. 5678) providing for record of deeds and other conveyances and instruments of writing in the Indian Territory, and for other purposes, to report it back with the recommendation that the House amendment be disagreed to and a conference asked.

The PRESIDENT pro tempore. The Senator from Arkansas moves that the Senate disagree to the House amendment and request a conference on the disagreeing votes of the two Houses.

The motion was agreed to.

By unanimous consent, the President pro tempore was authorized to appoint the conferees on the part of the Senate; and Mr. STEWART, Mr. PLATT of Connecticut, and Mr. JONES of Arkansas were appointed.

BILLS INTRODUCED.

Mr. CLARK of Montana introduced a bill (S. 6951) to cancel certain taxes assessed against the Kall tract; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. BERRY introduced a bill (S. 6952) for the relief of W. H. Chambers; which was read twice by its title, and referred to the Committee on Claims.

He also introduced a bill (S. 6953) for the relief of the estate of B. L. Armstrong, deceased; which was read twice by its title, and referred to the Committee on Claims.

Mr. DEBOE (by request) introduced a bill (S. 6954) to provide for the purchase of a series of parchments, 13 in number, executed by Nestore Leoni, of Rome, Italy; which was read twice by its title, and referred to the Committee on the Library.

Mr. KEARNS introduced a bill (S. 6955) to establish Salt Lake City, in the State of Utah, as a port of entry in the customs collection district of Utah, and for other purposes; which was read twice by its title, and referred to the Committee on Commerce.

Mr. FOSTER of Washington introduced a bill (S. 6956) authorizing the issuance of a certificate of merit to Robert Williams; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Military Affairs.

Mr. DRYDEN introduced a bill (S. 6957) granting a pension to Frances Cowie; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

He also introduced a bill (S. 6958) granting a pension to Grace Ashton Negley; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 6959) to increase the speed of ocean steamships; which was read twice by its title, and referred to the Committee on Commerce.

Mr. COCKRELL introduced a bill (S. 6960) for the relief of Charles W. Howard; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. GAMBLE introduced a bill (S. 6961) to authorize the construction of a bridge across the Missouri River between the city of Chamberlain, in Brule County, and Lyman County, in the State of South Dakota; which was read twice by its title, and referred to the Committee on Commerce.

Mr. MITCHELL introduced a bill (S. 6962) granting an increase of pension to James J. Wheeler; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 6963) granting an increase of pension to Israel A. Benner; which was read twice by its title, and referred to the Committee on Pensions.

Mr. JONES of Arkansas introduced a bill (S. 6964) for the relief of Moses Stroop; which was read twice by its title, and referred to the Committee on Claims.

Mr. MORGAN introduced a bill (S. 6965) to regulate the making of contracts for constructing an isthmian canal under the act of June 28, 1902; which was read twice by its title, and referred to the Committee on Interoceanic Canals.

Mr. BACON introduced a bill (S. 6966) for the relief of the estate of C. C. Adams, deceased; which was read twice by its title, and referred to the Committee on Claims.

He also introduced a bill (S. 6967) for the relief of the estate of C. E. Rosser, deceased; which was read twice by its title, and referred to the Committee on Claims.

Mr. BURTON introduced a bill (S. 6968) granting the Central Arizona Railway Company a right of way for railroad purposes through the San Francisco Mountains Forest Reserve, in the Territory of Arizona; which was read twice by its title and referred to the Committee on Public Lands.

COMMISSION ON PENSION LAWS.

Mr. SCOTT submitted an amendment intended to be proposed by him to the joint resolution (S. R. 133) creating a commission to investigate the present pension laws; which was referred to the Committee on Pensions, and ordered to be printed.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. MITCHELL submitted an amendment proposing to appropriate $29,500 for the construction of new buildings at the Indian Training School at Chemawa, Oreg., 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.

He also submitted an amendment relative to the ratification and confirmation of an agreement entered into with the Klamath and Modoc tribes and Yahooskin Band of Snake Indians, in the

State of Oregon, 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.

Mr. CLAPP submitted an amendment proposing to appropriate $5,000 for the appointment of a commission to investigate the claim of the Pillager Band of Chippewa Indians concerning land ceded by them to the United States, 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.

Mr. HOAR submitted an amendment proposing to appropriate $25,000 to enable the Commissioner of Labor to collect and report to Congress the statistics of and relating to marriage and divorce in the several States and Territories and in the District of Columbia since January 1, 1887, etc., intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on the Judiciary, and ordered to be printed.

Mr. MCLAURIN of Mississippi submitted an amendment authorizing a complete roster to be made of the officers and enlisted men of the Union and Confederate armies, intended to be proposed by him to the legislative, executive, and judical appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

CONDITIONS IN ISLAND OF GUAM.

Mr. HOAR. Yesterday I introduced a resolution of inquiry of the President of the United States, and I suppose it will be adopted this morning without any objection. I ask the Chair to lay it before the Senate.

The PRESIDENT pro tempore laid before the Senate the resolution submitted yesterday by Mr. HOAR, as follows:

Resolved, That the President be requested, so far as shall be, in his judgment, not inconsistent with the interests of the public service, to inform the Senate what government is existing in the island of Guam, and through what executive department the powers of such government are now in fact executed and administered;

What, according to his present information, is the number of inhabitants in said island;

Whether there be any persons imprisoned or detained in said island against their will by the authority of the United States;

If so, under what law such persons are detained, and by whose order such persons are detained;

And especially whether any person not an inhabitant of said island of Guam be detained there by the power of the United States against his will; if so, for what offense, and whether there has been any trial or conviction of such offense, or any charge made against such person, and whether the nature or character of such charge has been communicated to such person;

And whether any person is so therein detained for any alleged political offense, or any refusal to take an oath of allegiance to the United States;

And especially whether an inhabitant of the Philippine Islands named Mabini has been detained and be now therein detained, and if so, under what circumstances, for what alleged offense, and whether such person has been tried for the same;

And, further, whether said Mabini was, according to the President's information, an inhabitant of the Philippine Islands and a Spanish subject on the 11th day of April, 1899, and then a resident in said islands; and whether he be included within the provisions of the act of Congress approved July 1, 1902, entitled "An act temporarily to provide for the administration of the affairs of the civil government of the Philippine Islands, and for other purposes," being chapter 1369 of the Statutes of 1902; and

Whether as such he is now deprived of liberty without due process of law; whether he has enjoyed the right to be heard by himself and counsel to demand the nature and cause of the accusation against him, to have a speedy and public trial, to meet witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf; whether he has been held to answer for any criminal offense without due process of law, and whether he be denied the right of bail as provided in said act.

Also, whether any oath of allegiance be now required of any such inhabitant of the Philippine Islands to be taken beyond the limits of said islands as a condition of being released from imprisonment, or of being permitted to return thereto; and if so, by what authority said oath of allegiance is required.

The PRESIDENT pro tempore. Will the Senate agree to the resolution?

The resolution was agreed to.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. B. F. BARNES, one of his secretaries, announced that the President had on the 14th instant approved and signed the following acts:

An act (S. 2210) relating to Hawaiian silver coinage and silver certificates; and

An act (S. 6439) for the refund of certain tonnage taxes.

The message also announced that the President of the United States had on this day approved and signed the act (S. 6119) to authorize the Pensacola, Alabama and Tennessee Railway Company to erect, maintain, and operate a railway bridge across the Alabama River in Wilcox County, in the State of Alabama.

ANTHRACITE COAL.

The PRESIDENT pro tempore. The Chair lays before the Senate a resolution coming over from a previous day, which will be read.

The Secretary read the resolution submitted by Mr. VEST on the 5th instant, as follows:

Resolved, That the Committee on Finance be instructed to prepare and report a bill amending "An act to provide revenue for the Government and to encourage the industries of the United States," approved July 24, 1897, so that the tariff duty shall be removed from anthracite coal and the same be placed on the free list.

Mr. TILLMAN. Mr. President, the fact that the Senate yesterday evening passed the House bill removing the duty on anthracite coal would appear to take the subject out of discussion. Although I have never intended to discuss that phase of the coal famine, and so indicated in my remarks yesterday, I, of course, will not expect anything except a smile from the uninformed because I continue to discuss a different subject upon the same resolution, the subject of which has already been disposed of. As I began on the Vest resolution, I want to finish on it.

When the morning hour expired yesterday and I had to yield the floor I had reached that part of my argument or presentation of facts where the cause or causes of the coal famine were under consideration. I was reading from the report of the Industrial Commission some statements in regard to the condition in the anthracite coal region, upon which I am basing the charge that the monopoly which exists and which is causing all this misery and robbery could have been prevented by the Attorney-General. I will proceed to give some additional quotations from the report of the Industrial Commission. I read on page 459 of volume 19:

> The elimination of the independent coal operators was attempted in a second way, namely, by securing forfeit of their independence of action by means of long-time shipping contracts with the railroads. Reference has already been made to the fact that the proportion of tidewater price allowed had been increased from 55 to 60 per cent by contracts made some years ago. Most of these contracts terminating in 1901, it was proposed by the railroads that a uniform new contract be offered in renewal by all the railroads jointly, on the basis of an increase of the percentage to 65 per cent of tidewater price. On the other hand, in return for this decidedly favorable offer, the operators were to bind themselves to ship over no other roads during the entire life of their properties; that is to say, until the mines should have been entirely worked out. This is a notable departure from all previous forms of contract, which had been made for a definite term of years. Inasmuch as the proportion of independent coal output has been decreasing for many years, such contracts as this would finally dispose of the small fraction now in existence. It would forever remove a most disturbing factor in any attempt by the railroads to fix among themselves both the amount of output and the price.

Right here, Mr. President, I will pause to comment on the effort which is now being made by Mr. Cassatt, the president of the Pennsylvania Railroad Company, and others, in the reports of the evidence being taken before the Senate Committee on the District of Columbia as to the causes of this coal famine, upon the great hue and cry which has been raised against the "independent operators" as being the extortionists, the vampires who are sucking the blood of the poor. Here is the evidence, which I shall show more clearly and in a fuller way later on, that there are no independent operators except the owners of possibly 2 or 2½ per cent of the anthracite coal field. The railroad companies are absolutely in the saddle. They mine and market coal, and they fix the price without regard to a solitary independent operator alive. The way in which the newspapers are lending themselves to this effort to befuddle the minds of the people and to deceive them into the idea that the roads are now willing and anxious to relieve the distress, but that somebody somewhere called an independent operator is responsible, I say this effort or this willingness by the newspapers to be prostituted is an infamy.

I will go more in detail after a little and marshal some further evidence, but I want to continue and get through with the Industrial Commission's report in regard to the coal trust, its origin and its present status. Mentioning some evidence which has been referred to, the Commission goes on to say:

> On the basis of this evidence, the importance of the consolidation of the Reading and the Central of New Jersey becomes at once apparent. It is confirmed, furthermore, by the last annual report of the Reading Company, which concludes with the following complacent statement to its stockholders, that—
>
> "The acquisition of the control of the Jersey Central is not only of enormous advantage because of the additional facilities given to the system, but through its acquisition the Reading system now owns and controls about 63 per cent of all the unmined anthracite coal in the State of Pennsylvania."

COMMUNITY OF INTEREST.

> It is not clear, either from testimony before the Industrial Commission or from other information available, what degree of actual consolidation by exchange of stock holdings prevails among the other roads in the anthracite field. Considerable evidence tends to show that effective control by unity of stock ownership is given to a large proportion of the entire output of the field. Thus, the Lehigh Valley Railroad, since J. P. Morgan & Co. took up their option on the stock of that company held by the Packer estate, is quite certainly controlled by the same financial interest which entirely dominates the Reading Company. The Erie system also is understood to be a Morgan road, despite rumors to the effect that the Hill interests in the Northwestern transcontinental lines had secured control.
>
> The Erie road, through its acquisition of the Susquehanna and Western, and the purchase of the Pennsylvania Coal Company, now controls more than 11 per cent of the total output. The Lackawanna road, with its 12 per cent of shipments in 1900, is an important factor, but its definite relation to the Morgan interests has not been made clear. Its substantial unanimity of interest with the roads previously named is, however, apparent. While for many years the Pennsylvania Railroad has persisted in independent action, and while the Delaware and Hudson Company is usually credited with Vanderbilt affiliation, the proportion of the total output more or less directly controlled by the Morgan interests is probably from two-thirds to three-fourths of the entire shipment. The only roads which, it is maintained with showing of authority, are entirely independent are the Ontario and Western, and the firm of Coxe Brothers, which owns the Delaware, Susquehanna, and

Schuylkill. These two roads together, however, control but slightly over 7 per cent of the total shipments.

Here we have testimony on top of testimony, evidence unimpeached and indisputable, showing that there has been a consolidation under some scheme of community of interest and interchange of stock or by the purchase or lease of practically the entire anthracite coal field, and J. P. Morgan & Co. are the men who have been primarily instrumental in bringing this about.

The attempt had been made to secure this monopoly, but it remained for the genius of this modern Crœsus to accomplish what others had failed to do. I therefore do not hesitate to say in the face of the facts as herein set forth that J. Pierpont Morgan is to-day the deus ex machina, the man behind the curtain, pulling the wires, manipulating, controlling, and directing this whole scheme for the robbery of the millions, in order to add to his wealth, already so great that he does not know how rich he is, and nobody else can even do anything more than guess.

I call attention to a fact in our recent history which will be a comment on this condition, and that is that after the President of the United States had sent for these coal operators, although it was outside of his official duty and beyond his official power, and had exerted himself to the utmost by pleadings and arguments to induce the owners or presidents of the coal roads to come to some terms which would cause the strike to stop, he was treated almost with contempt and insulted by Mr. Baer. They spurned his pleadings for compromise or arbitration, but when Mr. Root, as the papers stated, took it upon himself to go to New York and apply to the king, Morgan, we find that Mr. Baer, Mr. Thomas, and their confrères began to see things in another light, and, therefore, an agreement was reached, by which the matters in difference between the miners, the operators, and the railroads were to be submitted to this commission or board of arbitration, which is now sitting and examining into the facts.

The President failed, although the Senator from Iowa [Mr. DOLLIVER] gave him so much credit in his speech the other day for having brought about such a condition as would ameliorate and prevent the disaster from assuming any greater proportions. The President deserves no credit except for his attempt. The actual fact is that J. Pierpont Morgan gave orders to his coconspirators, or servants, or whatever you may call them, and therefore we have this attempted arrangement or agreement between the monopoly and the strikers; while in the meantime, by reason of the strike and the scarcity of coal produced by the depletion of the accumulated stock, the people to-day are face to face with and are suffering from the lack of fuel to warm their houses, to cook, or to do anything else for which anthracite coal has been used heretofore.

Mr. President, I have been dealing somewhat in generalities. I have been marshaling evidence that the combination has been in process of completion. The monopoly has been born. The birth has been going on for several years. The absorption of properties by these coal roads began away back thirty or more years ago.

I now propose to come down to some particulars to show why the Attorney-General is derelict, criminal, and why he is essentially the man at whom the people of this country can point and say: "You have murdered all those who have frozen to death; you are the man who deserves the opprobrium and the hate of the poor and the oppressed of this land."

It will be recalled that some ten days or more ago a resolution calling for certain evidence and testimony in a case begun by William R. Hearst, in which a petition was filed with the Attorney-General, was called for, and the evidence demanded in order that the Senate and the country might see whether there was any essential reason to censure the Attorney-General. Senators were quick to spring up and say, "It would be wrong policy for the Senate to interfere with the judicial arm of the Government"—the Attorney-General—no; not the judicial department, but the Department of Justice. It is a pity they are not always synonymous. But the declaration was made and the argument was used that we ought not to interfere with the Attorney-General in the discharge of his duties; that he was and is an honorable man, clean, patriotic, and to be trusted. I confess on its face that was a proper contention; but the question is, whether the facts will bear out the idea that the Attorney-General has done his full duty and whether he is be trusted.

Mr. Hearst, when approached by some one—a friend, not me, but it came to me—sent a statement over his own signature that in October last he filed a petition, accompanied by evidence, showing this monopoly, this attempt to fix prices and interfere with interstate commerce, which, under the antitrust law, would make the parties indictable and would warrant the issuance of an injunction. He filed this information along with the petition of which mention has been made. I am informed that that testimony is in the hands of the district attorney in New York, Mr. Burnett, and that the papers have never been sent to Washington because orders came from here not to forward them. At the same time Mr. Hearst began——

Mr. SPOONER. Will the Senator allow me?

The PRESIDENT pro tempore. Does the Senator from South Carolina yield to the Senator from Wisconsin?

Mr. TILLMAN. Certainly; with pleasure.

Mr. SPOONER. Does the Senator make that statement on his own responsibility?

Mr. TILLMAN. What responsibility?

Mr. SPOONER. On your responsibility.

Mr. TILLMAN. What statement?

Mr. SPOONER. The statement that the papers have never been returned, and have not been returned because of an order from here not to return them.

Mr. TILLMAN. Not returned here. They are in the hands of the district attorney awaiting the action of the Attorney-General, and they are held under his orders.

Mr. SPOONER. Where?

Mr. TILLMAN. In the district attorney's office in New York.

Mr. SPOONER. By order of the Attorney-General?

Mr. TILLMAN. Yes; that is what I have said.

Mr. SPOONER. Does the Senator make himself responsible for that?

Mr. TILLMAN. How can I be responsible for some other man's statement? I gave the authority upon which I make that statement. That man is a member-elect of the other House, and without proof we have no right to impugn his honesty. I will give his letter setting forth the facts.

NEW YORK, *January 6, 1903.*

DEAR SIR: My attention has been called to certain insinuations that the evidence offered by me to the Attorney-General in re the coal trust had not been filed until within a few days of the date upon which Senator JONES introduced his resolution calling upon the Attorney-General for the matters pertaining to the petition.

The petition in question was filed with the Attorney-General on October 4, 1902. Two days later I received a communication signed by "H. M. Hoyt, Acting Attorney-General," advising me to this effect: "I have sent the petition to the United States attorney for the southern district of New York, with instructions to receive the evidence in support of your allegations, which you or your counsel have to offer, or any other evidence bearing on the situation, and to report promptly the result to the Attorney-General for such action as the latter may determine to take on your petition."

On the same day I received United States District Attorney Henry C. Burnett's acknowledgment of the receipt of the Attorney-General's instructions, and notice that he was ready to proceed. On October 9 my attorney, Mr. Clarence J. Shearn, appeared before District Attorney Burnett and began the presentation of the evidence in support of my petition, continuing from day to day until October 16, on which date the bulk of all the evidence was in the district attorney's hands, which evidence included the complete set of the Temple Iron Company's contracts, which had been unearthed by me, and which conclusively establish over the seal of the coal companies and the hands of their presidents the illegal combination complained of.

At the request of the district attorney, supplementary evidence was submitted from time to time up to October 30, when the preparation of the case was concluded.

I am credibly informed that District Attorney Burnett's report has been ready since the first week in November, but has been withheld on instructions from Washington.

WILLIAM RANDOLPH HEARST.

Mr. SPOONER. What I want to know is, is Mr. Hearst responsible for the statement?

Mr. TILLMAN. Mr. Hearst is responsible for that statement.

At the same time that Mr. Hearst through his attorney made this effort to secure the aid and obtain the action of the Attorney-General—for be it understood that all action under the antitrust law must come from the Attorney-General's order, and that no district attorney dare to proceed or move in any case until he has had the sanction and authority of the head of the Department of Justice——

Mr. PLATT of Connecticut. Will the Senator yield to me for a moment?

The PRESIDENT pro tempore. Does the Senator from South Carolina yield to the Senator from Connecticut?

Mr. TILLMAN. With pleasure.

Mr. PLATT of Connecticut. Did not the resolution that was introduced here some time ago, to which the Senator has referred, recite the fact that the district attorney had sent his report to the Attorney-General's Office?

Mr. TILLMAN. I do not know what the resolution recited, but I think the language of the resolution was that a considerable time or a protracted period had elapsed since the filing of the petition. The Senator can get the resolution and quote it if he sees fit. It is not a question of whether the Jones resolution stated the exact facts or not; it is not a question of whether Mr. Hearst's statement in regard to the present status of the case was exactly correct or not. The point that I want to call to the attention of the Senate and the country is that evidence backing up the facts as set forth in the Industrial Commission's report, which I have already quoted, shows that this combination was in process of final completion and adjustment to begin its work of squeezing the people, and that it has been going on for three or five years, with Attorney-General Griggs fully cognizant of the

action, because he had been the attorney of the combine, or one of them, and that the Department of Justice, under the predecessor of the present Attorney-General and under the present Attorney-General, has done nothing. That is the burden of my indictment. We are not going to be brushed aside by any little errors in my statement. I am not going to make any mistakes if I can help myself. I am going to state the plain truth as I understand it and believe it, and nothing more.

But here is an official document. As I was going to state when interrupted, when the move was made in the district court before the district attorney by forwarding or filing a petition and presenting such evidence as would prove the facts, a move was begun by Mr. Hearst before the attorney-general of the State of New York, at Albany, at the same time to have the machinery of justice of that great Commonwealth set in motion under the antimonopoly law, so as to take cognizance of the situation and to prevent the harm and wrong and misery that would follow.

Before putting in this petition I will state that I have here the argument in that case, where all the facts are marshaled, where the basis of the evidence is presented, and where the case is argued, and I shall read a little from it. The same case is now before the attorney-general of the State of New York, Mr. Cunneen, the former attorney-general, Mr. Davies, having gone out of office. Mr. Hearst renews his effort to have the machinery of the law in New York State set to work to at least do what can be done at this late day to relieve the suffering, and if not to relieve the suffering, because that appears to be impossible, to at least hold up to the gaze of the country the men primarily responsible, and let the odium and punishment that ought to follow come to them.

I will file this paper, as it is too long to read, mainly for the reason that it is more full and complete in all its recitals and details than the argument that was made in October. I prefer to read that argument and merely put in this petition in the matter of the application of William Randolph Hearst to the attorney-general of the State of New York for the institution of an action against the Philadelphia and Reading Coal and Iron Company and others, under the antitrust law. The petition was filed January 6 of this year. I suppose lawyers prosecuting a case would hold on to this petition and argue from it. But, as I said, not being a lawyer, and not being as thoroughly familiar with the evidence and the facts as I should desire to be, I shall lend myself—and not feel in the slightest degree that Senatorial dignity has been shocked or injured—to give voice to the argument and the presentation of the facts made by Mr. Shearn in the case last October. If Senators would like to have Mr. Hearst's petition read I have no objection, but they can read it in the RECORD, and therefore I will ask to have it inserted.

The PRESIDENT pro tempore. Without objection, the paper referred to by the Senator will be inserted in the RECORD.

Mr. TILLMAN. As part of my speech, right in the body of it. I mean I want it to come in right where I am.

The PRESIDENT pro tempore. It will be inserted as the Senator requests.

The paper referred to is as follows:

Before the attorney-general. In the matter of the application of William Randolph Hearst to Hon. John Cunneen, attorney-general of the State of New York, for the institution of an action against the Philadelphia and Reading Coal and Iron Company and others under the antitrust law. Reading Company, Philadelphia and Reading Coal and Iron Company, Central Railroad Company of New Jersey, Lehigh and Wilkesbarre Coal Company, Lehigh Valley Railroad Company, Erie Railroad Company, Pennsylvania Railroad Company, New York, Susquehanna and Western Railroad Company, Temple Iron Company, Delaware and Hudson Company, New York, Ontario and Western Railroad Company, Delaware, Lackawanna and Western Railroad Company, Pennsylvania Coal Company.

Take notice that, pursuant to authority this day granted by the Hon. John Cunneen, attorney-general of the State of New York, and upon the annexed verified petition of William Randolph Hearst, application will be made to said attorney-general, at his office in the capitol, in the city of Albany, N. Y., on the 12th day of January, 1903, at 10 o'clock in the forenoon, that proceedings and an action be instituted against you, the above-named corporations, in the name and on behalf of the people of the State of New York, under the provisions of chapter 690 of the laws of 1899, and that a hearing will then and there be had upon said application.

New York, January 6, 1903.

EINSTEIN, TOWNSEND, GUITERMAN & SHEARN,
Attorneys for Petitioner. Office and Post-Office Address, Mutual Life Building, 32 Nassau Street, New York City.

The Hon. JOHN CUNNEEN,
Attorney-General of the State of New York:

The petition of William Randolph Hearst respectfully shows:

That your petitioner, a citizen of the State of New York, residing in the city of New York, hereby makes application, upon the facts hereinafter recited, that you institute proceedings and an action under chapter 690 of the laws of 1899, in the name and on behalf of the people of the State of New York, against the Reading Company, the Philadelphia and Reading Coal and Iron Company, Central Railroad Company of New Jersey, Lehigh and Wilkes-Barre Coal Company, Lehigh Valley Railroad Company, Lehigh Valley Coal Company, Pennsylvania Coal Company, Delaware, Lackawanna and Western Railroad Company, Pennsylvania Railroad Company, New York, Susquehanna and Western Railroad Company, and Temple Iron Company, all of which are foreign corporations engaged in business within the State of New York, and against the Delaware and Hudson Company, New York, Ontario and Western Railroad Company, and Erie Railroad Company, domestic corporations, and against persons who are the officers, managers, directors, and agents of said corporations, to restrain and prevent the said corporations, their respective officers, managers, directors, and agents, from doing in this State any act in, toward, or for the making or consummation of the contracts, agreements, combinations, and arrangements herein set forth, and from doing business in the State of New York pursuant to such contracts, agreements, combination, and arrangements, and to vacate, annul, and set aside the certificates procured by any of the said foreign corporations from the secretary of state pursuant to section 15 of the general corporation law authorizing said corporations to do business in the State of New York.

That the only available source for the supply of anthracite coal, an article of common use and a necessity of life, to the inhabitants of the State of New York is a limited region in the State of Pennsylvania known as the anthracite coal field, comprising an area of about 477 square miles, and the only practical means of transporting coal from said coal field to the inhabitants of the State of New York are the railroads above mentioned, all of which penetrate said coal field and provide transportation for coal to points within the State of New York.

That although none of the said railroads except the Delaware, Lackawanna and Western Railroad Company and the Delaware and Hudson Company is permitted by its charter, or by the laws of the State under which it is incorporated, to operate coal mines, all of said railroad companies except the Delaware, Lackawanna and Western Railroad Company and the Delaware and Hudson Company, which own their own coal mines, engage extensively in the business of mining anthracite coal and in the business of selling the same within the State of New York, and elsewhere, by means of subsidiary corporations entirely owned, controlled, and directed by said railroad companies.

For example: Said Reading Company owns and operates coal mines through a subsidiary company called the Philadelphia and Reading Coal and Iron Company, the entire capital stock of which is owned by said Reading Company; and, although there are two separate corporate entities, the only distinction between the said Reading Company and said coal company is an artificial one, the companies having substantially the same officers and directors and the coal company being the absolute property of the Reading Company to do with as it sees fit. The Central Railroad Company of New Jersey owns and operates coal mines through a subsidiary company called the Lehigh and Wilkes-Barre Coal Company, and the entire capital stock of which is owned by said railroad company. Similarly the Lehigh Valley Railroad Company owns and operates coal mines by means of a subsidiary company called the Lehigh Valley Coal Company; as does the Erie Railroad Company, by means of the Pennsylvania Coal Company and the Hillside Coal and Iron Company, and as does the Pennsylvania Railroad Company by means of the Susquehanna Coal Company.

That for several years past of the entire area of said anthracite coal field, 97.5 per cent thereof was owned by said railroad company and said subsidiary companies in the following proportions:

	Per cent.
Reading	42.25
Central Railroad of New Jersey	17.30
Lehigh Valley	16.87
Delaware, Lackawanna and Western	6.55
Erie	5.18
Delaware and Hudson	2.29
Pennsylvania	6.24
New York, Ontario and Western	.28
New York, Susquehanna and Western	.54

That the annual productive capacity of said anthracite coal field has been for many years past about 60,000,000 tons, and that the annual production for several years past has been as follows:

	Tons.
1896	48,523,287
1897	46,974,715
1898	47,663,076
1899	53,944,647
1900	51,221,353
1901	60,242,560

That for several years prior to 1901 of the total output of said anthracite coal field, about 70 per cent thereof was mined and sold by the Reading Company, Central Railroad Company of New Jersey, Lehigh Valley Railroad Company, Delaware, Lackawanna and Western Railroad Company, Delaware and Hudson Company, Pennsylvania Railroad Company, New York, Susquehanna and Western Railroad Company, Erie Railroad Company, and New York, Ontario and Western Railroad Company, either directly or through their said subsidiary companies, and that the balance of the said output was mined by individual companies, independent of said railroad companies.

That during the year 1895 the average selling price per ton f. o. b. New York Harbor of stove coal was $3.12, as compared to $3.60 per ton for 1894 and $4.19 per ton for 1893, said low price of $3.12 being due to the fact that there existed at said time some competition, both between said railroad companies themselves and between said railroad companies on the one hand and the said individual operators on the other, in the business of mining and selling anthracite coal.

That in January, 1896, in order to raise the selling price of anthracite coal at tide water, and to restrain and limit, and as far as possible prevent, competition in the business of mining and selling anthracite coal, the Delaware, Lackawanna and Western Railroad Company, the Delaware and Hudson Canal Company (now the Delaware and Hudson Company), the Erie and Wyoming Valley Railroad Company (owning the Pennsylvania Coal Company, both companies being now owned by the Erie Railroad Company), Erie Railroad Company, New York, Susquehanna and Western Railroad Company, the New York, Ontario and Western Railroad Company, Pennsylvania Railroad Company, Lehigh Valley Railroad Company, and the Central Railroad Company of New Jersey and Philadelphia and Reading Railroad Company (since succeeded by Philadelphia and Reading Railway Company, which is owned by the Reading Company) entered into and upon an agreement with one another at the city of New York, wherein and whereby it was mutually agreed that, beginning February 1, 1896, the total tonnage of anthracite coal to be transported annually from said anthracite coal field should be divided into fixed proportions and allotted as follows:

	Per cent.
Delaware, Lackawanna and Western	13.35
Delaware and Hudson Canal Company	9.60
Erie and Wyoming Valley Railroad	4
Erie Railroad	4
New York, Susquehanna and Western	3.20
New York, Ontario and Western	3.10
Pennsylvania Railroad	11.40
Lehigh Valley Railroad	15.65
Delaware, Susquehanna and Schuylkill	3.50
Central Railroad of New Jersey	11.70
Philadelphia and Reading Railroad	20.50

That during the year 1896 the total output of anthracite coal was transported by said railroad companies, pursuant to said agreement, by each of them in the proportion fixed and allotted by said agreement, and, as a result thereof, the output for the year 1896 was reduced by more than 3,000,000 tons, and the selling price per ton f. o. b. at New York Harbor increased from $3.12 to $3.79 for stove coal.

That since 1896 said companies and their successors in interest have, by agreement and combination among themselves, maintained substantially the same percentages of anthracite coal transported, although the annual output has increased from 48,523,287 tons in 1896 to 60,242,560 tons in 1901, during which time the average selling price, f. o. b., New York Harbor, for stove coal has been as follows:

1896	$3.79
1897	4.01
1898	3.79
1899	3.70
1900	3.94
1901	4.32

That in 1896 and 1897 all of the said railrad companies except the Erie and Wyoming Valley Railroad Company maintained, by agreement between themselves, a uniform rate of freight between said coal field and tidewater which amounted to as much as 40 per cent of the f. o. b. price of coal at tidewater.

That during the year 1898 a majority of the independent coal operators in the anthracite coal field actively cooperated with one another in an endeavor to procure a lower rate of freight for coal, but the said railroad companies refused to lower the rate. That thereupon the majority of the independent coal operators in the coal field known as the Wyoming region organized a railroad corporation called the New York, Wyoming and Western Railroad Company, for the purpose of constructing and operating an independent railroad route from said coal field to tidewater. That practically all of the independent coal operators in said Wyoming region pledged the entire output of their respective mines to said New York, Wyoming and Western Railroad Company, and measures were taken to procure rights of way and a terminal for said projected railroad company. That among the independent coal operators who pledged the output of their mines to said New York, Wyoming and Western Railroad Company were Clarence D. Simpson and Thomas H. Watkins, composing the firm of Simpson & Watkins, of Scranton, Pa., owning controlling interests in eleven collieries. That said Simpson & Watkins were the most active and influential supporters of the said New York, Wyoming and Western Railroad Company, which company would, if completed, have resulted in competition in the sale of anthracite coal in the State of New York between said independent coal operators and said railroad companies.

That in January, 1899, the Delaware, Lackawanna and Western Railroad Company, Central Railroad Company of New Jersey, Reading Company, Lehigh Valley Railroad Company, Erie Railroad Company, and New York, Susquehanna and Western Railroad Company, hereinafter referred to for the sake of brevity as the "six companies," acting in concert and combination, and for the purpose of preventing competition in the sale of anthracite coal in the State of New York which would have resulted from the construction of the said independent railroad, purchased the charter of the Temple Iron Company, a corporation organized under the laws of Pennsylvania in 1873 and then operating an iron furnace at Reading, Pa. That at the time of the said purchase the capital stock of the said Temple Iron Company amounted to only $240,000, and said company was not engaged in the business of coal mining.

That on January 19, 1899, said six companies, acting in concert and combination and for the purpose aforesaid, procured the said firm of Simpson & Watkins to enter into a contract with the said Temple Iron Company for the sale to the said Temple Iron Company of all their interest in said eleven collieries, whose output was, as hereinabove alleged, pledged to the said projected independent railroad company. That said six companies in February, 1899, acting in concert and combination and for the purpose aforesaid, caused the capital stock of the said Temple Iron Company to be increased to $2,500,000, and an issue of bonds of the said Temple Iron Company to be authorized amounting to $3,500,000, and on February 27, 1899, said six companies entered into a written agreement with one another and with the said Temple Iron Company and with the Guaranty Trust Company of New York, a corporation existing under the laws of the State of New York, whereby said six companies agreed to guarantee yearly dividends of 6 per cent on the entire capital stock of the said Temple Iron Company, and also payment of principal of and interest on all of the bonds of the said Temple Iron Company, to the extent of and in the following proportions, to wit:

	Per cent.
Lehigh Valley Railroad Company	22.88
Central Railroad Company of New Jersey	17.12
Delaware, Lackawanna and Western	19.52
Erie Railroad Company	5.84
New York, Susquehanna and Western Railroad Company	4.68
Reading Company	29.96

That on the said day, to wit, February 27, 1899, pursuant to said agreements of January 19, 1899, and February 27, 1899, said firm of Simpson & Watkins transferred to the said Temple Iron Company all their interests in the aforesaid eleven collieries, and received therefor $2,250,000 of the capital stock of the said Temple Iron Company, and $2,100,000 of the bonds of the said Temple Iron Company, guaranteed by said six companies as aforesaid, whereupon said Simpson & Watkins entered into a written agreement with said Guaranty Trust Company of New York to transfer to said Guaranty Trust Company of New York all of the said bonds and stock of the said Temple Iron Company in consideration of the delivery to them of the sum of $3,238,396, and the delivery and issuing to them by said Guaranty Trust Company of New York of certificates of beneficial interest in the capital stock of the Temple Iron Company in respect of $1,000,000 of such capital stock. That by the purchase of the said collieries of Simpson & Watkins, in the manner aforesaid, said six companies prevented the building of the said projected New York, Wyoming and Western Railroad Company, and the competition in the selling of anthracite coal in the State of New York that would have resulted from the building and operation of the said road.

That said six companies have, since February, 1899, acting in concert and combination as aforesaid, and for the purpose of preventing competition in the sale of anthracite coal in the State of New York, controlled and operated the aforesaid eleven collieries, purchased from Simpson & Watkins as aforesaid through the medium of the said Temple Iron Company.

That in said agreement of February 27, 1899, between said six companies and the Temple Iron Company and the Guaranty Trust Company of New York, said six companies purchased the entire capital stock of the said Temple Iron Company then outstanding, in the proportions represented by the foregoing table of percentages, and agreed to purchase all additional amounts of stock of the said Temple Iron Company thereafter issued, and that pending the delivery of said stock, the same should be held by the said Guaranty Trust Company of New York, as trustee, with all the rights of owner thereof, both as to votes and dividends, said six companies only receiving certificates of a beneficial interest in said stock. That the aforesaid agreements between the said six companies, the Temple Iron Company, the Guaranty Trust Company of New York, and Simpson & Watkins constituted an illegal scheme and arrangement whereby competition in the sale of anthracite coal within the State of New York is restrained and prevented.

That the president of the said Temple Iron Company is George F. Baer, who is also the president of the Reading Company, the Philadelphia and Reading Railway Company, the Philadelphia and Reading Coal and Iron Company, and of the Central Railroad Company of New Jersey. That the directors of the said Temple Iron Company are the respective presidents of the said railroad companies, being as follows: George F. Baer, president of the Reading Company and of the Central Railroad Company of New Jersey; Eben B. Thomas, president of the Lehigh Valley Railroad Company and chairman of the board of directors of the Erie Railroad Company; F. D. Underwood, president of the Erie Railroad Company; William H. Truesdale, president of the Delaware, Lackawanna and Western Railroad Company; R. M. Olyphant, president of the Delaware and Hudson Company; Thomas P. Fowler, president of the New York, Ontario and Western Railroad Company; Irving A. Stearns, president of the Delaware, Susquehanna and Schuylkill Railroad Company.

That the coal area controlled by the said railroad companies, whose officers constitute the board of directors of the said Temple Iron Company, amounts to 89.51 per cent of the entire anthracite coal field of the State of Pennsylvania. That the railroads of which the said George F. Baer and Eben B. Thomas are the presidents control 86.42 per cent of the total anthracite area in the State of Pennsylvania, and transport annually 76.42 per cent of the total tonnage of anthracite coal out of said coal fields.

That the meetings of the board of directors of the said Temple Iron Company are, and have been since 1899, held at the office of the Central Railroad Company of New Jersey, at No. 143 Liberty street, New York City. That said meetings while ostensibly those of the board of directors of the Temple Iron Company are, and have been since 1899, in reality meetings of and conferences between the presidents of the said respective railroad companies held for the purpose of fixing a uniform selling price for anthracite coal and for the regulation of the output of anthracite coal.

That subsequent to the purchase of the colleries of Simpson & Watkins by said six companies, in the manner aforesaid, and during the year 1899, a large number of independent coal operators in said Wyoming region, who had pledged the output of their mines to the said New York, Wyoming and Western Railroad Company, the completion of which was prevented as aforesaid, among whom was then included the Pennsylvania Coal Company, cooperated with one another in a further attempt to procure a lower rate of freight for anthracite coal, and, failing to obtain the same, caused to be organized a railroad company called the Delaware Valley and Kingston Railroad, for the purpose of constructing an independent railroad from said coal field to Kingston, N. Y., on the Hudson River, and in pursuance thereof applied to the board of railroad commissioners of the State of New York for a charter. That the granting of said charter and the building and operation of said railroad would have resulted in competition in the sale of anthracite coal in the State of New York between said independent coal operators and the railroad companies.

That the granting of the said charter was opposed by the New York, Ontario and Western Railroad Company and by the Erie Railroad Company both before the said board of railroad commissioners and in the courts, but said charter was granted by said board of railroad commissioners in May, 1900, and sustained by the court in September of the same year. That the chief support of the said Delaware Valley and Kingston Railroad Company was the aforesaid Pennsylvania Coal Company. That immediately after the charter of the said Delaware Valley and Kingston Railroad Company had been sustained in the courts the aforesaid Erie Railroad Company entered into a contract with the firm of J. P. Morgan & Co., of the city of New York, for the purchase by said J. P. Morgan & Co., and the sale by said company to said Erie Railroad Company, of the entire capital stock of the said Pennsylvania Coal Company and of said Delaware Valley and Kingston Railroad Company, and in January, 1901, said contract was carried out and said Erie Railroad Company became, and is to-day, the owner of the entire capital stock of the said Pennsylvania Coal Company and of the said Delaware Valley and Kingston Railroad Company.

That at the same time the majority of the capital stock of the said Central Railroad Company of New Jersey was purchased by the Reading Company, and George F. Baer, president of the Reading Company, was elected president of the said Central Railroad Company of New Jersey. That at the same time, to wit, January, 1901, the majority of the capital stock of the Reading Company was, and had for some time prior thereto, been deposited in a voting trust consisting of Messrs. J. Pierpont Morgan, of said firm of J. P. Morgan & Co., C. L. W. Packard, and Frederick P. Olcott, and a majority of the stock of the Erie Railroad Company was deposited in a voting trust consisting of the aforesaid J. Pierpont Morgan, Louis Fitzgerald, and Sir Charles Tennant. That the aforesaid purchase of the Pennsylvania Coal Company and Delaware Valley and Kingston Railroad Company was for the purpose of, and resulted in, preventing the building of the said projected independent railroad to tide water, and thus preventing competition in the sale of anthracite coal within the State of New York.

That in March, 1901, in order to prevent any further attempts on the part of the remaining independent operators to build an independent railroad to tide water and thus compete with the said railroad companies in the sale of anthracite coal, the Reading Company, Lehigh Valley Railroad Company, Central Railroad Company of New Jersey, and New York, Ontario and Western Railroad Company, through their respective subsidiary companies, and the Delaware, Lackawanna and Western Railroad Company entered into an agreement with one another, and with practically all of the remaining independent coal operators, for the purchase by said companies of the independent coal operators of all coal mined by said operators in terms substantially as follows: That said independent coal operators should sell to said railroad companies, or their subsidiary coal companies, the entire product of their mines for all future time for 65 per cent of the f. o. b. price of coal at tide water, the railroad companies, or their subsidiary companies, however, agreeing to purchase of said independent coal operators only such "a just proportion of the entire quantity of coal agreed to be purchased by the buyer, measured by the colliery capacity of the respective sellers."

That in the manner and by the means hereinabove set forth there was consummated in March, 1901, in the hands of the aforesaid six companies and of the Delaware and Hudson Company, New York, Ontario and Western Railroad Company, and the Pennsylvania Railroad Company an absolute monopoly in the production and transportation of anthracite coal, and in the sale thereof within the State of New York, with absolute power arbitrarily to fix output, freight rate, and selling price.

That since March, 1901, there has been no competition between any of the said companies in the sale of anthracite coal, the proportionate output being determined by the said agreement of January, 1896, the freight rate and selling price by agreement between said companies.

That since March, 1901, said six companies, the Delaware and Hudson Company, New York, Ontario and Western Railroad Company, and the Pennsylvania Railroad Company have by agreement between themselves, and

contrary to law, fixed and maintained a uniform price for coal within the State of New York, and that all of said railroad companies, either individually or through their subsidiary companies, have since March, 1901, sold and delivered coal within the State of New York pursuant to said illegal agreement. That the prices fixed by said companies for the year 1901 were higher than would have prevailed in the absence of a combination or agreement between said companies, and were higher than the rates prevailing in 1900, thus involving great hardship and loss upon the inhabitants of the State of New York. That in October, 1902, said companies arbitrarily and uniformly by agreement between themselves, increased the price of coal 50 cents a ton over the price fixed and maintained by said companies during the year 1901. That while said increase means an addition of $30,000,000 a year to the revenues of the said railroad companies, it represents a corresponding loss to the consumers of coal, greatly to the detriment of business, and entailing suffering and hardship upon the poor.

To the end, therefore, that the power existing in the said railroad companies by virtue of the aforesaid combination and agreement between them may not be further abused by another increase in the price of this necessary of life, and in order that the said combination may be adjudged to be illegal and may be disrupted and destroyed, your petitioner earnestly prays that proceedings be instituted against said corporations pursuant to the antimonopoly law of this State.

WILLIAM RANDOLPH HEARST.

COUNTY OF NEW YORK, *ss:*

WILLIAM RANDOLPH HEARST, being duly sworn, says: That he is the petitioner above named; that he has read the foregoing petition and application, and that the same is true according to the deponent's information and belief, That the sources of deponent's knowledge of and the grounds of his belief in the truth of the allegations of the petition, all of which are made upon information and belief, are investigations made by petitioner's agents, reports of duly appointed committees of the United States House of Representatives and of the Senate of the United States and of the senate of the State of New York, based upon certain testimony taken by said committees, together with the reports of experts, Government officials, and other persons in a position to be familiar with the facts in the petition set forth.

WILLIAM RANDOLPH HEARST.

Sworn to before me this 6th day of January, 1903.

IRA E. MILLER,
Commissioner of Deeds, city of New York.

Mr. TILLMAN. Mr. President, the argument from which I am going to read is that of Clarence J. Shearn before the attorney-general of the State of New York on the 15th day of last October. It relates to same statement of facts. Of course, in my desire to condense what I am going to say, or want to say in support of my assertions that the Attorney-General is responsible, it would be better if I read all of it; but I have tried to go through and select such parts as are most essential to my purpose, and therefore it may have some little breaks in it.

I will state that the railroads embraced in the bill of complaint are what are known as the nine coal roads, together with the Pennsylvania Railroad Company and two or three others which are in alliance with them, and that in this hearing only the Pennsylvania Railroad Company and the Delaware and Hudson Canal Company appeared by attorney, all the other railroads merely filing their answers to the complaint.

There is some little colloquy here once in a while between the lawyers, which I will read because it is necessary to the elucidation of the statement of facts and arguments. I make that statement to show why other men appear, so that there will be no confusion. Mr. Shearn said:

Fortunately in this proceeding I shall be able not only to bring before you evidence of a nature from which inferences may be drawn, but also evidence in the shape of contracts over the hands and seals of many of these corporations in this combination, which shows conclusively and upon their face the existence of an actual combination between them to an end which is apparent from the paper itself.

Going on to discuss the basis of his contention that there was a combination, he says:

We find that the only available source of supply for the State of New York and for the entire Eastern and Northern States for anthracite coal is a limited area of some 477 square miles in the State of Pennsylvania—a little strip of 170 miles long and varying from a mile to two miles and a half in width.

There is all of the anthracite coal that is available for use in the Northern and Eastern States, and in fact for the whole country, because the small supply of anthracite coal in Colorado is but a drop in the bucket, and, of course, does not enter into this proceeding at all, because it is impossible for anyone to get it in competition with Pennsylvania coal.

I have shown to you, by testimony from the Industrial Commission's report, that these assertions of fact are based upon other evidence than the contention of Mr. Hearst's plea, and that they can not be disputed.

Now, we find that this supply of coal is owned and controlled absolutely by the corporations named in this petition, and in certain well-marked and readily ascertainable proportions, to wit: That the Philadelphia and Reading controls 42.25 per cent of the entire supply of anthracite coal; the Central Railroad of New Jersey controls 17.30 per cent; the Lehigh Valley 16.87 per cent; the Delaware, Lackawanna and Western, 6.55; the Delaware and Hudson, 2.29; the Pennsylvania Railroad Company, 6.24; the Ontario and Western, 0.28; and the Susquehanna and Western, 0.54.

So that out of the entire supply all but 2.59 per cent was, before this combination became effective, in the absolute control and in the hands of the parties to this combination; and of the balance, the supply was owned by a few independent operators, among whom the most important, previous to the consummation of this agreement and combination, was the Pennsylvania Coal Company.

The next step in outlining this situation, showing the opportunity for combination, is the determination of how it is possible to get that coal to market, and we find that the only means of access to these coal mines for the people of the State of New York are nine railroads, which, curiously enough, are the same corporations which control the price of coal.

And, considering the tonnage that has been carried over these railroads during a great many years past, we find that the Reading has carried 20.70; the Central Railroad, 11.77; Lehigh Valley, 15.32; Erie, 8.50; Delaware, Lackawanna and Western, 13.33; Delaware and Hudson, 8.81; Pennsylvania, 11.46; New York, Ontario and Western, 3.68; New York, Susquehanna and Western, 2.95.

In other words, not only have the corporations named controlled the available supply of coal, but they have handled its tonnage and have transported and carried it to the extent of 96.52 per cent of all the coal carried.

* * * * * * *

"So that, bearing in mind that these railroad companies, these mining companies, control the source of supply, and that they control the only means of getting coal to market, it is perfectly clear to the lay mind, and established to a certainty in any legal mind, that the opportunity for this combination exists, and that it is an unusual opportunity."

I have said that the sources of supply are controlled by these railroad companies and these coal-mining companies, but that even is susceptible to further limitation. How? We find that it may be limited to the railroad companies alone, because the railroad companies own the entire capital stock of the coal-mining companies, which are the legal owners of these various mining properties.

No one would think for a moment that, in the case of any railroad corporation other than one such as the Delaware and Hudson where there was a special provision in its charter authorizing it, for the benefit of the people of New York, at an early day in the mining industry, to invest its capital in the stock of coal mines, any railroad corporation would be permitted to control and own the means of producing that which they transported; because it affords the readiest means of discrimination against those who naturally would compete with the railroads.

We find that that sentiment that would be expressed in principles of public policy has, in the State of Pennsylvania, been embodied in the State constitution; that the constitution of 1873 expressly prohibits railroad companies from engaging directly or indirectly in mining coal; and a subterfuge has been resorted to (for it is a subterfuge, a device, a pretext which, from cases where the matter has been under advisement it is obvious that courts will at once brush aside), they have resorted to this device—to organize a holding company and then own all the capital stock of that company.

He goes on to say:

So we see that these corporations named, by virtue of the geographical situation, by virtue of the fact that they furnish the only means of access to these mines, and by the device of dividing that whole territory, and through the schemes of these subsidiary or holding companies, have the opportunity of creating an absolute monopoly in the production and sale of anthracite coal.

Now, whether that combination exists for these purposes may be very well arrived at preliminarily by consideration of what happened in the earlier attempt to monopolize this coal supply. I refer to the attempt known as the McLoud attempt in 1892, which was an attempt to obtain for the Reading Railroad Company a lease of the Central Railroad Company of New Jersey, and of the Lehigh Valley Railroad Company, thus consolidating under one management over 60 per cent of the total supply of anthracite coal.

In that case Chancellor McGill, of the New Jersey supreme bench, rendered a decision which I here insert, in which he declared that these conditions are intolerable because they are against public policy and public right, and he brushed aside the lease as absolutely worthless, and for a time the people were protected against monopolies.

In one of the New Jersey reports Chancellor McGill said:

There are peculiar features in the transaction now considered that evinces a public danger much more serious than the mere transfer of corporate duties to performance by a foreign corporation. The real lessor and lessee here are extensive producers and carriers of anthracite coal. They constitute two of the six great coal carriers from the coal regions of Pennsylvania to this and adjoining States. It is disclosed that the real lessee has secured the lease of the Lehigh Valley Railroad, and that thereby and by the lease in question it controls three of the six great coal carriers referred to; and also, with the alliance thus formed, now controls, through the instrumentality of coal companies, the capital stock of which these combined carriers own, more than one-half of the anthracite coal fields in Pennsylvania.

Moreover, as an indication of the tendency of the combination, the Attorney-General presents a report by the lessor defendant to its stockholders, in which it congratulates them upon the alliance, which, with the cooperation of other large coal-producing companies, will insure them "greater uniformity in prices of coal" and the "avoidance of needless and expensive competition between producers."

The proofs show that there are localities in this State which formerly had the advantage of competition between these allied roads, but now are subject to the monopoly which this lease affords. It is true the cooperation of the remaining roads, which is necessary to a complete monopoly, has not yet been secured.

It has to-day.

By this lease only one competitor is silenced and only a little more than one-half of the entire coal region is controlled. It is only the second step in the direction of monopoly, the first step being the lease of the Lehigh Valley Railroad. To say that these conditions do not tend to a disastrous monopoly in coal would be an insult to intelligence.

I have here also a letter written in 1892 by William H. Joyce, general freight agent, to S. R. Holden, chairman of the anthracite rate committee of New York, in which a statement is made that the rate committee of the conjoined railroads must conform to an agreement which had been reached, to the effect that the independent coal operators should receive 60 per cent of the selling price at tide water. They had previous to that been getting less; and therefore we have evidence away back yonder of a combination and a monopoly by this coal trust.

APRIL 18, 1892.

DEAR SIR: Referring to the discussion at the recent meeting in New York of the representatives of the anthracite coal carrying companies, at which the question of transportation rates on anthracite coal was considered, I now desire to reiterate the statements I then made.

As you are aware, during the past year the Lehigh Valley Railroad Company, directly or through its coal organization, the Lehigh Valley Coal Company, made with individual operators contract for the purchase of their coal upon a percentage of the prices realized at tide. Other railroad interests transporting coal from the same region have also been transporting coal under the same general or similar arrangements. Lately the Reading Railroad Company, directly or through its coal organization, the Reading Coal

and Iron Company, have effected like arrangements with a number of miners and shippers of anthracite coal, and, as a consequence of these contracts, it became necessary for our road, if it was to retain the product of collieries it has been transporting for a number of years past, to enter into similar arrangements. This change in the manner of dealing with the anthracite coal traffic necessarily requires an adjustment of rates for such transportation upon the basis of contracts to which I have already referred, for the reason that the amount received for the transportation must necessarily be the difference between the percentage agreed to be paid for the coal and the prices for the coal, including freight, realized at destination.

The terms of these contracts have been published repeatedly as being 60 per cent of the selling price at tide for prepared sizes, and at different percentages for sizes lower than prepared. The average price at tide on prepared sizes is now, say, $3.60 per ton, 40 per cent of which, representing the transportation rate, would be $1.44, while our present rate, as you are aware, is $1.70. It is, therefore, necessary for us to name a rate of $1.44 to seaboard at New York, which we will now do. I would further state, however, that if the prices of coal are changed, the transportation rates will be decreased or increased correspondingly, in the same ratio of 40 per cent of the selling price at tide.

Yours, truly,

WILLIAM H. JOYCE,
General Freight Agent Pennsylvania Railroad.

E. R. HOLDEN,
Chairman Anthracite Rate Committee, New York.

We have further here quotations from the report of the Congressional committee made to Congress in 1893, in which the statement appears:

The committee, after a careful investigation, has come to the conclusion that the railroad companies engaged in mining and transporting coal are practically in a combination to control the output and fix the prices which the public pays for this important and necessary article of consumption. The combination is not confined to the Philadelphia and Reading and the Lehigh Valley, but embraces all the railroads connecting the anthracite region with tidewater. There is substantially no competition existing between these companies. The only limitation to their demands is the indisposition on the part of the public to buy their product at an exorbitant price.

That was in reference to the conditions nine years ago. Now Mr. Shearn goes on to ask:

Now what is the situation? The same situation precisely, except that it is more aggravated. They have attempted to get around the law by this subterfuge. They have bought the control of the stock of the Central Railroad of New Jersey. The Reading Company now owns a majority of the stock of the Central Railroad of New Jersey. The officials of the Central Railroad of New Jersey resigned. All of its directors resigned; but we find now in that new order of things the president of the Reading is the president of the Central. The offices are in the same building. The directors are the same men. They are engaged in the same line of business, but there is no more competition between them; and they have accomplished by virtue of the buying up of the stock of the Central the same thing that Chancellor McGill denounced and that the Congressional committee found resulted in a combination in restraint of trade in 1893.

Mr. Shearn goes on to recite many other facts, and I ask permission to insert in my speech any parts of his argument that I may see fit.

The PRESIDING OFFICER (Mr. WELLINGTON in the chair). Does the Senator from South Carolina make that request?

Mr. TILLMAN. I make the request.

The PRESIDING OFFICER. The Senator from South Carolina requests permission to insert in his remarks such portions of the argument of Mr. Shearn as he sees proper. Is there objection to the request? The Chair hears none, and it is so ordered.

Mr. TILLMAN. Mr. Shearn goes on, after speaking about the McLoud attempt to secure this monopoly, to recite a more recent attempt, and he tells the story of how the independent operators, in their desperation at being in the grasp of the railroad monopoly, organized an effort to build an independent railroad out of the coal fields so as to reach the markets. He speaks of it as follows:

As the result of the setting aside of this Central Railroad lease in 1893, the Lehigh Valley lease was surrendered, and a period ensued—and as the result of the setting aside of those leases a new plan came into operation and lasted for something like six years, to wit, a community of interests scheme; and during that period the independent operators negotiated with Mr. McLoud, negotiated for the sale of their coal to the coal companies for 60 per cent of the prices that were realized for coal at tide water.

Those contracts were uniform and they were all identical, and under that plan there was a truce for some years, and the business went on without exciting any further comment until the Lexow investigation of 1897 or thereabouts.

During those years the prices of coal were substantially uniform at tide water and were fixed, as has been established by testimony taken before the Industrial Commission last year, at monthly meetings of sales agents of the respective railroads held at the city of New York. These agents got together once a month and agreed upon the prices of coal for the succeeding month and issued their circulars to the trade, and those were the prices; and there was unanimity in the price paid for transportation and unanimty in the prices realized for coal; but no substantial agreement shown between the companies and nothing further shown except a tacit agreement between them.

Those 60 and 40 per cent contracts were, many of them, drawing to a close in 1899 and 1900; and in the year 1899 there was a revolt among the independent producers of coal at the exorbitant prices which the railroad companies demanded for transportation.

As I have said, the producer of coal received only 60 per cent of the prices realized at tide water, and the railroad had 40 per cent; and by reason of the revolt, an organization was effected between the independents and they selected as their representative one E. B. Sturgis and one E. L. Fuller, who lived in the coal-mining region, and who undertook to make a different arrangement for them with the railroads.

Those attempts failed, and in desperation the independents got together and organized an attempt at an independent line from the coal mines to tide water. That railroad was chartered and called the New York, Wyoming and Western; and to show you the strength of that movement, every individual operator pledged his output to that projected railroad.

Well, there was a situation! Competition was about to take place in the sale of anthracite coal. That would of course result in a lessening of the price of coal. What did the combination of railroads do then? They went to work and bought up the chief supporter of this independent movement.

The chief supporter of this independent movement was a firm called Simpson & Watkins. They had some fifteen collieries, with a large output. The companies felt that there would be competition. How could it be stopped? Why, obviously, by going behind the backs of these independents and stealing away their chief supporter. What happened? Simpson & Watkins sold all their collieries and abandoned the enterprise and it died stillborn. To whom did they sell? The coal roads could not trust a sale to be made to any one of them. They did not have such confidence in one another at that time as would allow them to consent to the holding of those collieries by any one railroad company. They could not organize under a new agreement under the laws of any of the States and hold those collieries, because they would run up against the constitutional provision of 1873, that I have alluded to. So they must needs rake up an old charter, the charter of a company which had never accepted the provisions of the Pennsylvania constitution, but which had been formed under the act of 1869, which permitted corporations to loan their credit to mining enterprises. The name of that company was the Temple Iron Company. It was not a coal company at all. It was a little picayune concern that operated a little furnace at Reading. I will show you a photograph of the furnace, and you will see from that the character of the enterprise.

These railroads, these vast railroads, were engaged in the joint attempt to buy it up, and you will wonder what could possibly be the reason for the interest of the railroad companies in this little Temple Iron Company. You will not wonder when I tell you that the way in which they purchased the property of Simpson & Watkins was by the use of stock and bonds of the Temple Iron Company, all secured by a joint agreement between the railroad companies.

Between what railroads? Between these competing railroads, or supposedly competing railroads, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, the Erie, the New York, Susquehanna and Western, and the Reading Company.

And there, sir—

Laying it on the desk of the Attorney-General—

is one of the bonds issued in pursuance of that scheme—a bond of the denomination of $1,000, bearing on its face this very significant indorsement:

"This bond is entitled to the guarantee as set forth in the agreement dated February 27, 1899, between the Temple Iron Company, Guaranty Trust Company of New York, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, the Erie Railroad Company, the New York, Susquehanna and Western Railroad Company, and the Reading Company."

Now, the indorsement on the back of the bond, referring to the agreement between these companies, appears to be significant, and the significance is further apparent when we find who the officers and directors of the Temple Iron Company were in 1899 and are to-day.

The directors include the following: George F. Baer, president of the Philadelphia and Reading, and president of the Central of New Jersey—the Reading, as I have stated, controlling 42 per cent of the supply of anthracite coal; another member is Eben B. Thomas, chairman of the Central Railroad of New Jersey, controlling 17 per cent; another is F. D. Underwood, of the Erie, controlling 2.59; William H. Truesdale, president of the Delaware, Lackawanna and Western, controlling 6.55 per cent; Mr. Alfred Walter, president of the Lehigh Valley Railroad Company, controlling 16.87 per cent; Mr. R. M. Olyphant, of the Delaware and Hudson, controlling 2.29 per cent; Thomas P. Fowler, of the New York, Ontario and Western, controlling 0.28 per cent, and Irving A. Stearns, of the Delaware, Susquehanna and Schuylkill, controlling 1.38 per cent.

And so on. Here you have the bond of the trust, indorsed on its back by the constituent partners of the trust, the relative responsibility being the relative holding in coal lands and tonnage shipments, showing the combination, the organization, the monopoly. Mr. Shearn goes on to speak about the agreement of February 27, 1899, under which the Temple Iron Company was organized, and how this arrangement and division and agreement for responsibility came about.

The agreement recites the purchase of the collieries of Simpson & Watkins, and provides for the issue of stock and bonds in payment therefor, and then contains a provision absolutely guaranteeing the dividends upon that capital stock and guaranteeing the payment of the principal and interest on those bonds in a certain proportion, and I beg to call your attention to the proportion because it is a most significant part of this contract.

He goes on to give the percentages, which are the relative percentages so often mentioned here as to the relative ownership and tonnage. He says:

That is not the only agreement that was executed at that time. There was also a general agreement executed by all those railroad companies, a copy of which I have here, and another syndicate agreement providing for the holding of the stock that was issued to Simpson & Watkins in payment for those mines in trust by the Guaranty Trust Company, and the issuing to Simpson & Watkins and others of certificates of a beneficial interest in those shares; and thus you see that we have here the old form of trust. We have the stock of this corporation, which is the right arm of the combination and which carries out its decrees, held in trust by the Guaranty Trust Company and the Guaranty Trust Company issuing certificates of a beneficial interest therein. I have exact copies of each of those contracts. The terms of the two latter contracts in detail I can not state at this time, because the contracts were given to me by United States District Attorney Burnett, who procured them at my suggestion from the Guaranty Trust Company.

Mr. Shearn did not want to show that part of the Government's hand which District Attorney Burnett had been instrumental in securing or the information upon which the district attorney was acting.

Further, he says:

Now, then, there is a case complete when you consider these three elements of it:

First. The opportunity for a combination, which I have discussed at great length.

Second. The fact that in 1899 competition was threatened; that Simpson & Watkins were parties to a scheme which, if successful, would result in competition.

Third. Eliminate Simpson & Watkins and eliminate all competition. How? By a joint agreement of these railroad companies.

And there, sir, is as complete a case against a trust, a combination, and monopoly as has ever been presented in any court—an absolute monopoly of source of supply, competition threatened, the throttling of competition by the purchase of the threatening competitors, paying for their properties with stock and bonds unitedly guaranteed by these companies.

We could rest our case and rest any case, civil or criminal, on the evidence furnished by that bond and by these facts.

Mr. CULBERSON. Mr. President——

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

Mr. TILLMAN. With pleasure.

Mr. CULBERSON. I have not heard the entire argument of the Senator from South Carolina this morning, and I should like to ask him if the paper from which he is reading shows that there was not only a combination as to the mining of coal, but as to its transportation, directly or indirectly, into other States than Pennsylvania?

Mr. TILLMAN. Mr. President, the story of the absorption of the anthracite coal fields by the various railroads entering into it is a long one, and I am not entirely familiar with all the details or even any considerable number of them. But there are documents in this Capitol that go to show that this trust, this monopoly, began its work of absorption and control of the coal fields thirty or forty years ago, or even at an earlier date than that; that they have by contracts and agreements among themselves always maintained more or less of a combination which throttled competition; that the only bar to their absolute monopoly was the ownership of mines by independent operators; that these independent operators have in the last few years been brought to the verge of bankruptcy and despair, to the point where their mines were worthless because of the control of the means of transportation by these roads; that these roads have therefore forced on the operators contracts which give them absolute control of the output of nearly every independent operator at a fixed rate or price of 60 per cent to the operator and 40 per cent to the railroad transporting the product; that the combination of railroads themselves own the stock in the so-called coal-mining companies absolutely, and that these coal-mining companies and railroad companies are synonymous; that there is no difference in the ownership of stock; that when the board of directors of the railroad company meets and adjourns they can call a meeting of the board of directors of the coal-mining company and not another man will come in and not a man will go out.

Those are the facts, and these roads are necessarily engaged in interstate commerce because their product is not entirely consumed in Pennsylvania, but is sent broadcast all over the Northeastern part of the country and all over the Southern and Western parts where anthracite coal is consumed. Have I answered the Senator from Texas?

Mr. CULBERSON. I think so.

Mr. TILLMAN. Mr. Shearn says:

There are many other significant facts that go to fortify the impregnable position that we have taken in reference to these contracts. What are they? You observe what they have done in the case of these independent operators. There were some who were left in the lurch when Simpson & Watkins got under cover of the Temple Iron Company. Among them was the Pennsylvania Coal Company, a large factor in the anthracite coal situation, and among them were some fifteen or twenty other independent operators, whose output together was no inconsiderable factor.

They could not remain content under those old contracts of 60 and 40 per cent, and they resolved that they would carry out what had been earlier attempted; and therefore the Pennsylvania Coal Company met a representative, Mr. Fuller, representing all those remaining independent coal miners, "and entered into an arrangement with them whereby they all pledged their output to the Pannsylvania Coal Company if the Pennsylvania Coal Company would build a road to tidewater. That the Pennsylvania Coal Company undertook to do, and the result of that would have been competition in the supply of coal to the city of New York."

When there is competition in supplying the city of New York there is competition throughout the Eastern part of the country. I am only reading from the argument made before the attorney-general of the State of New York, and therefore this appears.

Mr. Shearn goes on:

How was that undertaken? I may say that I will submit to you contracts between the Pennsylvania Coal Company and these independent operators.

There was a route available for them—the bed of the old Delaware and Hudson Canal. They surreptitiously went to work, as they had to do—you have to work in the dark and under cover against a combination like this—and got Mr. Cuykendall, at Rondout, to secure terminal facilities there, and went to work and obtained rights of way along the old canal; and, having procured the terminal and rights of way, they applied for a charter to the State board of railroad commissioners.

What happened there? A significant fact—the railroad companies lined up in opposition to this charter, a charter that would result in competition.

The railroads fought it, but the railroad commission granted the charter. Then they carried it into the courts, and the supreme court of New York sustained it, and therefore they were at liberty to build their road. And then what happened?

There were the independents again in a position to make competition possible and available to the people of the State of New York; and the Pennsylvania Coal Company ordered 7,000 tons of rails and got ready to lay down this road, and then what happened? Mr. J. P. Morgan loomed up on the scene. He was, curiously enough, one of the three voting trustees of the Reading Company's stock, which controlled not only the Reading, but the Central Railroad of New Jersey. Mr. Morgan was also chairman and one of the three members of the voting trust of the Erie Railroad Company. Those three companies together controlled 63 per cent of the coal trade.

Mr. Morgan stepped in and did just what the combination had done the year before with Simpson & Watkins. He bought out the Pennsylvania Coal Company and transferred it, at a profit to himself of $3,400,000, to the Erie Railroad Company, and that was completed in January, 1901, and coincident with that the Reading Company bought the capital stock of the Central Railroad Company of New Jersey.

And there you are. In January, 1901, with the last effort at independence blotted out and with the supply of coal and the business of coal carrying and coal selling in the hands of the Reading, the Delaware, Lackawanna and Western, the Central Railroad of New Jersey, the Lehigh Valley, and the Erie, with the Delaware and Hudson trailing on.

That was the situation in 1901, said Mr. Shearn.

Right here I will call attention to the fact which I stated yesterday evening—I can not repeat it too often—that I am informed that during these active years, when the coal trust was completing its process of encircling and throttling and destroying and swallowing its competitors, Mr. Griggs, the Attorney-General, whose duty it was to stop it—who must have been in possession of full information, because he could hardly help it, because he had been the attorney of the combination when he went into the Attorney-General's office—did absolutely nothing.

Mr. Shearn goes on to relate that the few remaining operators, thwarted twice in their efforts to get transportation facilities, were face to face with a hopeless situation and they therefore accepted the conditions offered by the railroads to enter into contracts giving the railroads full power and control to manipulate the output of their mines. Here is one of the clauses of the contract which the railroads forced these people to sign:

First. The seller hereby sells, and agrees to deliver on cars at breaker to the buyer (the railroad company), all the anthracite coal hereafter mined from any of its mines now open or operated, or which it may hereafter open or operate on the premises intended to be covered by this contract, and any which shall be reclaimed from culm banks on such premises, as follows: Shipment to be made from time to time as called for by the buyer. The quantity to be ordered monthly shall be a just proportion of the entire quantity of coal agreed to be purchased by the buyer, measured by the colliery capacity of the respective sellers.

In other words, the miner of coal turns over for all time to the railroad company the entire output of his mine, puts it into their absolute control; and what do they agree to buy of him? Not his entire product, but a just proportion, measured by the capacity of his colliery, and taken into consideration with the entire amount agreed by the railroad companies to be purchased.

In other words, if the railroad companies wish to curtail the supply of coal, get it down from 60,000,000 to 40,000,000, the independent producer is obliged, by force of these contracts, to have the proportion of coal taken out of his mines allotted in precisely the proportion which the railroad companies decide to cut down the price of coal.

So there, if your honor please, you see that there are in addition to these written contracts of guaranty of the bonds of the Temple Iron Company, and to the other contracts made at the same time to which I have adverted, common contracts, identical in terms, executed by these various railroad companies with producers of coal, which, on their face, are in restraint of trade, because they make it possible for the purchaser to determine absolutely the amount which shall be taken out of each mine. The man who owns coal and mines it has nothing whatever to say about it. Cut the supply of coal down one-half, if you please, in order to raise prices, and the independent producer must have his independent output diminished one-half. He is a slave to this system, and those contracts on their face are in direct violation of the antimonopoly law of this State.

And yet we want more law; we have not enough; we can not do anything; the Attorney-General is powerless and helpless, he says. Mr. Shearn goes on to pile up evidence, evidence on top of evidence, to show the combination, furnishing the circulars of the Reading Company, the incubator. He speaks about the great amount of profit there was in the deal for Simpson & Watkins, all of which I will insert.

Now, when we arrive at that stage, what situation appears? Why, not only that they are acting in concert and combination, by reason of their control of the Temple Iron Company, and by reason of these agreements; that they maintain a common price for the purchase of coal, a common rate for the transportation of coal, and the only thing needed to make a monopoly plain and complete and obvious to the eyes of all is the result on prices; and we find that during this period prices were maintained that were uniform. That is admitted in every answer that is filed here before you to-day.

I have procured copies of the price circulars issued by some of the railroads, and it is significant, too, that the circular issued on March 1, 1901, which, as you see, was immediately after this new contract went into effect—immediately after this conference in New York and immediately after the killing of the independent movement by the purchase of the Pennsylvania Coal Company—is headed "Circular No. 1" for each of these different companies, and the price as given by these circulars thereafter was uniform.

The ATTORNEY-GENERAL. You claim the independent movement was killed. You mean it sold out—as fast as they formed independent companies they sold out.

Mr. SHEARN. The backbone of it sold out. In every case the party on whom the main financial reliance was placed sold out. Simpson & Watkins, for instance, had a great big output; they were important, and sold out.

The next time competition showed up the Pennsylvania Coal Company was the backbone of it—they possessed capital. That property was sold for $22,000,000; they left in their treasury $14,000,000 in cash. There was a great big force to be dealt with, and if the movement succeeded there would be competition in the State of New York, and they bought out the backbone of that, leaving a few independents.

There are still a few independents; there are perhaps a dozen men who say that they are independent to-day. But how are they independent? They can't get their coal to tide water unless these railroads will carry it. The railroads are obliged to carry their coal or their charters would be forfeited; but the railroads fixed the price and the price they fixed is 35 and 65; that is, the rate of 35 per cent.

Bear with me one moment in answer to the inquiry which I think is in your

mind right there. Put yourself in the position of an independent miner of coal. You have an output and you wish to sell it, but you do not wish to sacrifice your manhood and independence. You propose to sell your coal in New York yourself. You take your coal to the railroad company and it accepts it and brings it to New York and charges you, not a rate of so much per ton per mile, but a rate based upon the price which coal is bringing at tide water, to wit, 35 per cent of the price that is prevailing at tide water, which, by the way, is from two to two and one-half times the freight rate for bituminous coal.

Now you pay that 35 per cent, but the answer is, "Yes, but so do all the other coal companies pay 35 per cent. The bookkeeping charge is made against the Reading Coal and Iron Company of 35 per cent by the Central of New Jersey, against the Lehigh and Wilkesbarre of 35 per cent, and that rate is common and uniform." Is it?

That 35 per cent at tide water includes the cost of demurrage at the docks and includes the cost of selling coal in New York, which has been estimated to amount on an average to 5 per cent. So there, if you wish to sell your own coal in New York yourself, if you wish to remain independent, you have got to pay to the railroad 35 per cent of the price your coal brings at tide water for mere transportation, and you have got to stand the expense of 5 per cent in addition for demurrage at tide water and for the cost of selling.

Therefore, a club is held over the head of every independent. He gets 5 per cent more of the price of coal at tide water by selling his coal to the railroad company at the breaker instead of bringing it to tide water; and how independence can be expected to be maintained under such an arrangement it is hard to see. There are, as I say, a few hard-headed owners left; for instance, John C. Haddock, who, it is said, has pocketed thousands of dollars of losses year in and year out because he refused to sell his manhood and independence to the coal roads.

Now, as I say, the answers of these corporations admit, by not denying, that the prices at tide water are uniform. It is a fact; the circulars will establish it; and not only do the circulars show a community of price on their face, but, curiously enough, each circular has at the bottom a statement of discount that is allowed; and for the month of March, say circular No. 1, it will show a discount of 40 cents a ton.

By some marvelous coincidence, if you would believe the answers of these defendants, every other railroad company's circular shows a discount of 40 cents from the face price for that month. The next month there will be a discount of 35. All show 35.

Here are circulars, bear in mind, that all come out within twenty-four hours of each other. In order to throw dust in the eyes of the public one circular will be dated the 31st day of March and the other the 1st of April, so they don't appear on the same day, but within twenty-four hours of each other, every one bearing the same discount, month in and month out.

Now, then, I say that where you have the control of the supply in their hands, which is admitted by these answers; where you have the means of transportation absolutely in their hands, which is admitted by all these answers; where you have a common price for the purchase of coal maintained by all these companies, which is admitted in these answers; where you have a common form of contract for transportation, which is admitted in these answers, and where you have at the city of New York a common price for coal——

Mr. WILLCOX (interrupting). You don't mean to say that that contract—that we have ever made any such contract, or that Mr. Hough's client ever made any such contract?

Mr. HOUGH. I suppose the contracts he has mentioned will speak for themselves. The Pennsylvania never made any such contract.

Mr. SHEARN. I do maintain, and I do believe it can be established to your satisfaction, that even the railroads that are not parties to the Temple Iron Company agreement, to wit, the Delaware and Hudson Company and the Pennsylvania Railroad Company, which, curiously enough, are the only ones that appear in answer to this petition to-day, maintain the same rate for the transportation of coal, and that it is based upon prices prevailing at the destination, that they charge the same rate per ton per mile that these other corporations do, and the letter of the traffic manager of the Pennsylvania Company that I read showed that they agreed to do that back in 1892, and that they have been doing it within the past two years, the testimony before the Industrial Commission, if you choose to read it, will satisfy your mind amply.

Mr. WILLCOX. I think you are wandering away from what I suggested to you. You have stated that contracts of this character have been made by all the parties. I think you are in error, because our answer does not admit anything of the kind, and there is no such fact. In regard to freight rates, the interstate-commerce act forces the railroads to charge the same freight rate. There is no mystery about that.

Mr. SHEARN. There is no mystery about it at all.

Mr. WILLCOX. They all have to charge the same rates between the same points. That is what the commerce act is meant to do, to stop competition. These are questions principally of interstate commerce that you have been arguing. Excuse my interrupting you.

Mr. SHEARN. With great respect, Mr. Willcox, I maintain that the existence of these contracts—that the prevalence of that same rate, and the fact that it was arrived at and fixed upon by the representatives of these companies, other than your company and the Pennsylvania Railroad Company—furnishes significant evidence of a concert and combination between these companies.

I do not say that it is illegal for these railroad companies to maintain the same rate of freight from a given point to a given point, but I do say it is illegal for them to get together and agree to do it as the price of people giving up their independence, as the price of stifling competition.

Mr. WILLCOX. That would be a question under the head of Federal jurisdiction, wouldn't it?

Mr. SHEARN. I don't think it would. This matter has already come under the Federal jurisdiction on this same state of facts, but justice can be measured out in the State of New York and by the Federal Government according to the facts in each particular case.

But the existence of these contracts entered into in the manner and at the time I have stated to you and for the purpose, as the evidence all shows, for the purpose of eliminating this threatened competion of the independents, is significant evidence of the existence of concert and combination between them—if any were needed—after we put in evidence contracts jointly executed by them, all identical; or, if any were needed, after we show that there is a common price of coal at tide water—or, if any is needed after we show that they have absolutely in their control the whole source of supply of coal, and they alone have the means of transporting it to market.

Now, what the purpose of this organization is, of this combination, may be arrived at from all the sources to which I have adverted. The testimony of some of the members of it—for instance, Mr. Thomas, the chairman of the Erie—testified before the Industrial Commission that the greatest danger that the public have to apprehend is from unrestrained and unrestricted competition.

In explaining the part that he and his road had taken in this gigantic scheme, and as an apology for it, he tells that Commission that the greatest danger that the public has to fear is from unrestrained and unrestricted competition.

Now, if he believed that that was the danger, if that was something that he was trying to avoid because it was a danger, it is a significant fact in aiding you to arrive at the purpose of these corporations in this concerted action.

Now, just a few words more (I have trespassed a great deal upon your time). That is the situation as far as the facts are concerned. What is the law? The law governing these proceedings and governing these facts is perfectly well settled.

In the first place, no possible argument can be raised now to discourage you from entertaining this proceeding because of the possible unconstitutionality of this law, because you yourself have fought that question out in the ice-trust case and carried it successfully through to the highest courts in this State, and the procedure has been determined upon as constitutional and the act has been held to be constitutional, and nothing is to be feared in that direction.

Whether these facts constitute a combination with the law, eliminating the Temple Iron Company agreement (because there can be no doubt about that at all, that is sufficient for one proceeding), but bearing upon all these corporations, for instance, Mr. Willcox's and Mr. Hough's clients, who have not been shown to have actually participated in or signed that Temple Iron Company agreement—where similar instances have been before the courts—in the case of Arnot *v.* Pittson and Elmira Coal Company (68 N. Y., 558), what was said by the court there is very apt and pertinent here, it seems to me.

"Every producer or vender of coal or other commodities has the right to use all legitimate efforts to obtain the best price for the article in which he deals. But when he endeavors to artificially enhance prices by suppressing or keeping out of market the product of others (bear in mind that language in connection with the purchase of Simpson & Watkins) and to accomplish that purpose by means of contracts binding them to withhold their supply (as these contracts do) such arrangements are even more mischievous than combinations not to sell under an agreed price. Combinations of that character have been held to be against public policy and illegal. If they should be sustained the prices of articles of pure necessity, such as coal, flour, and other indispensable commodities, might be artificially raised to a ruinous extent far exceeding any naturally resulting from the proportion between supply and demand. No illustration of the mischief of such contracts is perhaps more apt than a monopoly of anthracite coal, the region of the production of which is known to be limited."

Now, then, take the case of the Morris Run Coal Company *v.* Barclay Coal Company, in the supreme court of Pennsylvania, which Attorney-General Knox discussed last night in his great speech on this general question.

The court says: "The important fact is that these companies control this immense coal field (this referred to bituminous only); that is the great source of supply of bituminous coal to the State of New York and large territories westward; that by this contract they control the price of coal in this extensive market and make it bring sums it would not command if left to the natural laws of trade; that it concerns an article of prime necessity for many uses; that its operation is general in this large region, and affects all who use coal as a fuel, and this is accomplished by a combination of all the companies engaged in this branch of business in the large region where they operate. The combination is wide in scope, general in its influence, and injurious in effects. These being its features the contract is against public policy, illegal and therefore void.

He speaks here of the meeting of the board of directors of the Temple Iron Company, this humbug, this sham, which they created, or which they bought, for it existed prior to the adoption of the last constitution of Pennsylvania, and in the answers they admit nearly all of the allegations of fact, but deny that there is any cooperation or combination. The Temple Company when it meets is composed of the presidents of the coal roads.

I recall a time in my political career when a somewhat similar condition of affairs existed in South Carolina. The Alliance was very strong in my State and in our State matters, because we had no difference of opinion or fight over the national attitude of the Democratic party, the Alliance would be called to meet in a certain place on a certain day and at a certain hour. The Democratic club of that precinct would be assembled an hour and a half later by notice. The Alliance would meet in secret and promulgate among its own members the policy to be followed by the Democratic party in that precinct. The Alliance would adjourn. Nobody would know what it had done.

The Democratic club would meet, and its resolutions would be passed or its delegates elected or whatever it would want to do was performed; and yet everybody, at least those who cared to talk about it, was proclaiming that the Alliance was not in politics, could not engage in it, and that it did not. But when the "Alliance" and the "Democracy" were synonymous, as they were in that instance, you can readily see that there was some humbuggery in the contention. And when the presidents of the coal roads, who are the presidents of the coal-mining companies, owned by the roads, meet as directors of the Temple Iron Company, which is immune from the Pennsylvania constitution forbidding railroads from engaging in mining, the contention is put forth that the Temple Iron Company is not engaged in any monopoly and therefore the railroads are not combined, but that they merely "exchange statistical information," and so on.

I do not think it worth while to read any further, or to present any additional facts along the line of proof that Mr. Hearst offered, except a statement here made by Mr. Shearn in his argument before the attorney-general of New York, that a similar statement of facts, with the evidence, had been presented to the attorney-general of New York; and Mr. Hearst says that he had furnished proofs and made petition to that district attorney to move, under the instructions of the attorney-general, to stop this monopoly from its hellish work.

Now, then, what do we find? To my mind a conclusive case is

made. The evidence and the facts are unanswerable. The law is plain. I yesterday quoted and cited the sections of the antitrust act which would apply. I have before me, in relation to trusts and monopolies, a clipping from the opinion of the Supreme Court in the Addyston pipe case:

Total suppression of the trade in the commodity is not necessary in order to render the combination one in restraint of trade. It is the effect of the combination in limiting and restricting the right of each of the members to transact business in the ordinary way, as well as its effect upon the volume or extent of the dealing in the commodity, that is regarded.

I can pile up opinions here, in the Trans-Missouri Traffic Association case, even in the Knight case in New Jersey, where the sugar trust was indicted and was not punished or restrained because of the fact that the evidence before the court only showed the manufacture. But the opinion of the Chief Justice of the Supreme Court (I believe it was Mr. Fuller who rendered the opinion) is replete with arguments going to show why if so and so had been so and so the court would have been compelled to act. The law is too plain for anybody to dispute it. But I have a case in point to which I wish to allude which is especially pregnant. I allude to the Debs case. As I understand the facts in that case, the American Railroad Union, composed of about 150,000 men, became involved in a strike because of the difference between the Pullman Car Company and its employees.

A general strike was ordered on all the roads entering Chicago unless they ceased to haul Pullman cars, which they refused to do. Trade was paralyzed; riots followed; men were shot; things were in a very critical and dangerous condition; the mails were stopped.

An appeal was made to Judge Woods for relief. Who made that appeal? The railroads, of course. Then Edwin Walker, the attorney for the general managers of the trunk lines entering Chicago, was employed by the Department of Justice to aid and assist the district attorney in filing the complaint and obtaining from Judge Woods, of the circuit court, an injunction. I have that injunction here.

Mr. President, as my time is limited to 2 o'clock, and the Senator from Ohio [Mr. FORAKER] is very anxious to go on and I am very anxious to complete my remarks, I will simply ask to have the Debs injunction printed as a part of my speech, as though I read it right now. I was prepared to read it and to comment on it and refresh my own mind as to what it contains, but I will state, in general, that it enjoins Eugene Debs and some thirty or forty others, "and all persons whomsoever," from doing thirty or forty things which would be an obstruction of commerce and an obstruction of railroad trains carrying the mails.

The troops were sent to Chicago to back up the court, notwithstanding Governor Altgeld contended that he was master of the situation.

Mr. BEVERIDGE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from South Carolina yield?

Mr. TILLMAN. With pleasure.

Mr. BEVERIDGE. Does the Senator impugn the motives of Judge Woods in issuing that injunction?

Mr. TILLMAN. Now, if Judge Woods is one of your constituents, I do not think you need to fret about what I am going to say.

Mr. BEVERIDGE. He is not now. He is not now alive. His memory, however, is precious to me, as it is to all the people of Indiana. I understood the Senator to reflect somewhat harshly upon the injunction, upon which I am not going to have any debate with the Senator, but I am sure the Senator did not mean to be understood as impugning the motives of that distinguished jurist, however much he might differ from the conclusions he reached; and I rose merely to call the Senator's attention to that, in order that he might not be misunderstood.

Mr. TILLMAN. The Senator is entirely wrong in imagining that I had any purpose of criticising Judge Woods in any angry or contemptuous way.

Mr. BEVERIDGE. I thought not.

Mr. TILLMAN. But I did not know that he was dead, and I am glad to be informed of it, because if I had had any such purpose, long since among the little Latin I learned was a phrase that I have considered of great use and benefit to me—De mortuis nil nisi bonum.

Mr. SPOONER. He does not need that protection.

Mr. BEVERIDGE. If the Senator is satisfied to take that attitude, I am satisfied to have him take it.

Mr. TILLMAN. Here, again, my friend from Wisconsin wants to leap into the arena, and he says that Judge Woods does not need that protection. I did not even intimate that he did need it, because, as I said a little while ago, I have no purpose to deal with Judge Woods in any critical spirit. He did go very, very far, very far beyond anything that had ever been contemplated by any American judge before, and he labored very ably in his opinion to find justification for his action, and law for it, in laying it on the antitrust act as a conspiracy and a combination in restraint of commerce among these railroad employees. I will put his opinion, or that part of it to which I alluded, in my speech, when it is printed. It is as follows:

It is therefore the privilege and duty of the court, uncontrolled by considerations drawn from other sources, to find the meaning of the statute in the terms of its provisions, interpreted by the settled rules of construction. That the original design to suppress trusts and monopolies created by contract or combination in the form of trust, which of course would be of a "contractual character," was adhered to, is clear; but it is equally clear that a further and more comprehensive purpose came to be entertained, and was embodied in the final form of the enactment. Combinations are condemned, not only when they take the form of trusts, but in whatever form found, if they be in restraint of trade. That is the effect of the words "or otherwise." It may be that those words should be deemed to include only forms of like character; that is to say, some form of contract as distinguished from tort; but if that be so, it only emphasizes and makes imperative the inference, which otherwise it seems to me would be sufficiently clear, that the word "conspiracy" should be interpreted independently of the preceding words. It is hardly to be believed that the words "or otherwise" were used simply for the purpose of giving fuller scope to the antecedent words "contract" and "combination," and then "conspiracy" added merely for the same purpose. Construed literally, the terms used in the body of this act forbid all contracts or combinations in restraint of trade or commerce, but that construction is controlled by the title, which shows that only unlawful restraints were intended. But what constitutes an unlawful restraint is not defined, and, under the familiar rule that such Federal enactments will be interpreted by the light of the common law, I have no doubt but that this statute, in so far as it is directed against contracts or combinations in the form of trusts, or in any form of a "contractual character," should be limited to contracts and combinations such, in their general characteristics, as the courts have declared unlawful. But to put any such limitation upon the word "conspiracy" is neither necessary nor, as I think, permissible. To do so would deprive the word, as here used, of all significance. It is a word whose meaning is quite as well established in the law as the meaning of the phrase "in restraint of trade" when used—as commonly, if not universally, that phrase has been used—in reference to contracts. A conspiracy, to be sure, consists in an agreement to do something; but in the sense of the law, and therefore in the sense of this statute, it must be an agreement between two or more to do by concerted action something criminal or unlawful, or it may be to do something lawful by criminal or unlawful means. A conspiracy, therefore, is in itself unlawful, and, in so far as this statute is directed against conspiracies in restraint of trade among the several States, it is not necessary to look for the illegality of the offense in the kind of restraint proposed; and, since it would be unnecessary, it would be illogical to conclude that only conspiracies which are founded upon, or are intended to be accomplished by means of, contracts or combinations in restraint of trade, are within the purview of the act. It would be to make tautologous words which have distinctly different meanings, and to deprive the statute in a large measure of its just and needful scope. Any proposed restraint of trade, though it be in itself innocent, if it is to be accomplished by conspiracy, is unlawful. A distinction has been suggested between the phrase "in restraint of trade" and the phrases "to injure trade" and "to restrain trade." Though perceptible, the distinction does not seem to me so significant that the use of one expression rather than the other should vary the interpretation of this statute. Any contract, combination, or conspiracy to be "in restraint of trade" must involve the use of means of which the effect is "to injure" or "to restrain" trade. A contract, combination, or conspiracy in restraint of trade is therefore a contract, combination, or conspiracy to restrain or to injure trade. It would not, I suppose, be enough in an indictment to charge conspiracy in restraint of trade in the language of the statute, but it would be necessary, unless the proposed restraint be shown to be in itself unlawful, to allege the illegal means intended to be used in order to effect the restraint; and whether the means should be averred to have been used "in restraint of" or "to restrain" trade could hardly be important. There are many cases, doubtless, in which the rule that every word of a statute should be given effect is inapplicable, because when synonymous words are used the court is powerless to give them different meanings, but when words of different significance are employed the rule forbids that the scope of the statute be compressed within the limits of the narrower word.

The injunction in the Debs case, which is one of the most remarkable documents in our jurisprudence and the forerunner of many instruments of that kind, is given in full. Judge Woods here set the pace, and judges, both Federal and State, have been not slow to reach out in the exercise of power, so that "government by injunction" has become a phrase in our politics, about which there has been and will continue to be angry discussion.

UNITED STATES CIRCUIT COURT, DISTRICT OF INDIANA.

The President of the United States of America to Eugene V. Debs, George Howard, Charles C. Clark, J. W. Mann, Denis J. Wren, W. Carroll, Judson Lamphier, T. S. Griffy, J. R. Church, Orey W. Fishback, A. C. McKelvey, C. C. Arnold, Peter Hughes, J. M. Jackson, L. R. Kirkpatrick, R. A. Robuck, Albert Rachwitz, W. P. Shackle, R. W. Underhill, W. H. Whitaker, J. H. Walters, W. H. Lesorr, Charles T. Fate, Leo S. Harding, L. N. Mellon, D. Mitchell, John Buck, —— Moriarty, L. F. Hawkins, H. B. Shaler, R. W. Sproston, W. H. Hamilton, J. K. Smith, F. P. Baily, H. Pence, Charles W. Shaw, William Mack, Joseph Mullinix, Harry Webber, D. J. Mett, Elmer Stoddard, W. C. Middaugh, T. H. Middaugh, Joseph Tobler, William Myers, William Ostermeyer, A. Wilkerson, William Young, J. T. Brennan, J. L. Vancamp, and the American Railway Union, and all other persons combining and conspiring with them, and to all other persons whomsoever:

You are hereby restrained, commanded, and enjoined absolutely to desist and refrain from in any way or manner interfering with, hindering, obstructing, or stopping any of the business of any of the following-named railroads:

The Pittsburg, Cincinnati, Chicago and St. Louis Railway,
The Pennsylvania Company,
The Terre Haute and Indianapolis Railway,
The Cleveland, Cincinnati, Chicago and St. Louis Railway,
The Lake Erie and Western Railway,
The Louisville, New Albany and Chicago Railway,
The Cincinnati, Hamilton and Indianapolis Railway,
The Evansville and Terre Haute Railway,
The Terre Haute and Logansport Railway,
The Wabash Railway,
The Lake Shore and Michigan Southern Railway,

The Michigan Central Railway,
The Chicago and Erie Railway,
The Baltimore and Ohio Southwestern Railway,
The Indianapolis Union Railway,
The Belt Railroad and Stock Yards Company,
The Grand Rapids and Indiana Railroad,
The New York, Chicago and St. Louis Railroad,
The Chicago and Eastern Illinois Railroad,
The Indianapolis, Decatur and Western Railway,
The Baltimore and Ohio and Chicago Railway,
The Chicago and Grand Trunk Railway,
The Louisville and Nashville Railroad,

As common carriers of passengers and freight between or among any States of the United States, and from in any way interfering with, hindering, obstructing, or stopping any mail trains, express trains, whether freight or passenger, engaged in interstate commerce, or carrying passengers or freight between or among the States, and from in any manner interfering with, hindering, or stopping any trains carrying the mail, and from in any manner interfering with, hindering, obstructing, or stopping any engines, cars, or rolling stock of any of said companies engaged in interstate commerce, or in connection with the carriage of passengers or freight between or among the States; and from in any manner interfering with, injuring, or destroying any of the property of any of said railroads engaged in or for the purposes of, or in connection with, interstate commerce, or the carriage of the mails of the United States or the transportation of passengers or freight between or among the States; and from entering upon the grounds or premises of any of said railroads for the purpose of interfering with, hindering, obstructing, or stopping any of said mail trains, passenger or freight trains engaged in interstate commerce, or in the transportation of passengers or freight between or among the States; or for the purpose of interfering with, injuring, or destroying any of said property so engaged in or used in connection with interstate commerce, or the transportation of passengers or property between or among the States; and from injuring or destroying any part of the tracks, roadbed, or road, or permanent structures of said railroads; and from injuring, destroying, or in any way interfering with any of the signals or switches of any of said railroads; and from displacing or extinguishing any of the signals of any of said railroads, and from spiking, locking, or in any manner fastening any of the switches of any of said railroads, and from uncoupling or in any way hampering or obstructing the control by any of said railroads or any of the cars, engines, or parts of trains of any of said railroads engaged in interstate commerce or in the transportation of passengers or freght between or among the States, or engaged in carrying any of the mails of the United States; and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, persuasion, force, or violence, any of the employees of any of said railroads to refuse or fail to perform any of their duties as employees of any of said railroads in connection with the interstate business or commerce of such railroads, or the carriage of the United States mail by such railroads, or the transportation of passengers or property between or among the States; and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force, or violence, any of the employees of said railroads who are employed by such railroads and engaged in its service in the conduct of interstate business, or in the operation of any of its trains carrying the mail of the United States, or doing interstate business, or the transportation of passengers and freight between and among the States, to leave the service of such railroads, and from preventing any persons whatever, by threats, intimidation, force, or violence, from entering the service of any of said railroads and doing the work thereof, in the carrying of the mails of the United States or the transportation of passengers and freight between or among the States; and from doing any act whatever in furtherance of any conspiracy or combination to restrain either of said railroad companies in the free and unhindered control and handling of interstate commerce over the lines of said railroads, and of transportation of persons and freight between and among the States; and from ordering, directing, aiding, assisting, or abetting, in any manner whatever, any person or persons to commit any or either of the acts aforesaid.

The only reason I have said what I have about Judge Woods or brought the Debs injunction into this discussion was to point to the difference in the action of our Department of Justice in dealing with men and its action in dealing with property. When the injunction was issued, covering everything, because it has been called a blanket injunction, embracing not only Debs but everybody who might by possibility be chargeable with disobeying it, Judge Woods followed it up, at the instance of the attorney of the railroads who had been employed by the Government of the United States, by arresting the so-called conspirators, by putting them into jail, and in the final adjustment of the case by imprisoning them for contempt.

If Judge Woods was justifiable, as the Senators would have us suppose, and for the purposes I am contending for I am ready to acknowledge that he was, in putting the machinery of the law in motion to suppress a combination of laborers who were interfering with interstate commerce, I ask in the name of justice and common sense how it is and why it is that the machinery which shall drive the poor man into submission falls powerless and is paralyzed when a big thief or a big culprit or a big conspirator is involved?

Why is J. Pierpont Morgan any more immune with his co-conspirators from the proceedings of our courts of justice than Eugene Debs if he is guilty of the same offense? Some men will say he is too rich; that he hires too many able lawyers; that he has a sanctity thrown around his person by owning so many millions; that nobody knows how many he owns, and that to imprison such a man as that would cause the stars to get out of their courses and the sun to stand still, or something like that.

But whatever be the cause, I have pointed out one reason, for my judgment, why things are as they are; that the district attorneys are hampered by the law and the influences which obtain at the other end of the avenue and in the Department of Justice are altogether plutocratic, altogether subservient to wealth and capital, indifferent to the sufferings of the poor, and as long as the poor, besotted, benighted, ignorant slaves, the voters, continue to put such people in power, then, so help me God, I hope you will grind them to powder! Screw down your taps, like the nobility of France did before the French revolution! Let the Attorney-General contend, as he does in his argument or in his presentation to the Judiciary Committee, that a monopoly once completed and in full possession of the field is no longer amenable to law; that it does not break any law after it has been able to get full possession and there are no competitors.

Let it be understood that the franchises and privileges of such men are immune from prosecution, that the men are immune from punishment, that no longer anyone who is worth several million dollars or can have fifty or one hundred million dollars at his back is to be brought into our courts, but that the courts are only for the poor and the laborers, and you will, in my judgment, be laying the foundations for a condition of affairs in the near future at which in some miserable period of poverty and hard times and inability to obtain work and opportunities to earn a living you will be face to face with hundreds of thousands of hungry men who will disobey not only your injunctions, but will be ready to take up arms to defend their rights and to have that equality of the law which our Constitution guarantees and which our courts are here to enforce.

People will ask me or will want to know how it is and why it is that I mention the President. The President is simply the man who appointed Mr. Knox. He is the boss of Knox. He orders Knox, he commands Knox, and, therefore, if Knox is responsible, he has either misled President Roosevelt or somebody else has misled him, and therefore primarily the President is responsible, or secondarily he is responsible, while Knox is primarily responsible. You can take choice of either horn of the dilemma.

I am too much pressed for time to do any summing up or attempt a review of the law and the facts. There is not much need, but still I would have been glad to have pointed out some of the, to my mind, unanswerable reasons for my contention, that we have law enough already. All we need is honest and incorruptible officials to enforce it.

I ask permission to print anything in the way of documents or connecting explanation I may care to insert. I will not abuse the privilege as was done once before by indulging in anything that I would not say here.

The PRESIDENT pro tempore. What is the exact request of the Senator?

Mr. TILLMAN. The request is that I may insert as portions of my speech, as though I had read them, such documentary evidence or quotations from the matter I have as may be relevant and respectful.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from South Carolina? The Chair hears none, and the order is made.

APPENDIX A.

The following documentary evidence and copies of correspondence between the officers of the joint committee of the American Anti-Trust League and District Assembly 66, Knights of Labor, demonstrates conclusively that proofs of violations of law on the part of numerous trusts and combines were placed in the hands of Attorney-General Knox and President Roosevelt, and that both of those officials promised to take the cases up, and that although a year and more has elapsed since they made verbal and written pledges to act on the cases involved they have done nothing.

The original documents and letters I have seen and can produce them here if anyone doubts their authenticity.

The greater part of this evidence and statement of facts has already appeared in the CONGRESSIONAL RECORD of June 26, 1902, in a speech by the Hon. W. G. WOOTEN of Texas. He obtained leave to print, being unable to get the floor of the House, and it therefore has never attracted the attention it deserves, because Congress had adjourned before it appeared. I add it to my speech as cumulative and corroborative evidence to show neglect of duty by the Attorney-General.

The first document is the letter of the antitrust committee to Attorney-General Knox announcing their purpose to "institute civil and criminal proceedings against the United States steel trust and others," and requesting the aid of the Attorney-General in enforcing the law against these lawless combines.

OFFICE OF JOINT COMMITTEE AMERICAN ANTI-TRUST LEAGUE AND DISTRICT ASSEMBLY NO. 66, KNIGHTS OF LABOR, FOR THE CIVIL AND CRIMINAL PROSECUTION OF THE UNITED STATES STEEL TRUST AND OTHERS,
Washington, D. C., August 19, 1901.

Hon. P. C. KNOX, *Attorney-General United States:*

SIR: We have the honor to request that you afford us all the information that you are possessed of or can obtain concerning an agreement or agreements made between the constituent companies and individuals who organized the United States Steel Corporation, commonly known as the steel trust.

The trust or syndicate agreement which we especially desire is the one which President C. M. Schwab, of the United States Steel Corporation, refused to furnish to the United States Industrial Commission when on the witness stand before that body.

Our request is founded upon information and belief that at the time that this contract or contracts was or were made you were, in some way, officially connected with the Carnegie Steel Company, which institution is one of the principal companies in the United States Steel Corporation. As this information is doubtless in your possession or conveniently at hand, you will greatly oblige this committee by giving us the substance thereof in your own language, or, if possible, a copy thereof.

This request is to cover any other contracts of a similar kind with which

you are acquainted or which you can obtain for us. Our object is to prevent the failure of justice in certain legal proceedings which we contemplate in the near future.

Hoping that you will find it convenient to comply with this request, we remain,

Very respectfully, yours,

H. B. MARTIN, *Chairman.*
WILLIAM L. DEWART, *Secretary.*

To this letter the Attorney-General returned the following evasive reply, in which reply he, however, admitted that he had been the attorney of the Carnegie Steel Company, the principal constituent company of both the armor plate trust and the United States steel trust:

OFFICE OF THE ATTORNEY-GENERAL,
Washington, D. C., August 20, 1901.

Mr. H. B. MARTIN,
Chairman Joint Committee American Anti-Trust League, etc., City.

SIR: I have the honor to acknowledge the receipt of your letter of August 19, 1901, in which you request me to obtain for you certain information with reference to certain alleged "agreement or agreements made between the constituent companies and individuals who organized the United States Steel Corporation." You ask me to afford you all the information that I may "possess or can obtain," and you specifically refer to an alleged "trust or syndicate agreement," which you state the president of the United States Steel Corporation, Mr. C. M. Schwab, "refused to furnish to the United States Industrial Commission when on the witness stand before that body;" and you further state that your request for information is to be understood as covering "any other contracts of a similar kind with which you are acquainted or which you can obtain for us."

You also state that your request for information is "founded upon information and belief that at the time this contract or these contracts was or were made" that I was "in some way officially connected with the Carnegie Steel Company," and you therefore assume that the information which you request must be in my "possession or conveniently at hand." I am, therefore, requested to give you the substance, or, if possible, a copy thereof.

Primarily, permit me to say that your request is founded upon an erroneous assumption. I do not know who the individuals are who organized the United States Steel Corporation. If they are the persons usually named in the newspapers as the promoters of that organization, with the single exception of Mr. C. M. Schwab, I do not know, never saw, and was never in any way connected with any one of them. I never heard of any agreement between them and the constituent members of the steel corporation.

Neither at the time of the formation of the United States Steel Corporation, nor at any time, was I officially connected with the Carnegie Steel Company. I was formerly one of its legal advisers in the conduct of its manufacturing business, but was never consulted with reference to the formation of the United States Steel Company, nor in relation to the sale to that company of the shares of stock held by the stockholders of the Carnegie Company.

I have never seen the papers or agreements to which you refer, nor have I been informed of their contents. I have no knowledge whatever of their existence, terms, or scope. I am thus specific, as I desire to cover both the spirit and the letter of your inquiry.

I may say, moreover, that I have no access to the agreement or papers to which you refer. I know nothing of the one to which you especially refer, and do not even know that such an agreement is in existence. The information which you request, therefore, is not in my possession or "conveniently at hand," as you assume, and it is therefore impossible for me to comply with any of the requests set forth in your letter. All this information you could at any time have acquired through the usual method of direct personal inquiry, thereby avoiding the doubtful propriety of addressing me through the medium of an open letter which you concurrently delivered to the press.

Whether, if such papers were accessible to me, it would be my duty to obtain them and furnish them for use in legal proceedings to which you are a party, and the nature of which you do not explain, is a question which I do not care at this time to discuss.

If I may regard the letter as addressed to me officially, I will say:

If this Department is under obligations to furnish information to prospective litigants in undisclosed proceedings, its responsibilities and labors are necessarily greater than they have ever been imagined from the time of its formation. Indeed, as there are generally two parties to every controversy, it would be difficult to discharge such alleged duty to both parties in view of conflicting interests. This Department was not called into being to furnish information to private litigants. Its duty and its object is to enforce the Federal statutes as interpreted by the courts wherever there is probable cause for believing that they have been violated.

Very respectfully,

P. C. KNOX, *Attorney-General.*

Chairman H. B. Martin, of the antitrust committee, promptly replied as follows:

"The letter addressed to me as chairman of the joint committee of the American Anti-Trust League and District Assembly 66, Knights of Labor, by Attorney-General P. C. Knox to-day, in reply to our letter of August 19, asking him for copies of certain incriminating documents affecting the steel trust, which we believed were in the possession of or accessible to the Attorney-General, and which he denies possessing and which he intimates that he might not allow to be used in a civil or criminal prosecution against the steel trust even if he had them in his possession, certainly raises some very important questions.

"After making his denial of being in possession of the evidence which we were seeking, the Attorney-General makes this complaint, which seems to indicate that the publicity of our action was irritating to him. He says: 'All this information you could at any time have acquired through the usual method of direct personal inquiry, thereby avoiding the doubtful propriety of addressing me through the medium of an open letter, which you concurrently delivered to the press.'

"We were not aware that there was any impropriety in a citizen or body of citizens publicly addressing the chief prosecuting officer of the United States in reference to grave violations of law that were being committed to the great injury of the people of the United States.

"Such a matter is in no sense a private matter, to be settled by personal and private interviews or conferences between the Attorney-General and a citizen; but it is a public matter, in which all the people of the United States have a right to the fullest and freest knowledge of all action that is taken.

"Attorney-General Knox says: 'Neither at the time of the formation of the United States Steel Corporation nor at any time was I officially connected with the Carnegie Steel Company.' This looks like a very sweeping denial on the part of the Attorney-General as to the many charges that have been made in the public press to the effect that he was formerly connected with the Carnegie Company or the steel trust. But the force and effect of this denial are entirely destroyed by the remarkable admission which the Attorney-General makes in the next sentence, when he says: 'I was formerly one of its legal advisers in the conduct of its manufacturing business.' This language of the Attorney-General certainly looks evasive in view of the fact that it is currently believed that the members of the steel combine selected one of their former attorneys for Attorney-General in order that they might have a friend at court in time of popular clamor for the enforcement of the law against trusts.

"Our letter itself contained the statement at the beginning that ours was a 'committee for the civil and criminal prosecution of the United States steel trust and others.' Is this language ambiguous? Does it leave any doubt in the mind of the Attorney-General as to the nature of the legal proceedings we are about to undertake?

"Furthermore, does the Attorney-General desire to put himself in a position before the people of the United States of saying that if the papers containing the incriminating evidence of the violations of the law of the United States, which he is sworn to enforce and punish violators of, were accessible to him, that it is a question whether he would furnish them for use in legal proceedings instituted by citizens for the purpose of punishing violators of the law? And yet the Attorney-General intimates to us that there is a question whether, if he possessed these incriminating documents, that he would either use them himself or permit anyone else to use them to secure the conviction of the great trust criminals who are violating the Federal statute against the organization of trusts, destroying freedom of competition in the business world, driving competitors into bankruptcy, crushing labor organizations with an iron hand, and instituting a reign of terror in the iron and steel industry which threatens to involve the country in a civil war.

"Now, the people of the United States can not afford to have any doubt or uncertainty as to whether their Attorney-General, who enjoys the honors and emoluments of that high office and draws his pay from the taxes exacted from the wealth producers, is willing or unwilling to perform the duties of his position and enforce the laws, as his oath of office requires him to, against the criminal trusts. Mr. Knox's letter intimates that there is a doubt about this. Can he afford to rest under the cloud which that doubt raises?

"We will give him an opportunity now to reassure the people as to his desire and intention to enforce the law against trusts. Will Attorney-General Knox offer a reward for the production of the incriminating evidence against the trusts for which we asked and which he says he does not possess? Will he announce to-morrow that the Department of Justice of the United States will pay a substantial reward to any person or persons who will produce evidence that will lead to the arrest and conviction of any person or corporation guilty of violating the Federal statute against trusts?

"Let him do this and institute vigorous proceedings against trust lawbreakers, and the people will no longer have doubts as to his faithfulness to his oath of office. And he will no longer be the target for criticism, inuendo, and invective on the part of the press, because of the fact that while the trusts ride roughshod over the people the Attorney-General, who is the sole officer under the Federal law who is vested with authority to prosecute them, refuses to take any action."

The Attorney-General having stated in his first letter that it was the duty of his Department "to enforce the Federal statutes wherever there is probable cause for believing that they have been violated," the committee took him at his word, and promptly filed the following petition, evidence, and affidavit:

ANTI-TRUST LEAGUE'S PETITION TO ATTORNEY-GENERAL KNOX.

WASHINGTON, D. C., *September 6, 1901.*

Hon. PHILANDER C. KNOX,
Attorney-General of the United States, Washington, D. C.

SIR: In response to your communication of August 20, 1901, in which you say the duty of your Department and its "object is to enforce the Federal statutes as interpreted by the courts wherever there is probable cause for believing that they have been violated," we herewith hand you the inclosed petition, in which the "probable cause" demanded is set forth for your action.

Very respectfully, yours,

H. B. MARTIN, *Chairman,*
WILLIAM L. DEWART, *Secretary,*
Joint Committee American Anti-Trust League and District Assembly 66, Knights of Labor.

Hon. PHILANDER C. KNOX,
Attorney-General of the United States:

1. Your petitioners would respectfully show that the American Anti-Trust League is an organization nonpartisan in its character, numerous in its membership in various parts of the United States, having for its object, among other things, to secure the enforcement of the existing State and Federal statutes against trusts and monopolies, and furnish such evidence of the violation of such statutes to the officers whose duties are to enforce these laws, and to cooperate with such prosecuting officers of the various States and the United States for the enforcement of these laws; and that District Assembly 66, Knights of Labor, is also a nonpartisan body, engaged in various trades and crafts within the District of Columbia, whose object is to protect the rights and interests of the wage-working wealth producers from unlawful aggressions and encroachments on the part of great combinations of capital, whether in the form of a trust or otherwise. The said District Assembly 66 is also associated with various other branches of organized labor throughout the United States.

2. Your petitioners would show that the United States Steel Corporation seems to your petitioners to exist, subsist, and persist in violation of law, and that its principals, agents, promoters, and managers are a combination who conspire to restrain—and they do restrain—and monopolize and attempt to monopolize trade and commerce between the States and Territories and the District of Columbia and in the Territories and in the District of Columbia and with foreign nations.

3. Your petitioners further say that at various times prior to February 23, 1901, certain alien capitalists, aided by American coconspirators, among whom are and were Andrew Carnegie; J. P. Morgan & Co., American agents of the house of Rothschild; Charles C. Cluff, William J. Curtis, Charles MacVeagh, John D. Rockefeller, Charles M. Schwab, Henry C. Frick, and others, did, under the alleged protection of the State of New Jersey, in violation of the Constitution and laws of the United States, enter into the following unlawful

"ARRANGEMENT."

In violation of the "antitrust law," as it is commonly called, which was enacted July 2, 1890, the interstate-commerce law of 1887, and the act to reduce taxation and provide revenue for the Government, and other purposes, which became a law in 1894, the coconspirators made an "arrangement," contract, combination, and conspiracy in restraint of trade and commerce among the States and with foreign nations, attempted to monopolize and combined and conspired together and with other persons to monopolize a very great part of the trade and commerce among the several States and with foreign nations, and made a contract, agreement, and combination in the form of a trust and otherwise and a conspiracy in restraint of trade and commerce among the States and in a Territory and Territories of the United States and in the District of Columbia, and in restraint of

trade and commerce between one Territory and another, one State and another, and with the District of Columbia and foreign nations; that the syndicated conspiracy includes certain American capitalists who unite and combine with the European capitalists to share with them the spoliation of the people of the United States, based upon the "acquisition of the holdings of the said Andrew Carnegie" and the stock and bonds of the Carnegie Company, and the stocks and bonds of the following companies, to wit:

Of the Federal Steel Company, of the American Steel and Wire Company of New Jersey, of the National Tube Company, of the American Tin Plate Company, of the National Steel Company, of the American Steel Hoop Company, and of the American Sheet Steel Company, which, on his oath before the United States Industrial Commission, the said Charles M. Schwab deposed to be a "consolidation" of artificial and other persons in the shape of the United States Steel Corporation by agreement between it and the above-named seven constituent companies, to none and to neither of which does the incorporating certificate grant such a right to consolidate. The said "consolidation," therefore, being illegal, and the said United States Steel Corporation being, therefore, nonexistent by law and subject to the dissolution by a court having jurisdiction; and that the conspirators agreed that whenever by the consummation of the proposed "arrangement" the amount of dividends shall cease to be substantially increased the greater stability of investment will be assured by "necessarily increasing the prices of manufactured products," all of which facts appear in the prospectus of the syndicate managers, J. P. Morgan & Co., dated March 2, 1901, as Exhibit 1, on page 455 of a public document entitled "Testimony, Trusts and Industrial Combinations," herewith filed as part of Exhibit A, for reference, and also in Exhibit 2 of said document, which is a copy of the amended certificate of incorporation of the United States Steel Corporation, as the other part of Exhibit A, in which the said State of New Jersey, excepting herself from the operation of said law by forbidding the corporation to operate or maintain railroads and canals within her own borders, assumes to give eminent domain to the corporation everywhere else in the country except in New Jersey, and further subjects a greater part of the metal and mineral products in the United States and Territories, and manganese (and imported metaloid), and every transport thereof by land and water to the corporation and its extension and "business," contrary to the Constitution and laws of the United States and of each of them, and contrary to "public policy," private rights, and the stability of the Republic of America.

4. As is further shown by the testimony of President Charles M. Schwab, of the United States Steel Corporation, delivered before the United States Industrial Commission May 11, 1901, reported on page 465 of their "Testimony, Trusts and Industrial Combinations," where he states, in reply to the following question by Commissioner Farquhar:

Q. What have you to say to the public expression that the United States Steel Corporation controls 80 per cent of the whole manufactured product of this country?

A. (Interrupting.) Seventy per cent.

And on page 455, same sworn testimony, in answer to a question by Commissioner Phillips:

Q. Can you give the per cent of the Carnegie Works?

A. Well, I could figure it out. I know the Carnegie people exported 70 per cent of all the steel exported, but I could not give you the tons, etc.

And on page 470, in answer to a question by Commissioner Litchman:

Q. I understood you to say that the United States Steel Corporation controls about 80 per cent of the ore of the United States?

A. Well, I would modify that some if I said the United States; I think I made a mistake; I would say it controls about 80 per cent of the ores in the Northwest, which are those most largely used; in fact, nearly altogether used for steel products in the United States, etc.

And continuing on page 471, in answer to a question by Commissioner Harris, as follows:

Q. In transportation of your raw materials, do you own your own roads and steamboats?

A. We own all of our steamboats—not quite all—and we own all our railroads; the constituent companies own their railroads from the mines to the lakes, and we own one railroad from the lakes to the manufactories.

Q. You practically control the transportation of your raw materials, then?

A. On the lakes; yes.

5. Your petitioners respectfully submit that in view of the fact that the Carnegie Company is only one of the constituent companies of the United States Steel Corporation, that President Schwab's testimony, which is hereinbefore quoted, is almost conclusive evidence that the aforesaid steel trust is monopolizing, or attempting to monopolize, a part of the trade or commerce among the several States and with foreign nations.

6. And your petitioners further respectfully show that there are certain other combinations and conspiracies, in the form of trusts and otherwise, who are monopolizing, attempting to monopolize, combining and conspiring to monopolize part of the trade and commerce, and combining, contracting, and conspiring in restraint of trade and commerce among the several States and Territories and the District of Columbia, and with foreign nations; and that among those who have and are thus conspiring, as aforesaid, in the form of trusts and otherwise, are the armor-plate trust or combination, which has been for some years past composed of the Carnegie Steel Company and the Bethlehem Steel Company.

7. And your petitioners further show that the said armor-plate trust and its constituent members and its managers have combined and conspired not only to monopolize the trade, commerce in armor plate among the several States and Territories and the District of Columbia and with foreign nations, but it and its constituent members and managers thereof, among whom are the aforesaid Andrew Carnegie, Charles M. Schwab, Henry C. Frick, and others, have conspired and combined to so monopolize the commerce in armor plate among the several States and with foreign nations that they have been able to and did extort from the people and Government of the United States such an exorbitant price from the National Government and the people of the United States that they sold armor plate which cost less than $200 per ton to the said Government of the United States for the sum of $520 per ton.

8. And your petitioners further show that the said Carnegie Company and the said Bethlehem Company, who combined and conspired to form the said armor-plate trust, conspiracy, or combine, are now combined in violation of law of the United States into the hands of one combination, and they are the same combination which now controls the United States Steel Corporation, and that they are still monopolizing the trade and commerce in armor plate and still charging the Government the aforesaid exorbitant prices as a result of their being able to monopolize the trade and commerce in armor plate.

9. And we herewith submit the following from the official report of Hon. Hilary A. Herbert, Secretary of the Navy, for the year 1897:

"My impression is that there is and has been for some time at the least a friendly understanding among armor contractors both in Europe and America as to the prices to be charged for armor. This impression, I find, prevails abroad, certainly among some of the persons who have inquired into the subject.

* * * "These natural promptings to such a combination are mentioned only as persuasive to show, when taken in connection with what follows, and that a world-wide combination or understanding does exist.

* * * "An inspection of the prices paid, as shown by the diagram before referred to, will indicate what is not denied, that the Carnegie and Bethlehem companies agreed with each other as to prices. They have divided the contracts of this Government between themselves, each bidding lower than the other for one-half of the armor required at any time by the Government.

* * * "In 1895 Russia was in the market for harveyed nickel armor The Bethlehem and Carnegie companies in the United States were then both well established and neither had sufficient orders from this Government to employ its plant continuously. There was sharp competition for the order from Russia, and the Bethlehem Company secured the contract for manufacturing armor for one ship at the very low price of $249 per ton, this armor to be both nickeled and harveyed and to be delivered in Russia, the company agreeing at the same time to manufacture the armor for two other ships, if required, at the same price. The Russian Government afterwards did require for the other two ships, and taken altogether the armor for the three amounted to about 1,400 tons.

* * * "I am informed upon authority which I believe to be good that about or perhaps before the time of the last contract of the Bethlehem Company with Russia there was a meeting in Paris of the representatives of the principal, if not all, of the armor manufacturers of Europe and America.

* * * "These facts seem to lead to the conclusion that there is at least a friendly understanding or agreement among the principal armor manufacturers of the world that prices shall be maintained at or about a certain level.

* * * "In June, 1896, a board of officers, consisting of Lieuts. Karl Rohrer, Kossuth Niles, and A. A. Ackerman, was assembled with instructions to make a careful estimate of the actual cost in labor and material for the manufacture of armor now being provided for our battle ships. The board submitted a report on July 3, 1896.

* * * "The Department is inclined to give the greater weight to the estimated cost formed by the board, and it is believed to be just to both the manufacturers and to the Government to take average of the estimates to be $185.88 for single-forged and $197.78 for reforged armor."

10. And your petitioners further respectfully show that in addition the aforesaid violators of the United States statutes against trusts and monopolies, part of the aforesaid individuals, including John D. Rockefeller and others and the Standard Oil Company, among the managers, directors, and officers of which are John D. Rockefeller, H. M. Flagler, H. H. Rogers, John D. Archbold, William Rockefeller, and others, who have combined, contracted, and conspired together under the name of the Standard Oil Company, the Home Oil Company, the National Transit Company, and otherwise, to monopolize and restrain the trade and commerce among the States and Territories and the District of Columbia and foreign nations in crude and refined petroleum and its by-products.

11. And your petitioners further show that the anthracite coal combine and its members, among whom are the aforesaid J. P. Morgan, William Rockefeller, and others, have combined and conspired together to restrain and to monopolize the trade and commerce among the several States and Territories and the District of Columbia and with foreign nations in anthracite coal.

12. And your petitioners further respectfully show that the aforesaid J. P. Morgan & Co., the American agents of Rothschild, John D. Rockefeller, and William Rockefeller, also William K. Vanderbilt, James J. Hill, E. H. Harriman, George J. Gould, Russell Sage, A. J. Cassatt, and numerous railroad corporations, their owners, managers, and directors, including the Delaware, Lackawanna and Western, the New York Central Railroad, the New York, New Haven and Hartford Railroad, the Pennsylvania Company, or Pennsylvania Railroad Company, the Chicago and Northwestern Railroad Company, the Chesapeake and Ohio Railroad Company, the Missouri Pacific Railroad Company, the Union Pacific Railroad Company, the Southern Pacific Railroad Company, the Atchison, Topeka and Santa Fe Railroad Company, the Northern Pacific Railroad Company, the Great Northern Railroad Company, the Southern Railroad Company, the Louisville and Nashville Railroad Company, the Wabash Railway Company and the Erie Railway Company, the Boston and Albany Railroad Company, and numerous others, and their principal stockholders, directors, and managers and officers, and certain bankers, including the firm of J. P. Morgan & Co., the National City Bank of New York, Kuhn, Loeb & Co., the First National Bank of New York, and the First National Bank of Chicago, and others, have conspired and combined to restrain and monopolize the railroad trade and commerce among the several States and Territories and the District of Columbia of the United States and with foreign nations.

13. As evidence of the existence of the said combination of railroads, and as further evidence of the existence of a conspiracy entered into by the aforesaid railroad managers, stockholders, and manipulators, for the purpose of monopolizing and restraining the railroad trade and commerce among the several States and Territories and the District of Columbia, of the United States, and with foreign nations, your petitioners submit herewith, and make a part hereof, two sentences from the opinion handed down by Judge Hazel, sitting in equity in the case of the Lackawanna Railroad against 61 ticket scalpers, in which case the aforesaid railroad company prayed the United States court at Buffalo to restrain and inhibit the defendant ticket scalpers from dealing in Pan-American excursion tickets. Judge Hazel threw the case out of court, his decision that the aforesaid railroad company was not entitled to the protection of the laws being based upon the reasons in the following two sentences from his opinion:

"It appears that the complainant is a party to a combination which is engaged in pooling railroad rates and in fixing fares in order to avoid competition between the several lines constituting the association known and distinguished as the Trunk Line Association.

"Can the aid of a Federal tribunal be invoked to protect the complainant in the issuance of a ticket which is the culmination as well as the evidence of an agreement between railroad corporations specifically forbidden by an act of Congress which has been sustained by the Supreme Court of the United States?"

Judge Hazel thus decided that, sitting in equity, he could do nothing for a complainant who "does not come into court with clean hands."

Your petitioners further represent that the decision of Judge Hazel, of the United States court at Buffalo, as above quoted, certifies that a document was produced in his court which was the culmination as well as the evidence of an agreement between the railroad corporations, specifically forbidden by an act of Congress, which has been sustained by the Supreme Court of the United States.

And we submit that this evidence produced in Judge Hazel's court is ample and sufficient evidence and "probable cause" on which the Attorney-General may institute proceedings under the statute.

14. Your petitioners would further show unto your honor that numerous other trusts exist than those herein mentioned; that they can furnish evidence of the existence of such other trusts if necessary; that their existence is so open and notorious to the minds of the people of the United States that it seems unnecessary and would lengthen this petition to furnish more specific evidence at this time; that this other evidence will be furnished, if requested, by the Attorney-General; that the existence of the trusts is

admitted by the public editorials and articles in every leading newspaper in the United States; that during the last session of Congress their existence was admitted by the declaration of every member of Congress who addressed himself to the subject; and that an act was passed by the House of Representatives which purported to further restrict their operations in the United States, as is evidenced by a copy filed herewith and for identification, marked "Exhibit B."

The existence of these dangerous combinations is further proven by facts known to all men that in the platforms of the Republican, Democratic, and Populist parties adopted at their last national convention they all recognized the existence of these illegal combinations and vigorously denounced them.

It therefore being thus stated by men of all parties, by the executive and legislative departments of the Government, and having been recognized by the judicial department of the Government in various opinions rendered by the Supreme Court, and also having been recognized by a large number of States in their constitutions by incorporating clauses therein denouncing these monopolies, trusts, and combinations and providing laws for inflicting upon them civil and penal punishment.

15. Your petitioners would further show unto your honor that, even though it should be denied that these combinations exist, or that they are now violating the law enacted by Congress, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," that it is the duty of the Attorney-General to prevent and restrain a contemplated violation of the said law whenever and wherever there is probable cause for instituting such proceedings as are provided for by said section 4 of the aforesaid act, which reads as follows:

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

16. Your petitioners further respectfully represent unto your honor that they will cheerfully furnish evidence now in their possession, and gladly assist you by furnishing you, through their organizations, whatever information and aid you may desire from them.

Your petitioners therefore pray that you either institute yourself, in the proper courts, prosecutions against these violators of the law or that you may authorize in the various districts of the United States your subordinates, the respective district attorneys in these districts, to at once commence prosecution for the past violations of this law in their respective districts, and at the same time instruct them at once to file before the various courts of the United States petitions such as are provided for by the terms of said law in equity to restrain and prevent impending and future violations of this law.

That these and all other and general proceedings may be taken against the aforesaid trusts, combinations, as to you may seem meet, your petitioners in duty bound will ever pray, etc.

H. B. MARTIN, *Chairman*,
WILLIAM L. DEWART, *Secretary*,
Joint Committee American Anti-Trust League and District Assembly 66, Knights of Labor.

F. S. Monnett, of Ohio; A. A. Lipscomb, of District of Columbia; R. S. Tharin, of District of Columbia; L. R. Via, of West Virginia, counsel for petitioners.

OFFICE OF L. C. STRIDER, JUSTICE OF THE PEACE,
Washington, D. C.

Henry B. Martin, who being first duly sworn, says that he has read the foregoing petition or heard the same read, and that the grounds of belief therein stated as probable cause for the proceedings of the Attorney-General against the persons of all kinds therein mentioned and accused are clearly, in his opinion, good and sufficient to furnish ample grounds for the prosecution of the accused, as in duty bound under the Attorney-General's direction, by such assistant or district attorney as may be lawful and right.

HENRY B. MARTIN.

Subscribed and sworn to before me this 6th day of September, 1901.
[SEAL.] L. C. STRIDER, *Justice of the Peace.*

On September 11, 1901, the joint committee received the following reply from Attorney-General Knox:

OFFICE OF THE ATTORNEY-GENERAL,
Washington, D. C., September 11, 1901.

H. B. MARTIN AND OTHERS,
1229 Pennsylvania avenue, Washington, D. C.

SIRS: I have your letter of September 6, inclosing a copy of what is properly known as the "Sherman antitrust act," a copy of the testimony of Mr. Charles M. Schwab before the Industrial Commission, and a petition addressed to me requesting legal proceedings to be taken against the trusts and combinations referred to therein. *I will examine these papers with care at as early a date as is possible, and communicate to you my conclusions.*

Very respectfully, yours,

P. C. KNOX, *Attorney-General.*

After the receipt of this definite written promise of Attorney-Geeneral Knox that he would take up the cases "at as early a date as is possible" the committee waited hopefully for many weeks. But no action was taken by the Attorney-General, and his promise to communicate his conclusions was never fulfilled. After waiting nearly three months, on November 25, the committee addressed the following letter to President Roosevelt:

THE AMERICAN ANTI-TRUST LEAGUE, NATIONAL OFFICE,
1229 PENNSYLVANIA AVENUE, SECOND FLOOR,
Washington, D. C., November 25, 190–.

Hon. THEODORE ROOSEVELT,
President, White House, Washington, D. C.

SIR: I am instructed by the joint committee of the American Anti-Trust League and District Assembly 66, Knights of Labor, to address to you a letter of inquiry, asking you to name a date within the next five days when you could give our committee an opportunity to present to you in person certain facts in reference to violations of Federal law by certain great trusts, and also with reference to a certain petition of complaint against these trusts which we filed with the Attorney-General of the United States some two months ago.

It is of great importance that we should have the opportunity to present this matter to you on or before November 29.

Earnestly hoping that in the pressure of your many other duties you will be able to find time to grant us this request, I am,

Very respectfully, yours,

H. B. MARTIN,
Chairman Joint Committee the American Anti-Trust League and District Assembly 66, Knights of Labor.

To which the President caused the following reply to be sent:

THE PRESIDENT'S REPLY.

WHITE HOUSE, *Washington, November 26, 1901.*

MY DEAR SIR: In reply to your letter of the 25th instant I would state that the President has expressed a desire to have matters of the kind to which you refer submitted to him in writing. This is because of the great pressure upon his time which renders it impossible for him to receive all of those who wish to call upon him.

Assuring you that I shall be glad to see that anything you may decide to forward is given prompt attention, believe me,

Very truly, yours,

GEO. B. CORTELYOU,
Secretary to the President.

Mr. H. B. MARTIN,
National Secretary, etc., 1229 Pennsylvania Avenue, Washington, D. C.

The committee at once forwarded to the President a full presentation of the cases with the following letter:

THE AMERICAN ANTI-TRUST LEAGUE, NATIONAL OFFICE,
1229 PENNSYLVANIA AVENUE, SECOND FLOOR,
Washington, D. C., November 30, 1901.

Hon. THEODORE ROOSEVELT,
President, White House, Washington, D. C.

SIR: Your letter of 26th instant, per George B. Cortelyou, secretary to the President, at hand. Pursuant to the suggestion contained therein, we herewith submit to you the documents relating to the petition of the joint committee of the American Anti-Trust League and District Assembly 66, Knights of Labor, to Attorney-General Knox, in which we laid before that officer the "probable cause" asked for by him as a basis of instituting proceedings against five of the great trusts who are operating in violation of the Federal statute of July, 1890.

We desire to call your attention also to the fact that we not only submitted "probable cause" for prosecution, but also positive proof of the violations of the Federal statute against trusts by at least two combines, viz, the armor-plate trust and the railroad combine, which latter succeeded the Joint Traffic Association and continued the illegal practices of that trust after it was ordered dissolved by the Supreme Court of the United States in 1898.

Recent events in connection with the organization of a railroad trust known as "The Northern Securities Company" by the same offenders who were enumerated in our petition to Attorney-General Knox, dated September 6, 1901, have aroused the indignation of the people of five of the great Northwestern States to such an extent that the governors of States are calling special sessions of legislatures to take action to prevent the consummation of this conspiracy against the public welfare.

The course of Attorney-General Knox in neglecting or refusing to take action against the parties of whose guilt proofs were submitted to him in our petition and his failure to keep the promise made in his letter of September 11 to take action and render a decision as to "his conclusions at the earliest possible date," make it our duty to call your attention to his culpable inactivity in these matters.

The neglect on the part of Attorney-General Knox to enforce the law of 1890 against trusts and combinations has resulted in such grave injury to the interests of the people of the United States that we deem it our duty to bring to your notice these facts, in order to secure that prompt and necessary action which the emergency demands.

Very respectfully,

H. B. MARTIN, *Chairman*,
WILLIAM L. DEWART, *Secretary*,
Joint Committee American Anti-Trust League and District Assembly 66, Knights of Labor.

To which the President responded as follows:

WHITE HOUSE, *Washington, December 2, 1901.*

MY DEAR SIR: I beg to acknowledge the receipt of your letter of November 30, with inclosures, and to state that by direction of the President it has been brought to the attention of the Attorney-General.

Very truly, yours, GEO. B. CORTELYOU,
Secretary to the President.

Mr. H. B. MARTIN,
Chairman, etc., 1229 Pennsylvania Avenue, Second Floor, Washington, D. C.

Notwithstanding this statement from President Roosevelt that he had brought the matter to the attention of the Attorney-General, that officer has utterly neglected and even positively refused to take a single step looking toward action against the trusts, of whose violations of law the committee had furnished him ample proofs.

On November 25, 1901, the antitrust committee made demand on the Attorney-General for a definite reply on or before November 30 as to what action he intended to take in the cases. As no reply was received from Mr. Knox, and as the committee had become convinced that Mr. Knox's antecedents and his neglect and refusal to perform the duties of his office made him an unfit person to fill the position of Attorney-General, they, on the opening of Congress early in December, filed written charges and protests with the Senate against his confirmation.

The evidence against Knox was of so serious a character that his nomination instead of being instantly confirmed, as is the custom with Cabinet officers, was referred to the Judiciary Committee of the Senate for investigation. The chairman of that committee having informed the chairman of the antitrust committee that Mr. Knox had attempted to defend himself to the committee against the charge of neglect to perform his duty by the excuse that he had promised the antitrust committee that "he would take up their cases right away after the meeting of Congress," the committee sent the following letter to the chairman of the Judiciary Committee, and filed proofs of their statement that the Attorney-General had not made such a promise:

THE AMERICAN ANTI-TRUST LEAGUE,
NATIONAL OFFICE, 1229 PENNSYLVANIA AVENUE, SECOND FLOOR,
Washington, D. C., December 10, 1901.

Hon. GEORGE F. HOAR,
Chairman Senate Committee on the Judiciary.

SIR: Referring to the conversation we had with you yesterday, in which you stated that P. C. Knox, acting Attorney-General of the United States, had informed you that he "had notified our committee that he would take up our cases right away after the meeting of Congress," we beg to inform

you that our committee has never received any such notice whatever in any form from Mr. Knox.

We further call your attention to the fact that the charges against Mr. Knox, which we have filed with the Senate, not only refer to his dereliction of duty in the cases which we filed with him, but also bear upon his antecedents and his admitted intimate relations and his collusion with the criminal practice of the armor-plate trust, which institution. we are informed by members of the Senate, robbed the Government of millions of dollars annually during the time that Mr. Knox was their associate and adviser.

We submit that the record of such a man should be thoroughly investi gated before he is confirmed in the office of Attorney-General, where one of his principal duties will be to prosecute those great criminals whom he admits were his former friends and employees.

Very respectfully, yours,

H. B. MARTIN, *Chairman*,
WILLIAM L. DEWART, *Secretary*,
Joint Committee American Anti-Trust League and District Assembly 66, Knights of Labor.

The Judiciary Committee referred the case to a subcommittee, who gave a hearing to the antitrust committee in support of the charges against the Attorney-General, and after having the matter in their hands until December 16, they reported the case to the Senate, where Mr. Knox was confirmed. Senators will recall the circumstances and the debate on that occasion.

The antitrust men then waited from December 16 till January 29 in hopes that the Attorney-General would keep to the promise he claimed to have made that he would take up the case right away after the meeting of Congress. After waiting another month and a half for the Attorney-General to act and getting no results, the antitrust committee filed the following memorial with the Senate of the United States, which was referred to the Judiciary Committee, where it now rests. In view of the fact that another year has elapsed and the Attorney-General still fails to act, I suggest that it would be eminently proper for that committee to take some action or make some report on this memorial.

After the confirmation the committee addressed the following communication to the Senate asking for an investigation of the Attorney-General's Department:

WASHINGTON, D. C., *January 29, 1902.*

To the honorable the Senate of the United States, Washington, D. C.

GENTLEMEN: At a meeting of the joint committee of the American Anti-Trust League and District Assembly No. 66, Knights of Labor, held on Monday, January 27, 1902, the following resolutions were unanimously adopted and directed to be presented to the Senate of the United States:

"Whereas on four separate occasions, viz, August 20, 1901, September 11, 1901, November 25, 1901, and January 23, 1902, covering a period of over five months, the joint committee of the American Anti-Trust League and District Assembly 66 of the Knights of Labor did urge upon the attention of Attorney-General P. C. Knox complaints and evidence of violations of the laws of the United States against trusts and monopolies and conspiracies in restraint of trade; and

"Whereas, despite the assurance given us in his letter of September 11, 1901, by said Attorney-General P. C. Knox that he would 'examine these papers with care at as early a date as is possible and communicate to you my conclusions,' nevertheless five months have passed and we have not yet received his promised conclusions as to these complaints of violations of law on the part of the unlawful trusts enumerated in our petition, viz: The United States Steel Corporation, the Standard Oil Company, the armor-plate trust, the railroad combine, the anthracite-coal trust, and the Northern Securities Company; and

"Whereas, during the five months which have elapsed since we first made our complaint to Attorney-General P. C. Knox of these violations of the Federal statutes against trusts, numerous other and flagrant violations of the law of the United States have been committed by the same offenders charged in our petition and complaint to the Department of Justice; and

"Whereas these gross violations of law are well known not only to us but to the public, and especially to the said Attorney-General P. C. Knox and other officials of the Department of Justice; and

"Whereas great and irreparable injury to the welfare and interests of the people of the United States and grave scandal and disgrace to a department of the Government results from this apparent collusion between the officials of the Department of Justice and the great trust criminals; and

"Whereas it is a well-known and scandalous fact that the predecessor of P. C. Knox in the Attorney-General's office, John W. Griggs, went from the service of the coal trust to the head of the Department of Justice, and that during his term of four years in that office he permitted the laws of the United States to be trampled under foot by the criminal trusts, and when he left the Attorney-General's office it was to publicly reenter the service of the railroad combine and other trusts, and on this very day, January 27, 1902, said ex-Attorney-General Griggs appeared before the Supreme Court of the United States as the servant of the Northern Securities Company, a branch of the railroad trust now being tried on charges preferred by a sovereign State; and

"Whereas the equally scandalous condition now exists that P. C. Knox, the present Attorney-General, went into the Department of Justice directly from the service of the criminal armor-plate trust and the Carnegie Steel Company, the main factor in the steel trust, and that he, like his predecessor, Griggs, has persistently neglected and refused to perform the sworn duties of his office as regards the prosecution of trusts, combines, and monopolies operating in open violation of the law; and

"Whereas the Attorney-General is the sole officer of the United States who is clothed with authority to prosecute these trust-law breakers: Therefore,

"*Resolved*, That the attention of the Senate and House of Representatives and of the President of the United States is hereby called to this condition of affairs now prevailing and to the palpable appearance of illicit relations existing between the Attorney-General of the United States and the most dangerous class of lawbreakers now at large in this Republic; and

"*Resolved*, That we, the joint committee of the American Anti-Trust League and District Assembly 66 of the Knights of Labor, hereby call upon the Senate, the House of Representatives, and the President of the United States to at once institute a searching and thorough investigation of the Department of Justice and the official conduct of that Department by Attorney-General P. C. Knox.

"Respectfully submitted."

H. B. MARTIN, *Chairman*,
WILLIAM L. DEWART, *Secretary*,
Joint Committee of the American Anti-Trust League and District Assembly 66, Knights of Labor.

APPENDIX B.

Failing to secure any favorable action by the Attorney-General in suppressing the monstrous trusts with which he was personally and professionally connected, the antitrust people filed a mass of convincing documents against another illegal combination, the Eastern Railroad Association, with President Roosevelt on December 21, 1901, which the President referred to the Attorney-General.

Those documents are here submitted in full, because they are valuable in themselves as an exhaustive presentation of the law, and because they show conclusively that the present Administration does not intend to suppress or punish any unlawful trust or conspiracy against trade so long as the Republican party lives and thrives by their substantial support in all its compaigns and elections.

The following are the documents presented by the joint committee of the American Anti-Trust League to the President and Attorney-General of the United States, and which to this date have not received even a respectful hearing:

EXHIBIT A.

THE EASTERN RAILROAD ASSOCIATION,

This association is a combination, voluntarily formed under a secret written agreement, of nearly all railroad corporations in the fifteen Atlantic coast States to secure by unity of action arbitrary control over all patented inventions applicable for use on railroads. It is without doubt the oldest illegal trust in the United States. It was formed in 1866, and has successfully pursued its iniquity for some thirty-five years.

The association's annual reports from 1867 to 1883 are on file in the United States Patent Office library; but since 1883, which is approximately the date of the present agitation against unlawful combinations, no reports have been allowed to reach the public.

Its membership in 1868 embraced 57 railroad corporations in Maryland, Pennsylvania, New York, and in the New England States. In 1883 the membership had increased to include 255 railroad corporations. The present membership is not actually known, inasmuch as the affairs of the association since 1883 have been kept secret. However, it is believed that the membership now includes at least 600 or 700 railroad corporations.

The headquarters of the combine was originally at Springfield, Mass.; afterwards, in 1878, at the Boston and Lowell station in Boston; then, in 1880, at the Grand Central Station in New York; and finally a permanent base of operations was established at Washington, D. C., the association, in 1886, purchasing for $25,000 the premises No. 614 F street NW., to be held "in trust for the sole use and benefit of the members of a certain association known as the Eastern Railroad Association."

On reference to the "Memorandum of deed in trust" (see Exhibit G), it will be seen that the conveyance was made to three members of the executive committee of the association and in a form which "has ever been held most sacred in equity." The building which is now the headquarters of the association contains large fireproof vaults with combination locks and within which are guarded the secret archives.

The railroad corporation members prior to December 4, 1878, operated under a written agreement, called a constitution, adopted February, 1867, a copy of which is not available. On the above date an amended constitution was adopted. This latter constitution was revised some time prior to 1887. (See Exhibit E.)

It will be seen on reference to the constitution that all the affairs of the association are turned over to and managed by nine governors called an executive committee. The names of the committee and the officers of the association have been published from time to time in the Travelers' Official Guide. In the Guide for June, 1902, the following list of the officials is given:

"*Eastern Railroad Association.*—General offices—614 F street NW., Washington, D. C. Hon. W. D. Bishop, president, Bridgeport, Conn.; Theodore N. Ely, vice-president, Philadelphia, Pa.; Albert A. Folsom, treasurer, Boston, Mass.; Robert J. Fisher, general counsel, Washington, D. C.; John J. Harrower, secretary, Washington, D. C.

"Executive committee: William D. Bishop, New York, New Haven and Hartford Railroad Company; Theodore N. Ely, Pennsylvania Railroad Company; Henry F. Kenney, Philadelphia, Wilmington and Baltimore Railroad Company; John R. Kenly, Atlantic Coast Line Railroad Company; Samuel E. Williamson, New York Central and Hudson River Railroad Company; Frank S. Gannon, Southern Railway Company; F. D. Casanave, Baltimore and Ohio Railroad Company; John J. Turner, Pennsylvania Company; William G. Besler, Central Railroad Company of New Jersey."

The meaning and force of certain articles in the amended constitution were explained to the 53 corporation members in the twelfth annual report of the president (Exhibit C), and reveals the true nature and character of the association.

Litigation is asserted to be the association's most important business. It is stated that section 4 of the constitution is "tyrannical," and deprives "members of the liberty of individual and independent action in the settlement of claims;" that members are forbidden to settle claims independently of the permission of the executive committee, for "the money thus paid enables the party making the unjust claim to prosecute other members, which in most cases he would otherwise be unable to do;" that the members of "the association must act as a unit," and that "it is believed that this unity of action has been the true cause of our success heretofore."

In fact, this report furnishes conclusive evidence that the association was at the time, as it is now, a criminal conspiracy at common law. In State *v.* Burnham (15 N. H., 396, 1840), Judge Gilcrist said:

"Combinations against law or against individuals are always dangerous to the public peace and to public security. But the law by no means intends to exclude society from the benefits of united effort for legitimate purposes and such as promote the well-being of individuals or the public. It uses the word "conspiracy" in its bad sense. An act may be innocent without being indictable where the isolated acts of an individual are not so injurious to society as to require the intervention of the law. But when innocent acts are committed by members in furtherance of a common object, and with the advantage and strength which determination and union impart to them, they assume the grave importance of a conspiracy, and the peace and order of society require their repression."

"The general principle on which the crime of conspiracy is founded is this, that the confederacy of several persons to effect any injurious object creates such a new and additional power to cause injury as requires criminal restraint, although none would be necessary were the same thing proposed or even attempted to be done by any person singly." (7 Rep. Crim. Law Com., 1843, p. 90.)

"The concentrated energy of several combined wills operating simultaneously and by concert upon any one individual is dangerous even to the cautious and circumspect. It is therefore the business of the law to protect individuals from such conspiracies. All combinations in society to effect an evil purpose are dangerous, and when their object and purpose are to cheat an individual by whatever means, they are obnoxious to the criminal law." (Twitchell *v.* Comm., 9 Pa. St. R., 211.)

"I take it, then, a combination is criminal wherever the act to be done has a necessary tendency to prejudice the public or to oppress individuals by unjustly subjecting them to the power of confederates and giving effect to the purposes of the latter, whether of extortion or mischief." (Judge Gibson, Comm. *v.* Carlisle, Brightly's Rep., Pa. 36, 1821.)

"An association may be formed, the declared objects of which are innocent and laudable, and yet they may have secret articles or an agreement

communicated only to the members by which they are banded together for purposes injurious to the peace of society; such would undoubtedly be a criminal conspiracy on proof of the fact, however meritorious and praiseworthy the declared objects might be." (Comm. *v.* Hunt, 4 Metcalf, 1845.)

Some time between 1878 and 1887 a further change in the constitution, as above stated, was made (Exhibit E), and in accordance with which the association has since carried on its business and exploited inventors and owners of patents.

The real purpose of the combination can be ascertained from an inspection of Articles V, VI, and VII of the constitution.

From section 1, Article V, it appears that an inventor or owner of a patent can not deal directly with any member of the association. He must deal with the executive committee, persons who never wish to purchase. The executive committee determines the validity of the patent and the expediency of contesting the claim, and the railroad corporation directly interested is deprived of individual freedom of action.

Under section 2 the executive committee arbitrarily fix the basis of settlement, if fixed at all. The individual member interested has no voice in the matter.

Under section 3 the individual member sued can not settle a claim or defend the suit. The executive committee manage the suit, and corporation members in no way interested are compelled to contribute aid.

Under section 4 each member is deprived of the right of individual opinion and freedom of action.

Under section 5 the individual member is forced to accept the judgment of the executive committee when "for the best interests of the association," whatever may be the interests of the individual member. If a claim is settled the inventor receives pay from those not using the invention. The sole condition of settlement is that such settlement is cheaper for the association than "carrying on the litigation."

Article VI fixes the penalty for violating the agreement.

Article VII authorizes the unlawful "maintenance" of suits where a majority of the members are not directly or indirectly interested and where no member of the association is a legal defendant of record.

These articles provide for the suppression of competition between the corporate members in the purchase of licenses and interests in letters patent, and restrict freedom in the settlement of claims for the infringement of patents; and also for the fixing of the price by the executive committee when any interest in a patent may be purchased or any claim is to be settled, provided "such settlement or purchase can be effected at less expense to the association than the cost of carrying on the litigation."

Under its constitution and by-laws the association exists in violation of the antitrust act. The facts and law showing this to be true are fully set forth in a "statement" filed in 1900 with the Attorney-General of the United States and which accompanied a request that he direct a suit in equity to be instituted under section 4 of the act to restrain and enjoin the association. A copy of the "statement" and certain exhibits, as well as the reply of Attorney-General Griggs defending the association, are herewith submitted. (Exhibits B and H.)

The principal business of the association under and outside of its unlawful constitution and by-laws appears to embrace, first, reports upon patents, and, second, litigation.

Reports upon patents are prepared by the general counsel and a slip attached stating that they are of "no effect or binding on the association until approved by the executive committee." All applications for information by a corporate member must be made through an authorized person named by the board of directors of the corporation. The reports on the validity of patents are preserved in secret, and the inventors or owners of the patents and the general public as well never learn their substance unless accidentally. Inasmuch as there is no competition and that the reports are generally made to railroad officials unfamiliar with the art and the patent laws, and hence incompetent to criticise, it is maintained with truth that the said reports are as a rule superficial and arbitrary. Several reports have been seen which disclosed great ignorance of the particular arts and which prevented the introduction of very desirable safety devices upon railroads.

However incomplete, arbitrary, capricious, and unjust these reports may be, the association members are in practice bound to adopt and follow them. Any official who should ignore the report would be dismissed from service. By these secret reports it is within the power of the association to destroy the property right in a patent created by the Government, or to give value to a worthless or invalid patent if some one on the inside is adequately remunerated.

It is obviously against public policy for a combination of corporations, each exercising a public office, affected with a public use, and performing the function of the government, to agree and covenant that they will be bound by secret decisions and reports relative to the validity or invalidity of patents for such appliances as are discovered and invented from time to time, and are adapted for cheapening, hastening, and rendering safer the transportation of freight and passengers on railroads.

Litigation is another and the most important business in which the association is engaged. (See Exhibit C.) According to one of the association's reports, it had in its treasury in 1882 the sum of $50,028.98. Of this amount immediately available for litigation and corrupt uses, $33,655 was invested in convertible bonds and stock and $10,000 loaned on call. A much larger sum is now doubtless immediately available for "running down a poor inventor with an invalid patent" who has the audacity to bring suit against a corporation member. The members of the association are domiciled in four judicial circuits. An owner of a patent commences suit in equity against a railroad corporation member in a certain district. The general counsel of the association appears for the defendant and unlawfully maintains the suit, the other corporate members of the association refusing to lawfully intervene, so they may not be bound by any judgment rendered within that district.

When the complainant takes his proofs he must pay his witnesses and railroad fares. The general counsel travels to the place of examination on a railroad pass, cross-examines the witnesses at great length to increase the per diem charges of the witness for his services and to increase the cost of printing the testimony by the complainant. When the general counsel takes testimony for the defense he rides on a pass and secures witnesses free, who also travel on passes, from among railroad employees, who are always willing to testify as instructed. The testimony may be taken in any part of the country which will entail the greatest possible expense for the complainant in railroad fares.

The general counsel secures perjurous testimony, manufactured evidence, and avails himself of all means, honest or dishonest, to defeat the suit. When the case comes on to be heard it may be before a Federal judge who has a railroad pass in his pocket. Then comes a series of appeals. Should the complainant be successful he can but seldom prove profits or damages, as the association has by its ingeniously contrived constitution prevented the establishment of a license fee. Upon application for an injunction in another judicial circuit against a railroad corporation which had participated in the defense, the general counsel will again appear and assert new defenses and allege a different claim or demand and the case must be tried anew.

Without entering into details, it is a truthful statement of fact to say that the ordinary citizen is absolutely precluded from prosecuting in any Federal court a suit against a railroad corporation for infringing a patent with any hope of success.

The association is above citation in any court of justice, and in fact possesses a power superior to that exercised by any circuit court of the United States. In the annual report for 1882 the president says:

"The association has so increased in strength and usefulness that it may be likened in one respect to a judicial authority or tribunal, to which all interested can apply for advice respecting patented inventions in any way relating to railroads, and with the assurance that the advice given, if followed, will be supported and sustained with all the combined force and power of our membership."

In closing the thirteenth annual report, 1879, the general counsel uttered this boast:

"It appears to be the fact that during the whole period of thirteen years, during which the association has been in existence, no suit defended by it has resulted in a judgment against a member on appeal to the highest court; and that while some claims have been settled after suit was brought, no member defended by the association has yet, by process of law under execution, attachment, or otherwise, been compelled to pay anything on account of infringement of letters patent."

For thirty-five years this association has stripped owners of patents and inventors of their property as effectively and completely as the uncircumcized Philistines of old stripped Saul on Mount Gilboa. As stated by the Scientific American March 12, 1902: "Legislation is certainly needed to put a stop to combinations like the Eastern Association for the express purpose of nullifying the privileges granted to inventors by Congress."

[Extracts from the association's annual reports.]

In the first report it is stated that persons who claim damages for the infringement of their patents are "cormorants."

In the third report it is said that the usefulness of the association is becoming apparent. Members enjoy freedom from applications of "patent agents." Our relations to the Western Railroad Association, of Chicago, are such as to secure to each party the full benefit of investigations conducted at the expense of the other.

Fourth report: That under the quiet influence of our own and the Western Railroad Association the business of dealing in railroad patents is fast becoming legitimate and respectable. Owners of patents making claims against railroads are aptly denominated "patent sharks."

Sixth report: That after six years, of all the suits brought against members of the association only one has been pressed to trial, and in that case the defendant was successful, "and a fraudulent claim was permanently overthrown." Referring to certain attempts to secure extensions of patents from Congress, it is stated that "the poor inventor was employed to stand around as a figurehead and recite his misfortunes to members of Congress for the purpose of eliciting sympathy." "It is deemed a part of prudence for the association to be properly represented at Washington during the session of Congress to watch the speculators in these defunct patents and report their earliest appearance."

Seventh report: That the association saves to the companies many hundreds of thousands of dollars annually. That during the seven years' experience of the association only three cases have actually been heard by the courts.

Eighth report: "The executive committee presents its eighth annual report with a feeling of lively satisfaction at the success which continues to attend the organization."

Ninth report: "The kindly relations hitherto existing between the executive committee of this and the Western Railroad Association are still maintained."

Eleventh report: "It has been thought advisable to accept of a low compromise rate offered by the owners of one or two patents whose claims have upon investigation been found to be valid." Data is given of 20 suits defended by the association.

Thirteenth report: It is stated that attention is called to a bill before Congress providing for a commission, appointed by the President of the United States, to examine patented improvements applicable to railroads, with power to decide which of such improvements shall be used and the amount to be paid to the owner. "But the provisions of the bill were so manifestly unconstitutional I did not think it necessary to appear as a remonstrant."

Fifteenth report: "The association can no longer be said to be an experiment. With fifteen years' experience and the resulting accumulation of valuable records and tangible assets in the form of invested securities shown by the reports of the counsel and secretary and the treasurer, it must be admitted to be an established institution, and that it has proved a success far exceeding the expectations of its founders.

"It has fully subserved the object which was intended to be accomplished, and has so increased in strength and usefulness that now it may be likened in one aspect to a judicial authority or tribunal, to which all interested can apply for advice respecting patented inventions in any way relating to railroads, and with the assurance that the advice given, if followed, will be supported and sustained with all the combined force and power of our membership.

"All are apt to be blind when their own interests are concerned, but it is worthy of remark, and a subject of congratulation, that whatever may be the individual interests of our members here we meet as a brotherhood, on a common level, for a common purpose, and without respect to persons or individuals, whatever may be their circumstances or pretensions.

"It may be proper to remind you that the association makes use of no legal power or authority against its members; we are bound by no other ties than those of honor and mutual benefit. There has been some discussion as to the desirability of our acquiring the powers of a corporation. Your committee has not so far discovered any necessity for making such a radical change in the organization of the association."

H. B. MARTIN,
National Secretary.
F. E. STEBBINS,
Of Counsel American Anti-Trust League.

EXHIBIT B.

In re the Eastern Railroad Association.

STATEMENT ACCOMPANYING A REQUEST, FILED WITH THE ATTORNEY-GENERAL, THAT SUIT IN EQUITY BE INSTITUTED AGAINST THE EASTERN RAILROAD ASSOCIATION.

"In an effort to avoid the condemnation of the law, shelter has been sought under what has ever been held most sacred in equity, a trust, a thing over which equity, to prevent fraud, has asserted and exercised an exclusive jurisdiction. The same combinations to prevent competition, condemned already by the law, are attempted to be worked out at the footstool of the chancellor, concealed in the form there most favored. It is like the outlaw grasping the horns of the altar for security, but, unlike him, it conceals its guilt and demands protection, protesting its innocence while pursuing its iniquity."

The act is the culmination of corporate insolence and deceit." (Ray, Contractual Limitations, under the head of "Corporate combinations to prevent fair competition.")

STATEMENT.

The agreement of the Eastern Railroad Association set forth in its constitution and by-laws, and its doings in accordance therewith, constitute violations of the "Act to protect trade and commerce against unlawful restraints and monopolies." (26 Stat. L., chapter 647.)

I.

The constitution of the Eastern Railroad Association is a contract in restraint of trade or commerce among the several States.

THE AGREEMENT.

Prior to the 4th day of December, 1878, 53 railroad corporations, chartered under the laws of and doing business in 15 separate States—to wit, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, North Carolina, and South Carolina—had entered into an agreement by which they constituted themselves an association to be known as the Eastern Railroad Association. On December 4, 1878, "after due discussion and deliberation," and at a special meeting of the association, an amended constitution was adopted.

Under date of March 24, 1879, the president of the association made the twelfth annual report to the railroad corporation members, and therein called "particular attention" to, and explained the meaning of, certain provisions of the amended constitution.

During the year 1883 the railroad corporation members to the agreement numbered 255, and operated over 19,198 miles of track in 15 States. (Exhibit D, Report in Patent Office Library.)

In 1894 and at the present time, as far as can be learned, the membership of the association embraces some 700 railroad corporations, having 34,000 miles of track and $2,820,000,000 capital.

About 1887 the members of the association adopted a revised constitution, which each railroad company signed and by which it agreed to be bound. (Exhibit E.)

Article I of the constitution recites the purpose of the association, to wit:

"While having for its general purpose the promotion of railway interests, its leading object shall be the protection of its members against unjust claims made for patented inventions."

By Article II the members agree that any railroad company approved by the executive committee and subscribing to the articles and contributing to the expense of the association may become a member. Each company is to be represented by a duly authorized person.

By Article III the members agree that the affairs of the association shall be turned over to and managed by nine governors, called the executive committee, who shall be elected each year by the representatives of the railroad corporations at the annual meeting of the association, held in the city of New York. (By-laws, Article I.) That the executive committee shall elect a president, vice-president, and treasurer, selected from among themselves, and shall also elect a general counsel and secretary, and that the officers shall be the officers of the association. That the committee shall have power to elect other officers and employees, to appoint legal counsel, fix salaries and compensation for themselves and other employees, to prescribe the duties of all officers, agents, and employees, and to make by-laws for its own government.

By Article IV the members agree that annual meetings of the association shall be held; that special meetings shall be called at the request of two members of the executive committee and upon written request of the representatives of not less than five companies; that each company shall be entitled to one vote.

By Article V the members agree that the executive committee shall determine the validity or invalidity of any patent submitted for examination by any railroad corporation member; that the executive committee shall determine the expediency of contesting any claim for compensation made upon any railroad corporation member for the use of a patented invention which it has appropriated; that should the executive committee conclude (1) that a patent is valid or (2) that it is inexpedient to contest a claim for compensation made against one of the railroad members of the association, it shall be the duty of said executive committee, at the request of an associate member, to (1) negotiate for the use of the patent or (2) for a settlement of the claim of compensation; that if the railroad member declines to accept the terms fixed by the executive committee for the use of the patent, the association will not be responsible for the defense of any suit against such member.

That if the railroad member declines to accept the basis of settlement fixed by the executive committee when claim for compensation is made for the use of an invention, the association will not thereafter be responsible for the expense of litigation growing out of the case. That when the owner of a patent brings suit at law or in equity against a railroad member for infringing his patent adjudged invalid by the executive committee, said member shall report the suit to the secretary, and the executive committee shall manage the same thereafter at the expense of the association. That when the owner of a patent brings suit at law or in equity against a railroad member for the use of a patent which the executive committee has reported upon as valid and for the use of which the executive committee has also fixed the price, accepted by the railroad member but not by the owner of the patent, the said railroad member shall report the suit to the secretary and the executive committee shall thereafter manage the defense at the expense of the association.

That no member shall settle a suit or claim against it after being advised that a similar suit or claim is in charge of the association for defense against another member, except with the consent of the general counsel and president of the association. That when the executive committee decide it inadvisable to assume or continue the expense of litigation arising out of a report which it has adopted, it may so notify the member against which suit has been brought. But the executive committee may compromise or settle the claim for compensation made by the owner of the patent or purchase a license for the member at the expense of the association: *Provided*, The settlement or purchase can be effected at less expense to the association than the cost of carrying on the litigation.

By Article VI the members agree: That expulsion shall be the penalty when any member willfully violates "these articles."

By Article VII the members agree: That the executive committee shall confer with the officers of similar associations in the United States relative to the settlement of patent claims and the trial of patent cases; meaning by "similar associations" especially the Western Railroad Association, which embraces some 81 railroad corporations distributed among the Western States. And that they will contribute from the trust fund to maintain the defense of suits.

By Article VIII the members agree: That they shall be assessed annually according to mileage and gross receipts "for any expenses incurred or hereafter to be incurred" in behalf of the association; and that payment of the assessments shall be enforced under penalty.

By Article IX the members agree: That any company may withdraw from the association by giving notice in writing.

The provisions recited in the by-laws and standing resolutions of the association are intended to aid in carrying out and making effective the agreement set forth in the constitution.

It should be noted that Article V of the constitution of 1887 is substantially identical with Article VI of the constitution of 1878, and that the explanation of said Article VI by the President of the association in the twelfth annual report (Exhibit C) applies to Article V of the constitution of 1887. The explanation is as follows and reveals the true purpose and object of the agreement:

Your committee, however, think it proper here to refer to some of the provisions of the constitution as amended:

Particular attention is called to Article VI, which is designed to regulate the action of all concerned when a claim is made for the use of a patented invention and said claim is submitted to the association for action.

Section 1 of this article makes it the duty of the executive committee to negotiate with an inventor or patentee whose claim it is considered inexpedient to contest; but attention is drawn to the fact that the committee must first be requested to do so by a member. In this respect the section differs from section 3 of Article VII of the old constitution. Section 2 is substantially the same as section 4 of Article VII of the old constitution; but it will be observed that if a member fails to acknowledge receipt of notice sent by the committee for fifteen days after its date, the terms of settlement proposed shall be considered as accepted by such member.

Attention is also called to section 3 of this article, as by its terms the members, in order to avail themselves of the services of the association for defense or in settlement of claims, must notify the secretary of any suit or claim brought against them. And if any member has previously declined, or shall subsequently decline, the basis of settlement recommended by the executive committee, the association will not be responsible for any expenses for litigation such member may incur.

Section 4 prohibits any member settling any suit or claim brought against it, after being advised by the secretary that a similar suit or claim is in charge of the association for defense in behalf of any of its members, without the consent of the secretary, indorsed by the president.

This provision of the Constitution may appear tyrannical, and it does to a certain extent deprive members of the liberty of individual and independent action in the settlement of claims; but the subject has been well considered, and the rule is believed to be essential to the successful carrying out of the main object of the association, to wit, the protection of its members against unjust claims made for patented inventions.

One member may find it expedient to settle a claim under special inducements; but the money thus paid enables the party making the unjust claim to prosecute other members, which in most cases he would otherwise be unable to do. Again, the weaker members of the association might be unduly influenced in the settlement of such claims when they learned that a more powerful member had found it expedient to settle.

Such methods of influencing the settlement of claims are well known to those engaged in the manipulation of fraudulent patent claims, and, if allowed to prevail, the influence and salutary effect of the association would be destroyed. To obtain the best results, the members of the association must act as a unit, and it is believed that this unity of action has been the true cause of our success heretofore.

As further revealing the association's estimate of the character of its agreement, as embodied in its constitution, the following extracts from the president's annual report,[a] March 9, 1882, are reproduced, to wit:

The association "has so increased in strength and usefulness that now it may be likened in one respect to a judicial authority or tribunal,[b] to which all interested can apply for advice respecting patented inventions in any way relating to railroads, and with the assurance that the advice given, if followed, will be supported and sustained with all the combined force and power of our membership."

There has been some discussion as to the desirability of our acquiring the powers of a corporation. Your committee has not so far discovered any necessity for making such a radical change in the organization of this association.

THE ANTITRUST LAW.

An act to protect trade and commerce against unlawful restraints and monopolies.

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

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

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

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

[a] On file in the United States Patent Office library.

[b] It is not within the power of individuals or corporations to create judicial tribunals for the final and conclusive settlement of controversies. (102 Ind., 262, 1885.)

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

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

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

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

Approved, July 2, 1890.

ARGUMENT.

Section 1 of the antitrust act states:

"Every contract * * * in restraint of trade or commerce among the several States * * * is hereby declared to be illegal."

The law assumes that trade and commerce among the several States shall be free, and that this freedom shall extend to all persons, natural as well as artificial, and also embrace all subjects-matter, whether corporeal or incorporeal, which can be bought, sold, or exchanged.

Chief Justice Fuller, in United States v. Knight (156 U. S., 11), said:

"The Constitution does not provide that interstate commerce shall be free, but, by the grant of this exclusive power to regulate it, it was left free except as Congress might impose restraints."

No limitation has ever been fixed by the Supreme Court to the phrase "commerce among the States." Its narrowest definition at least embraces "the conduct of individuals" "in buying and selling or barter."

On argument in Gibbon v. Ogden (9 Wheaton) it was claimed that navigation was not included within the meaning of the term; and the court remarked, at page 190:

"The mind can scarcely conceive of a system for regulating commerce (between the States) which shall * * * be confined to prescribing rules for the conduct of individuals in the actual employment of buying and selling or of barter."

Other deliverances on the subject are as follows:

"Commerce is undoubtedly traffic. But it is also something more; it is intercourse." (Gibbon v. Ogden, 9 Wheat., 181.)

"Sale is the object of importation, and it is an essential element of commerce." (Brown v. Maryland, 12 Wheat., 419.)

"Commerce is intercourse; one of its most ordinary ingredients is traffic." (Brown v. Maryland, 12 Wheat., 446.)

"Commerce is a term of the largest import. It comprehends intercourse for the purpose of trade in any and all of its forms, including the transportation, purchase, sale, and exchange of commodities between the citizens of our country and the citizens of other countries, and between the citizens of different States." (Welton v. State of Missouri, 1 Otto, 275.)

"Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities." (County of Mobile v. Kimball, 102 U. S., 702.)

"The negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce." (Robbins v. Shelby Taxing District, 120 U. S., 497.) (1886.)

"While the completely internal commerce of a State is reserved to the State itself, because never surrendered to the General Government, commerce, the regulation of which is committed by the Constitution to Congress, comprehends traffic, navigation, and every species of commercial intercourse or trade between the United States, among the several States and the Indian tribes." (Interstate Commerce Commission v. Brimson, 154 U. S., 447.) (1894.)

"Definitions as to what constitutes interstate commerce are not easily given, so that they shall clearly define the full meaning of the term. We know from the cases decided in this court that it is a term of very large significance. It comprehends, as it is said, intercourse for the purpose of trade in any and all its forms, including transportation, sale, purchase, and the exchange of commodities between the citizens of different States." (Justice Peckham in Hopkins v. United States, October 24, 1898, 171 U. S., 597.)

(See United States v. Addyston Pipe and Steel Company, 54 U. S., App. 723 et seq. Supreme Court decision December 4, 1899, 175 U. S., 211.)

From the above definitions it may be said that the transfer by a person domiciled in one State to a person domiciled in another State of any interest in a patent by assignment, grant, or license, or negotiations preliminary or preparatory to such transfer, constitute trade or commerce among the several States.

The Congress by positive enactment has declared that there shall be freedom of trade or commerce in patents for inventions and interests therein throughout the United States. Section 4898, Revised Statutes of the United States, reads:

"Every patent or any interest therein shall be assignable in law by an instrument in writing; and the patentee or his assigns or legal representatives may, in like manner, grant and convey an exclusive right under his patent to the whole or any specified part of the United States."

There are three classes of persons in whom the patentee can vest an interest of some kind in the patent. They are an assignee, a grantee of an exclusive sectional right, and a licensee. (Potter v. Holland, 4 Blatchford, 406.)

The courts have repeatedly affirmed the existence of a free and open market for patent property throughout the United States. Justice Davis, of the Supreme Court of the United States, in ex parte Robinson, 2 Biss., 309 (1870), a case arising under an act of the State of Indiana "regulating the sale of patent rights," said:

"The property in inventions exists by virtue of the laws of Congress, and no State has a right to interfere with its enjoyment or to annex conditions to the grant. If the patentee complies with the laws of Congress on the subject, he has a right to go into the open market anywhere within the United States and sell his property."

It has repeatedly been held that the acts of State legislatures which attempt to direct the manner in which patent rights shall be sold in the States are void. (See Helm v. Bank, 43 Indiana, 167; Robinson on Patents, section 46, note 4, and section 1242.)

In Holiday v. Hunt (70 Illinois, 113) the court recognized that the purchase and sale of a patent right constituted "traffic," and remarked of the State law:

"It is a marked discrimination against the traffic in patent rights, which can not fail to seriously prejudice and impair the rights of patentees and their assignees."

A State can not impose a license tax upon the sale of a patent. (State v. Butler, 3 Lea., 222.) (1879.)

An act respecting foreign corporations and their agents does not apply to an agent selling patented inventions. (Grove & Baker Sewing Machine Company v. Butler, 53 Ind., 454 (1876); Shock v. Singer Company, 61 Ind., 520.) (1878.)

The necessary effect of the agreement entered into by the railroad corporations, members of the Eastern Railroad Association, is the restraint of trade or commerce in patent property among the several States.

In United States v. The Trans-Missouri Freight Association (166 U. S., p. 341) Justice Peckham, referring to the agreement there under consideration, said:

"The question is one of law in regard to the meaning and effect of the agreement itself. The necessary effect of the agreement is to restrain trade or commerce, no matter what the intent was on the part of those who signed it."

The true meaning of the agreement is to be gathered, according to the well-known rule, from the four corners of the agreement itself. (Judge Chitty in Mills v. Dunham, 1 Ch., 580; 1891.)

I do not think an averment is necessary as to what has been done under it (the agreement) or as to any mischief which it has actually produced. We are to consider what may be done under it and what mischief may thus arise. (Lord Campbell in Hilton v. Eckersley, 6 E. & B., 65.)

Whether the nature of the combination is injurious is to be determined by a construction of the provisions of the agreement constituting the combination, and not by its effects in actual operation. (Salt Company v. Guthrie, 35 Ohio State, 678; Atcheson v. Mallon, 43 N. Y., 149 (1870); Richardson v. Buhl, 43 N. W., 1102; 77 Mich., 632; Anderson v. Jett, 41 Alb. L. J., 104; 89 Ky., 375.)

From the plain terms of the constitution of the Eastern Railroad Association it appears to be the fact that the several hundred railroad corporations, members thereof, have entered into a mutual contract and agreement one with another whereby they have voluntarily abolished competition among themselves in the negotiations for the purchase of any interest in patents for inventions; that for securing "unity of action" they have handed over to a committee of nine persons, called the executive committee, all control over all their business relating to the purchase of patent rights and licenses; that each and every of them has surrendered its liberty of individual and independent action in dealing with inventors and owners of patents; and especially in negotiating settlements of claims made for the use of patented inventions; that they have delegated and surrendered to the said executive committee the power of fixing the price or prices to be paid for the use of any patented invention, and the price in payment for any unlawful appropriation of a patented invention, and the price to be paid for a license to use any patented invention, and the price to be paid for any patent or assignment thereof (assuming that in any case they intend to pay anything at all), and have bound themselves by penalties to abide by the articles of agreement and the decisions of the executive committee.

The several hundred railroad corporations, members of the association, and parties to the agreement, are organized under the laws of fifteen or more States. The owner of a patent domiciled in any of the States is, under the agreement, debarred from negotiating with any one of the railroad corporation members for the sale of an interest in a patent, or for the settlement of any claim for compensation against any railroad member that has infringed a patent.

As between an individual patentee or owner of a patent and the corporation members of 14 States the negotiations involve trade or commerce among the States.

In Hammerstein v. Parsons (38 Mo. App., 333) (1889) the court remarked:

"The constitution and by-laws of an association constitute a contract between the members."

It can not be gainsaid that the constitution and by-laws of the Eastern Railroad Association constitute a contract in restraint of trade or commerce among the several States, and thus violate section 1 of the antitrust act.

Had the agreement as set forth in the association constitution given the executive committee power only to report on the validity or invalidity of a patent, and then left such railroad company to its own individual and independent judgment as to whether it would purchase a license, or settle for an infringement, or defend any suit brought against it, the agreement would perhaps not be illegal. But had the agreement been so limited it would have been useless. If each company should be allowed to act independently in dealing with owners of patents the whole agreement might as well be rescinded. The president in explaining the provisions of the constitution (Exhibit D) reveals the real nature and essential purpose of the agreement when he says:

"To obtain the best results the members of the association must act as a unit, and it is believed that this unity of action has been the true cause of our success heretofore."

Justice Peckham, in United States v. The Joint Traffic Association (171 U. S., 505), referring to an analogous agreement, said:

"If one company is allowed, while remaining a member of the association, to fix its own rates and be guided by them, it is plain that as to that company the agreement might as well be rescinded. This result was never contemplated."

The defense in the joint traffic case endeavored to differentiate the agreement there involved from that in the trans-Missouri case by asserting that in the former the rates were made by the several companies and in the latter by the association. Both agreements were held to be violations of the antitrust act.

The conditions imposed upon railroad members by Section V of the constitution, aside from the provision of the remaining sections, render the agreement unlawful. In the Inter-Ocean Publishing Company v. The Associated Press (184 Ill., 438), 1900, the supreme court of Illinois decided that—

"The restrictions attempted to be imposed by the Associated Press through its contracts and by-laws upon the rights of members to purchase news from other agencies which such corporation may declare to be antagonistic are null and void as tending to create monopoly and restrict competition." (See Exhibit IX.)

II.

The combination and confederacy of the railroad corporations composing the association to oppose individual patentees and owners of patents in the negotiations of interests in their property, and the agreement of said corporations to use certain unlawful means set forth in their constitution in so opposing, as well as their unlawful acts in pursuance thereof, constitute the association a conspiracy in restraint of trade or commerce among the several States.

By the first section of the antitrust law not only are contracts in restraint of trade which impose binding obligations upon parties to the agreement not

to compete illegal, but also conspiracies in restraint of trade, which cover a well-known class of cases where the confederacy proposes or attempts to prevent others from freely carrying on their trade.

The Congress intended to embrace within the statutory prohibition all conspiracies which would be illegal at common law. Illustrations of such cases are: Commonwealth *v.* Carlyle (Br. Rep., 36), where a combination of employers conspired to depress the wages of journeymen, and in respect to which Judge Gibson remarked:

"An association is criminal when its object is to depress the price of labor (commodity) below what it would bring if it were left without artificial excitement by either masters or journeymen, to take its chances in the market" (p. 42).

Mogul Steam Company *v.* McGregor, Grow & Co. (appeal cases, 25). (See Judge Taft's remarks on this decision (54 U. S. App., 211). People *v.* Everest (51 Hunn., 19). Wright, Criminal Conspiracy, pp. 144-181; American and English Encyclopedia of Law, Vol. IV, p. 608; First Edition Stephen's History of Criminal Law; Ray, Contractual Limitations.)

First. The combination under the constitution and by-laws constitutes the conspiracy though nothing be done in pursuance thereof. In Woodworth *v.* Sherman and same *v.* Cheever and 18 others, 3 Story, 172 (1844), Justice Story, who at that time had served thirty-five years on the bench, remarked during the course of the case:

"That he observed that the bills contained a charge of an actual combination to resist the patent. That it was a question of much importance what would be the legal effect of such a combination. That he did not intend to express any opinion on this part of the case, but that in a former case he had occasion to declare that it seemed to approach very near, if it did not actually reach, a criminal conspiracy. That in many cases it was lawful for individuals to do what could not lawfully de done by a combination. That an individual patentee might successfully resist an individual, but it was much more difficult to resist the combined force of a great number of persons united to oppose a patent."

An inspection of the agreement will disclose that the associated railroad companies, organized under the laws of 15 States, have conspired together for the purpose of restraining individual owners of patents, domiciled in the several States, from freely negotiating sales of interests in their patents and from collecting compensation from any member of the association who has appropriated a patented invention.

Second. The agreement by the association to use unlawful means in opposing owners of patents in their attempts to negotiate interests in their property constitutes the association a criminal conspiracy.

A conspiracy has been defined as:

"A combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means." (Pettibone *v.* United States, 13 Supreme Court Reporter 542 (1893).)

The unlawful means which the association agrees to use are: (1) The unawful maintenance of suits brought against any one of its members (Art. V, secs. 3 and 5, Art. VII). (2) The boycott. The members of the association agree by Article V not to individually negotiate with the owner of a patent for an interest therein and not to settle a suit or claim when a similar suit or claim against another member is being maintained by the association, for, as the president of the association said in the twelfth annual report, "the money thus paid enables the party making the unjust claim to prosecute other members, which in most cases he would be otherwise unable to do." He further remarked that "this unity of action has been the true cause of our success heretofore."

Third. The acts of the association, its res gestæ, through a series of years in opposing individual patentees and owners of patents, prove the association to be a permanent conspiracy in restraint of trade or commerce among the several States.

The methods and means, unlawful under the common law and by statute, employed by the association embrace: [a]

(1) The unlawful maintenance of suits and without legal intervention. (See article "Intervention," A. and E. Enc. of Pleading and Practice, Vol. XI, p. 494.)

(2) Impeding, obstructing, and defeating the due course of justice. (Sec. 5407, R. S., U. S.)

(3) Manufactured evidence.

(4) Perjury. (Sec. 5392, R. S., U. S.)

(5) Subordination of perjury. (Secs. 5393, 5440, R. S., U. S.)

(6) Oppression. (Sec. 5508, R. S., U. S.)

The association violates, and has violated, the first section of the antitrust act within the meaning of the conspiracy clause thereof.

III.

The members of the association have combined and conspired to monopolize part of the trade or commerce among the several States appertaining to the purchase and sale of interests in patents, and have consequently violated section 2 of the act.

By the agreement, as set forth in the constitution, the members turn over to the executive committee of nine governors the sole control of all purchasing of licenses from owners of patents, the settlements of claims made against individual members of the association for the appropriation of patented inventions, and the maintenance of all suits. In the twelfth annual report (Exhibit D) the president states that "this unity of action has been the true cause of our success heretofore."

By suppressing competition among the members and delegating to the executive committee the power to fix prices, the sole buying by the corporation members in 15 States and the selling by the individual owners of patents domiciled in the several States, Territories, and District of Columbia is effectively controlled, and a monopoly of part of the commerce or trade among the several States or Territories is established.

Had not the main purpose of the association been the creation and acquiring of a monopoly, the constitution would have provided that after the executive committee had reported upon the validity or invalidity of a patent each member should be left free to exercise its own individual and independent judgment as to the advisability of purchasing an interest in or license under the patent or settling a claim made for the use of an invention. Deprive the association of the power of compelling or agreeing upon "unity of action," and it would fall to pieces immediately.

It may be further asserted that under the provisions of Article VII of the constitution the attempt is made to further extend the monopoly to all the trade or commerce in patent rights in all the States which may be carried on, or attempted to be carried on, between railroad corporations and owners of patents for inventions.

But it is immaterial whether an attempt is made to monopolize the whole or any part of trade or commerce among the States. In United States *v.* Knight Company (156 U. S., 16) Chief Justice Fuller said:

"Again, all the authorities agree that in order to vitiate a contract or combination it is not essential that the results should be a complete monopoly. It is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition."

Combining or conspiring to monopolize trade or commerce among the several States may be defined as a conspiracy of two or more persons by concerted action to acquire the sole, or an excessive, power to control trade or commerce among the several States which others have the legal right to engage in independently.

Tested by this definition, the association has violated section 2 of the antitrust act.

As the headquarters of the association are in the District of Columbia, it might be shown that it violates section 3 of the act. It is at least within the jurisdiction of the supreme court of the District of Columbia, and that court is authorized by section 4 to apply the third section to corporations (see section 8) doing business within the District of Columbia and bound by contract or conspiring to restrain trade locally in the District of Columbia, or between the District of Columbia and any State or Territory.

THE SCOPE OF THE ANTITRUST ACT.

Six decisions only have thus far been rendered by the Supreme Court in cases under the act, to wit: United States *v.* E. C. Knight Company, 156 U. S., 1; United States *v.* Trans-Missouri Freight Association, 166 U. S., 290; United States *v.* The Joint Traffic Association, 171 U. S., 505 (decided October 24, 1898); Hopkins et al. *v.* United States, 171 U. S., 578; Anderson et al. *v.* United States, 171 U. S., 604; Addyston Pipe and Steel Co. et al. *v.* United States, 175 U. S., 211.

It was decided in United States *v.* E. C. Knight Company that the act did not apply to "monopolies in manufacture even of a necessary of life," but to monopolies in restraint of interstate or international trade or commerce."

The Chief Justice remarked in that case:

"What the law struck at was combinations, contracts, and conspiracies to monopolize trade and commerce among the several States or with foreign nations; but the contracts and acts of defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce between the several States or with foreign nations."

In this suit the Government neglected to secure evidence of a restraint of interstate commerce, and consequently failed.

In the United States *v.* Trans-Missouri Freight Association it was held:

That the antitrust act applied to railroad companies.

That the true meaning and intent of the statute was that it should apply, and did apply, to "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States," irrespective of whether the contract, combination, etc., was in reasonable or unreasonable restraint of trade or commerce.

"While the statute prohibits all combinations in the form of trusts or otherwise, the limitation is not confined to that form alone. All combinations which are in restraint of trade or commerce are prohibited, whether in the form of trusts or in any other form whatever. We think, after a careful examination, that the statute covers, and was intended to cover, common carriers by railroad." (326.)

"We are of opinion that the language used in the title refers to and includes, and was intended to include, those restraints and monopolies which are made unlawful in the body of the statute." (327.)

"Contracts in restraint of trade have been known and spoken of for hundreds of years, both in England and in this country, and the term includes all kinds of those restraints which, in fact, restrain or may restrain trade." (328.)

"When, therefore, the body of an act pronounces as illegal every combination or contract in restraint of trade or commerce among the several States, etc., the plain and ordinary meaning of such language is not limited to that kind of contract alone, which is in unreasonable restraint of trade, but all contracts are included in such language, and no exception or limitation can be added without placing in the act that which has been omitted by Congress." (328.)

"Why should not a railroad company be included in general legislation aimed at the prevention of that kind of agreement, made in restraint of trade, which may exist in all companies, which is substantially of the same nature wherever found, and which tends very much toward the same results, whether put in practice by a trading and manufacturing or by a railroad company." (322.)

"It is entirely appropriate, generally, to subject corporations or persons engaged in trading or manufacturing to different rules from those applicable to railroads in their transportation business, but when the evil to be remedied is similar in both kinds of corporations, such as contracts which are unquestionably in restraint of trade, we see no reason why similar rules should not be promulgated in regard to both, and both be covered in the same statute by general language sufficiently broad to include them both." (324.)

In The United States *v.* The Joint Traffic Association, it was held:

That the differences between the provisions contained in the Trans-Missouri and Joint Traffic agreements were not of a material and fundamental nature; and that the decision in the former case was a precedent for the latter. That the act was constitutional. That the decision of the Trans-Missouri case was not erroneous.

In Hopkins et al. *v.* The United States it was held:

That certain rules and regulations of a live-stock exchange "are not agreements affecting interstate commerce within the meaning of the antitrust law, having no direct or necessary relation to such commerce."

It appears from this decision that the members after they entered into such association "still continued their individual business in full competition with each other and that the association itself, as an association, does no business whatever."

Justice Peckham here remarked:

"The contract condemned by the statute is one whose direct and immediate effect is a restraint upon that kind of trade or commerce which is interstate.

"There must be some direct and immediate effect upon interstate commerce in order to come within the act."

In Anderson et al. *v.* United States it was held:

"That an association of dealers who buy and sell cattle in competition with each other in a particular market, where it is open to all similar dealers, and where no attempt is made to control prices or the number of cattle bought, nor in any manner to prevent full competition between its members, is not in violation of the antitrust act, although the members are engaged in interstate commerce."

In Addyston Pipe and Steel Company *v.* United States it was held:

"That a combination and conspiracy among six companies in regard to the manufacture and sale of cast-iron pipe, by which they agreed that there should be no competition between themselves in some 36 States and Territories and by which prices were to be fixed for each contract by the association, was in violation of antitrust act."

From these decisions it is apparent—

That any agreement (whether contract, combination, in the form of trust

[a] Statement of facts under oath now on file in the office of the Attorney-General support these charges.

or otherwise, or conspiracy) in direct restraint of trade or commerce among the several States is illegal.

That the act is not restricted to any particular subject-matter of the buying or selling or trade or commerce among the several States.

That, further, the act is not limited in its application to any particular persons, natural or artificial, who may enter into any agreement to restrain trade or commerce among the several States.

The decision of the court of appeals for the fifth circuit in United States v. Addyston Pipe and Steel Company (54 U. S. App., 723) is especially noteworthy in positively disclosing that the scope of the antitrust act is not restricted to contracts, combinations, or conspiracies to restrain the transportation or delivery of the corpus (iron pipe) from one State to another, but extends to contracts, combinations, etc., in restraint of negotiations and sales which precede delivery of the corpus across State lines (or not). Sections 4 and 5 of the act confer jurisdiction over and power of reaching persons, companies, and corporations who have entered into agreements or combinations to hinder, interrupt, restrain, or in any way prevent full, free, and unrestricted negotiations or sales preliminary to the delivery of the corpus.

Section 6 reaches the corpus when it is in process of transportation, provided the corpus is of such a character or nature that it can be seized.

It is worth while here to observe that by the construction of the antitrust act in the Trans-Missouri and joint traffic cases it is not necessary to prove that an agreement actually restrains trade in practice or in operation to render it violative of the act. The defense of the joint traffic case attempted to show the opposite, and instanced in support of its view a State statute of New York (1830), and cited three cases tried under the act, to wit, People v. Fisher, 14 Wend., 9; Hooker v. Vandewater, 4 Denio, 347; Stanton v. Allen, 5 Denio, 434.

Under section 4, moreover, courts of equity have jurisdiction and power to issue injunctions for the purpose of and which may result in restraining the commission of crime. (United States v. Trans-Missouri Freight Association; United States v. Joint Traffic Association; Ellenbecker v. Plymouth County, 134 U. S., 31; United States v. Alger, 62 F. R., 824; United States v. Elliott, 64 F. R., 27; United States v. Debs, 64 F. R., 724.) In fact, this act seems to revive, in a measure, the ancient criminal jurisdiction of the court of chancery. (See Spence's Equity Jurisdiction of Court of Chancery, Vol. I, page 684.)

PATENTS FOR INVENTIONS ARE PROPERTY AND FORM THE SUBJECT-MATTER OF TRADE OR COMMERCE AMONG THE STATES.

(I) Patents are property.

"An invention secured by patent is property, and as much entitled to protection as other property." (Cammemyer v. Newton, 94 U. S., 225.)

"Patents when rightfully issued are property, and are surrounded by the same rights and sanctions which attend all other property." (Densmore v. Scofield, 102 U. S., 375.)

"By the laws of the United States the rights of a party under a patent are his private property." (Brown v. Duchesne, 19 Howard, 197.)

"The Government has no more power to appropriate a man's property invested in a patent than it has to take his property invested in real estate." (Solomon v. United States, 137 U. S., 346.)

"The power, therefore, to issue a patent for an invention and the authority to issue an instrument for a grant of land emanate from the same source, and * * * are of the same nature, character, and validity." (United States v. A. B. T. Co., 128 U. S., 358-359.)

Robinson on Patents, section 752 et seq.

The distinction between a patent for an invention and the physical thing, as machine, article of manufacture, etc., which embodies the invention set forth in the patent, should not be overlooked.

In Webber v. Virginia (103 U. S., 349) the court clearly distinguished between "the right to an invention or discovery—the incorporeal right—which the State can not interfere with," and the "tangible property," which is subject to the tax laws of the State.

"The purchase of an implement or machine for the purpose of using it in the ordinary pursuits of life stands on different ground from the purchase of the right of making and using the article." (Bloomer v. McQuewan, 14 Howard, 439.)

"There is manifest distinction between the right of property in the patent, which carries with it the power on the part of the patentee to assign it, and the right to sell the property resulting from the invention or patent." (11 Bush., 311 Ky. See also Welch v. Phelps, 14 Nebr., 134, where many cases are cited. Robinson on Patents, section 46, note 4, and section 1242.)

(II) Patents are not, properly speaking, monopolies.

Inventions were not recognized as property at common law. The Crown undertook to secure the exclusive right by patent, the same instrument as was used to create a monopoly. Thus the English courts fell into the habit of calling a patent a monopoly—one allowed and not forbidden by the statute of 21 James I. The unreflecting confounded and still confound the word and the thing.

"Now, patents (for inventions) are not monopolies, as the counsel have well said, because a monopoly is that which segregates that which was common before and gives it to one person or to a class for use and profit." (Singer v. Walmsley, 1 Fish., 363; Seymour v. Osborne, 11 Wall., 516.)

(III) Patents form the subject-matter of trade or commerce among the several States.

Section 4898, Revised Statutes of the United States, reads:

"Every patent or any interest therein shall be assignable in law by an instrument in writing, and the patentee or his assigns or legal representatives may in like manner grant and convey an exclusive right under his patent to the whole or any specified part of the United States."

A judgment debtor may be compelled to execute and deliver an assignment of an interest in a patent to a receiver. (Ager v. Murray, 105 U. S., 126.)

If the patentee complies with the laws of Congress on the subject, he has the right to go into the open market anywhere within the United States and sell his property. (Justice Davis, of the Supreme Court of the United States, in ex parte Robinson, 2 Biss., 309.)

Property can not be defined without enumerating seizure, use, and alienation. (Wynehamer v. People, 13 N. Y., 396, where the entire subject is exhaustively discussed.)

See also section 5046, Revised Statutes of the United States.

CONTRACTS, COMBINATIONS, OR CONSPIRACIES TO LOWER PRICES IN NO WISE DIFFER IN CHARACTER FROM SIMILAR CONTRACTS, ETC., TO RAISE PRICES WHEN THE PURPOSE IS THE SAME.

Lieber, in his Political Ethics, volume 2, book 4, chapter 37, has briefly and intelligently discussed this subject.

See also Commonwealth v. Carlyle (Br. Rep., 36), where it is stated that "a combination of employers to depress the wages of journeymen below what they would be if there were no recurrence to artificial means by either side is criminal."

People v. Fisher (14 Wendell, 1): "Combinations and conferences to enhance or reduce the price of labor or of any articles of trade or commerce are injurious."

Moore v. Bennet (29 N. E., 888): "To stifle or prevent competition, and thereby enhance or diminish prices to a point above or below what they would have been if left to the influence of unrestricted competition," is unlawful.

In United States v. Knight Company (156 U. S.) Chief Justice Fuller, at page 16, remarked:

"Contracts, combinations, or conspiracies to control domestic enterprise in manufacture, agriculture, mining, production in all its forms, or to raise or lower prices or wages, might undoubtedly tend to restrain external as well as domestic trade." * * *

Wharton's Criminal Law, tenth edition (1896), section 1365:

"To prejudice the public or government generally, as, for instance, by unduly elevating or depressing the prices of wages or toll or of any merchantable commodity."

Section 1370:

"To suppress competition at public auction."

(Comm. v. Haines, 15 Phila. Rep., 363; Huntzinger v. Connecticut, 10 Weekly Notes, Pa., 98; Texas Standard Oil Company v. Ardoue, 83 Tex., 650; Journeymen Tailors' Case, 8 Mod., 10; Comm. v. Hunt, 4 Metcalf, 111; The Queen v. Rowlands, 17 Q. Bench, 671; Hilton v. Eckersley, 6 Ellis & B., 47.)

In the statutes of Great Britain and Ireland, Volume I, page 64 (31 Edw. III), is found a law relating to merchants who by covin do abate the price of wools.

In Leiber Assissarum (27 Edw. III, 138) is specified, among other conspiracies to be investigated, that of—

"Merchants who by alliance and covin among themselves in any year put a certain price on wools which are to be sold in the country, so that none of them will buy, or otherwise pass in the purchase of wools beyond the certain price which they themselves have ordained, to the great impoverishment of the people."

(See Statutes at Large, 7 and 8 Victoria (vol. 84), chap. 24, Section IV.)

Senator HOAR, who aided in formulating the antitrust act, gives the following definition of a trust:

"I understand that a trust, technically and legally, means the case of having one or more persons commit to others or to a combination of others their business or the control of their business or the management of some portion of their business, such as the selling portion or the fixing the price or the hiring of labor, with the understanding that these powers are to be exercised by the corporation or combination to whom it is committed in a manner to operate for the benefit of the persons committing to them that power ordinarily by the depression or putting up of prices." (CONGRESSIONAL RECORD, June 28, 1897.)

A contract, combination, or conspiracy in restraint of trade among the States, which lowers prices of whatever is to be purchased, undoubtedly violates the antitrust act; and further, any contract, combination, or conspiracy to lower prices in the District of Columbia, and thus restrain local trade, violates section 3 of the act.

THE RELATION OF QUASI-PUBLIC CORPORATIONS TO THE ANTITRUST LAW.

The subject is fully discussed in United States v. Trans-Missouri Freight Association (166 U. S.), where numerous authorities are cited and the conclusion reached that:

"The business which the railroads do is of such a public nature that it may well be doubted, to say the least, whether any contract which imposes any restraint upon its business would not be prejudicial to the public interest."

That "while, in the absence of a statute prohibiting them, contracts of private individuals or corporations touching upon restraint in trade must be unreasonable in their nature to be held void, different considerations obtain in the case of public corporations like those of railroads," etc.

See Inter-Ocean Publishing Company v. The Associated Press (184 Ill. Rep., 438) (1900) (Exhibit IX), and also note that the by-laws of the Associated Press—declared to be illegal—are identical in force with several articles of the Eastern Railroad Association constitution.

A railroad corporation performs the function of the State (Olcott v. The Supervisors, 16 Wall., 678), and all its property is a trust fund for the sovereign power which created it. The incidental interests and profits of individuals are accidents, both in theory and in practice (Talcott v. Township of Pine Grove, 1 Flippin, 144) (1872).

In people v. Chicago Gas Trust Company it was said:

"Whatever tends to prevent competition between those engaged in a public employment or business impressed with a public character is opposed to public policy, and therefore unlawful."

The Constitution (Art. I, sec. 8, clause 8) empowers Congress to promote the progress of the useful arts by securing, for limited times, to inventors the exclusive right to their discoveries, and the Congress has repeatedly enacted laws to that end.

Patents for inventions are granted under the authority of the Constitution for the promotion of a Federal purpose. (Board of assessors of Brooklyn v. Edison Ill. Co., 156 N. Y., 417, 1898.)

The Congress also passed an act approved March 2, 1893, "to promote the safety of employees and travelers on 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."

In a message recommending this legislation, President Harrison said:

"It is a reproach to our civilization that any class of American workmen should, in the pursuit of a useful and necessary vocation, be subjected to peril of life and limb as great as that of a soldier in time of war."

Yet there exist two combinations of railroad corporations, one of them embracing practically all the companies in the 15 Atlantic Coast States and the other 81 corporations, each bound together under a written agreement, entered into voluntarily by each corporation, to "act as a unit" not only in subverting and negativing the laws enacted to promote the progress of the useful arts, but also in delaying and obstructing the enforcement of the act approved March 2, 1893.

The restriction of the introduction of patented inventions by anyone is against public policy and the public interests, and especially reprehensible when practiced by a public corporation, or a combination of 700 public corporations.

Agreements between common carriers, whether by land or by water, whereby a company covenants not to use such inventions and appliances as are discovered or invented from time to time, and are adapted to cheapening, hastening, and rendering safer the transportation of freight and passengers, are against the most obvious public policy. (Wiggins Ferry Company v. Chicago and Alton Railroad, 5 Mo. App., 347.)

In Hopkins v. Oxley Stave Company (28 C. C. App., 83 F. R., 912) the court remarked, in the course of its decision:

"Another object of the conspiracy, which was no less harmful, was to deprive the public at large of the advantages to be derived from the use of an invention."

The common law will not permit individuals or corporations to legally place themselves in a position by contract where they are required to do or not to do a particular thing, when the thing to be done or omitted is in any

degree injurious to the public. (W. Va. Trans. Co. *v.* Ohio R. P. L. Co., 22 W. Va., 617; W. U. Teleg. Co. *v.* Am. U. P. Co., 65 Ga., 160; Watson *v.* Harlem and N. Y. Nav. Co., 52 How., Pr. 348. See Ray Contractual Limitations, p. 276; Partial restriction of trade not permissible by corporations; and p. 261, Corporate Combinations to Prevent Fair Competition. Beach, Trust and Monopolies.)

By reason of the influence of the Eastern and Western Railroad Associations innumerable old methods and devices are now in use on railroads which, had competition not been suppressed, would long ago have been cast aside and replaced by improved methods and life and labor saving devices.

FREE COMPETITION IS THE GENERAL PUBLIC POLICY OF THE BODY POLITIC OR NATION.

"Competition, free and unrestricted, is the general rule which governs all the ordinary business pursuits and transactions of life." (United States *v.* Trans-Missouri Freight Association, quoting Judge Shiras, 166 U. S., 337.)

"The public policy of the Government is to be found in its statutes, and where they have not directly spoken, then in the decisions of the courts and the constant practice of the Government officials; but where the lawmaking power speaks upon a subject, over which it has constitutional power to legislate, public policy in such case is what the statute enacts." (United States *v.* Trans-Missouri Freight Association, 166 U. S., 340.)

The entire body of the laws may be subdivided into—

(1) The Constitution, treaties, and statutes of the United States.
(2) The constitutions and statutes of the several States.
(3) The common law as interpreted by the Federal courts.
(4) The common law as interpreted by the State courts.

The first constitutes supreme national law, and the third and fourth subsidiary national law. A United States court, when the law governing a case is common law, follows its own judgment in the interpretation to be placed upon the law, and not the interpretation of a State court, and the State courts thereafter follow such interpretation. In this way the common law has, in fact, acquired the character of a national system and is kept substantially uniform.

To determine the public policy of the nation relative to free competition, it is only necessary to consult (1) the Constitution, treaties, and Federal statutes, and decisions of the United States courts in cases arising under the same; and (2) the decisions of the Federal courts and State courts in cases at common law.

I. The Constitution empowers the Congress only to interfere at all with free competition (other than purely local within a State) in what may properly be called industrial or commercial pursuits. Thus far the coining of money (Article I, section 8, clause 5) and the postal business (clause 7) have been completely monopolized, but in connection with the latter, section 3950, Revised Statutes, requires free competition in making contracts for carrying the mails. The power, under clause 3, to regulate (not monopolize) commerce has been exercised mainly in the direction of preserving freedom of interstate trade and commerce. Note the interstate-commerce law, and in particular section 5, which forbids "pooling" by common carriers, and the antitrust act.

Whatever industrial or commercial enterprises may in the future be conducted on a limited scale or be monopolized by the General Government under the authority of Article I, section 8, clauses 1 and 18, it is a fact that so far the power has for the most part been held in abeyance. The decisions of the United States courts in cases involving the construction of the Constitution or arising under the statutes have ever been in the line of preserving and promoting commercial freedom and free competition.

NOTE.—The Interstate Commerce Commission *v.* Railway Company (167 U. S., 479), where it was held that the Commission has no power to prescribe traffic rates for common carriers "to evolve as it were out of its own consciousness the satisfactory solution of the difficult problem of just and reasonable rates for all the various roads in the country." United States *v.* Trans-Missouri Freight Association; United States *v.* Joint Traffic Association.

In Chicago and Northwestern Railway Company *v.* Osborne (52 Fed. Rep.) Justice Brewer said:

"Congress has not attempted to require that tariffs on all roads be uniform, nor has it attempted to place a limit in figures beyond which no company may go in its charges. The laws of business and competition have as yet been deemed sufficient restraint in that direction."

Nearly all States have legislated against the consolidation of competing lines of railroads. In a case arising under a State law (Pearsall *v.* Great Northern Railway Company, 161 U. S., 646) Justice Brown remarked:

"Whether the consolidation of competing lines will necessarily result in an increase of rates or whether such consolidation has generally resulted in a detriment to the public is beside the question. Whether it has that effect or not, it certainly puts it in the power of the consolidated corporation to give it that effect; in short, puts the public at the mercy of the corporation. There is and has been for the past three hundred years, both in England and in this country, a popular prejudice against monopolies in general, which has found expression in innumerable acts of legislation. We can not say that such prejudice is not well founded. It is a matter on which the legislature is entitled to pass judgment. There are, moreover, thought to be other dangers to the moral sense of the community incident to such aggregations of wealth, which, though indirect, are even more insidious in their influence, and such as has awakened feelings of hostility which have not failed to find expression in legislative acts."

In Van Patten *v.* Chicago, Milwaukee and St. Paul Railway (81 F. R., 545) the judge said that "the controlling element in regulating prices, values, and rates in general commercial and manufacturing business of the country" is "self-interest controlled by free competition."

"The fact that Congress has not legislated upon the subject of interstate commerce is equivalent to the declaration that it shall remain free and untrammeled." (Welton *v.* Missouri, 91 U. S., 275; In re Debs, 158 U. S., 564.)

"Again, all the authorities agree that in order to vitiate a contract or combination it is not essential that its results should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition." (United States *v.* Knight Company, 156 U. S., 16.)

II. The decisions of the Federal and State courts in suits involving the interpretation of the common law have almost without exception condemned all agreements the main objects of which were the restraint or destruction of free competition. Those who before the courts and in the public press have denounced "free competition self-destructive" have been able to support their contentions by about six decisions, to wit:[a] (1) Perkins *v.* Lyman, 9 Mass., 522 (1813); (2) Kellog *v.* Larkin, 3 Pinney, 123 (1851); (3) Schrainka *v.* Scharringhausen, 8 Mo. App., 522 (1880); (4) Leslie *v.* Lorrilard, 110 N. Y., 519 (1888); (5) Manchester and Lawrence Railroad *v.* Concord Railroad, 20 Atlantic R., 383 (1890); (6) National Company *v.* Hospital Company, 45 Minn., 275.

These decisions, however, have but little weight when carefully studied. They are only minor and temporary reverse currents which have lost their way in the general onward flow of the main stream.

[a] Ex parte Koehler, 21 Am. and English Rid. Cas., 57. But pooling is now forbidden by the interstate-commerce act.

Free competition is to fix prices in all cases except where the nature of the business renders it inoperative and creates a "virtual monopoly," and there the "police power" may be exercised (subject, however, to the provisions of the fifth and fourteenth amendments to the Constitution) in establishing "reasonable rates" or charges. (Granger cases, 94 U. S.; Munn *v.* Illinois, 94 U. S., 113; Railway Company *v.* Minnesota, 134 U. S., 418; Smyth *v.* Ames, 169 U. S., 466; Budd *v.* New York, 143 U. S., 517; Spring Valley Water Works *v.* Schlotter, 110 U. S., 347.)

As confirmatory of the proposition expressed, there may be here introduced the testimony of two eminent jurists:

"The advantages of unrestricted competition are apparent to the public in industrial life all about us, and while in some kinds of business this is sharp, yet selfishness is sufficiently active and sufficiently intelligent to prevent its becoming ruinous." (Judge T. M. Cooley in Railway Review, January 8, 1887.)

"As long as the principle of competition by private contract is recognized by our social philosophy as regulative of industrial relations, the law has done all it can when, as with us, it breaks down the cast of hereditary privileges, sweeps away the law of primogeniture, and establishes that equality of opportunity which secures to every individual all that he can, according to his capacity, achieve and acquire for himself and his without infringing upon the equal right of his neighbor. The law can do no more than, as an impartial judge, keep a free and fair field, clear from all obstruction, and let the winner win." (Justice Matthews in New York Independent, July 10, 1879.)

As a summary of the benefits of free competition see the remarkable article in Lalor's Cyclopedia of Political Science, Vol. I, page 642, written by the eminent economist, Coquelin:

"We would not," it is remarked, "have the reader imagine that in what we have just said our object was to defend industrial or commercial competition against the puerile attacks which have so frequently been made on it. It has always seemed to us as ill-becoming economists to stoop to defend such a principle; it is too entirely inherent in the primary conditions of social life; it is at the same time too great, too elevated, too holy, and in its general application too far above the attempt of the pigmies who threaten it, to need any defense. We do not defend the sun, although it sometimes burns the earth, which it should only illuminate and warm; neither is there any need to defend competition, which is to the industrial world what the sun is to the physical world. Competition was not born in 1789; it was born in the very cradle of human society, which it has led step by step, from its state of primitive barbarity, to the point of civilization which it has now reached."

It may be truthfully stated that where competition is free no person, natural or artificial, can gain an advantage over others except by rendering more effective and efficient service to the community in quality, quantity, or time, or in some of these combined, unless resort be had to force or fraud.

The Eastern Railroad Association has, by its "combined force and power" and by fraud, for more than twenty-five years oppressed and robbed inventors and owners of patents. Since July 2, 1890, it has existed and pursued its iniquity, in violation of the antitrust act. It is unquestionably the duty of the Attorney-General, as directed by section 4 of the act, to instruct the proper district attorney forthwith to file a petition in equity praying that further violations of the law be enjoined and prohibited.

THE ATTORNEY-GENERAL, INDEPENDENT OF HIS POWER AND DUTY AS SPECIFIED UNDER SECTION 4 OF THE ANTITRUST ACT AND REPRESENTING THE GOVERNMENT OF THE UNITED STATES, HAS AUTHORITY TO AND SHOULD INSTITUTE SUIT IN EQUITY FOR THE PURPOSE OF RESTRAINING THE EASTERN RAILROAD ASSOCIATION.

The United States can assert its prerogative of parens patriæ and enter suit in its own courts in behalf of the public when there is an interference with the exercise of any exclusive power or function granted by the Constitution and over which the Congress by positive enactments has assumed control. (In re Debs, 158 U. S., 599; United States *v.* American Bell Telephone Company, 159, U. S., 670.)

The legislative branch of the Government vested with power and authority granted by Article I, section 8, paragraph 8, of the Constitution has enacted certain patent laws.

Patent rights are granted under the Federal Constitution and necessarily for the promotion of a Federal purpose. (Grant *v.* Raymond, 6 Peters, 218, 241; Ames *v.* Howard, 1 Sumner, 482; Blanchard *v* Sprague, 3 Sumner, 535.)

In People ex rel Edison Illuminating Company *v.* The Assessors (156 N.Y.R., 417); the court remarked:

"The next step is that patent rights being created under the Federal Constitution and laws for a Federal purpose, the States are without the right to interfere with them."

A State has no power to obstruct or impose conditions upon or to interfere with the sale of State, county, or town rights or individual licenses under a United States patent. (Ex parte Robinson, 2 Biss., 209; Holliday *v.* Hunt, 70 Ill., 109; Helm *v.* First National Bank, 43 Ind., 167; Patterson *v.* Kentucky, 97 U. S., 501; Webber *v.* Virginia, 103 U. S., 304, etc.)

Regarding an interference with interstate commerce the Supreme Court, in re Debs (158 U. S., 564), expressed itself as follows:

"If a State with its recognized power of sovereignty is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limit of that State has a power which the State itself does not possess?"

By parity of reasoning a voluntary association of railroad corporations in 15 States has no lawful authority to erect a "judicial tribunal" for the determination of all questions "respecting patented inventions in any way relating to railroads." (See p. 10.)

The executive branch of the Government must guard the Constitution and enforce the laws. The President "shall take care that the laws be faithfully executed." (Constitution, Article II, section 3.)

By act of Congress certain Executive Departments have been created to aid the President in the performance of his duties and to act by his authority.

The circuit courts, a part of the judicial branch of the Government, have jurisdiction of actions to which the United States is a party (18 U. S. Stat., 470, act March 3, 1875), and can exercise their equity jurisdiction at the suit of the Attorney-General to prohibit acts which interfere with any subject-matter over which Congress, by power granted, has assumed control, and to restrain or annul obstructions interposed by private persons or corporations in the way of the full and free exercise of privileges lawfully granted by said legislative branch of the Government. (In re Debs, 158 U. S., 599; United States *v.* A. B. T. Co., 128 U. S., 359.)

Justice Brewer, in re Debs, summed up the conclusions of the court in a case involving an interference with interstate commerce by a voluntary association. Substituting for the clauses thereof relating to commerce among the States those relating to the promotion of useful arts by patents, for inventions, the decision reads:

"Summing up our conclusions, we hold that the Government of the United States is one having jurisdiction over every foot of soil within its territory, and acting directly upon each citizen; that while it is a government of enumerated powers, it has within the limits of those powers all the attributes of

sovereignty; that to it is committed power 'to promote the progress of science and useful arts by securing for limited time to * * * inventors the exclusive right to their * * * discoveries;' 'that the powers thus conferred upon the National Government are not dormant, but have been assumed and put into practical exercise by the legislation of Congress; that in the exercise of those powers it is competent to remove all obstructions,' 'natural or artificial,' to the progress of science and useful arts and to the free exercise by every citizen of the privileges guaranteed under the patent laws; that while it may be competent for the Government (through the executive branch and in the use of the entire executive power of the nation) to forcibly remove all such obstructions, it is equally within its competency to appeal to the civil courts for an inquiry and determination as to the existence and character of any alleged obstructions, and if such are found to exist, or threaten to occur, to invoke the powers of those courts to remove or restrain such obstructions; that the jurisdiction of such courts to interfere in such matters by injunction is one recognized from ancient times and by indubitable authority; that such jurisdiction is not ousted by the fact that the obstructions are accompanied by or consist of acts in themselves violations of the criminal law; that the proceeding by injunction is of a civil character."

And the court further stated that its decision in this case rested upon "broader ground" than the antitrust act.

See the following authorities:

The United States may bring an injunction bill, in the proper circuit court, to protect improvements which she is making under the authority of Congress in navigable waters from injury which will be caused by works of internal improvement within State limits and by State authority. (United States *v.* City of Duluth et al., 1 Dillon, 469 (1870).)

According to the principles of equity, as recognized in the courts of the United States, a State can obtain relief by a bill in equity filed by the attorney-general of the State. (Coosaw Mining Company *v.* South Carolina, 144 U. S., 564 (1892), citing United States *v.* Gear, 3 Howard, 120, and City of Georgetown *v.* Alexandria Canal Company, 12 Peters, 91.)

When a corporate excess of power tends to the public injury or to defeat public policy, it may be restrained in equity at the suit of the Attorney-General. (Stockton *v.* Central Railroad Company, 50 N. J. Eq. Rep., 52 (1892).)

"Remedies against corporations—bill by Attorney-General to prevent corporations from entering into agreements and combinations to prevent competition or monopolize trade, or for continuing in, or carrying out, such agreements and combinations." (Note to People *v.* Milk Exchange, page 485 of American Railroad and Corporation Reports, Volume XI.)

"When the managing body are doing or about to do an ultra vires act of such a nature as to produce public mischief, the Attorney-General, as the representative of the public and of the Government, may maintain an equitable suit for preventive relief." (Pomeroy, Equity Jurisprudence, sec. 1093. See also the last paragraph of the decision, United States *v.* Trans-Missouri Freight Association, 166 U. S., 290.)

The unlawful agreement relating to patents for inventions entered into by the railroad corporations of the 15 Atlantic coast States under the style of the Eastern Railroad Association and the many unlawful acts of the association in enforcing its unlawful agreement are fully set forth in the foregoing statement and accompanying exhibits.

The Attorney-General should, independent of his duty as designated in the antitrust act, direct the filing of a civil information in equity in the proper United States circuit court praying for an injunction to issue restraining the Eastern Railroad Association and for a dissolution of the unlawful trust combination and conspiracy.

F. E. STEBBINS.

EXHIBIT C.

Twelfth annual report of the executive committee of the Eastern Railroad Association to the members, 1878–79.

Membership.—Ashuelot; Baltimore and Ohio; Boston and Albany; Boston, Concord and Montreal; Boston, Clinton, Fitchburg and New Bedford; Boston, Lowell and Nashau; Boston and Maine; Boston and Providence; Catasauqua and Fogelsville; Central (of New Jersey); Central, Vermont; Cheshire; Concord, Manchester and Lawrence; Connecticut River; Connecticut Western; Danbury and Norwalk; Delaware and Hudson Canal Company; Eastern; Fitchburg; Housatonic; Lehigh Valley; Long Island; Maine Central; Naugatuck; New York Central and Hudson River; New York, New Haven and Hartford; New Haven and Northampton; New London Northern; New York and New England; North Pennsylvania; Northern Central; Northern (New Hampshire); Northeastern (of South Carolina); Norwich and Worcester; Ogdensburg and Lake Champlain; Old Colony; Passumpsic; Pennsylvania; Philadelphia and Baltimore Central; Philadelphia and Reading; Philadelphia, Wilmington and Baltimore; Providence and Worcester; Providence, Warren and Bristol; Raleigh and Gaston; Richmond, Fredericksburg and Potomac; Richmond and Petersburg; Seaboard and Roanoke; Stonington and Providence; Troy and Boston; Vermont Valley; Wilmington, Columbia and Augusta; Wilmington and Weldon; Worcester and Nashua.

Executive committee.—Strickland Kneass, assistant to president Pennsylvania Railroad Company; J. B. Winslow, agent Boston and Lowell Railroad Company; Frank Thomson, general manager Pennsylvania Railroad Company; J. N. DuBarry, representing Northern Central Railroad Company; E. D. Worcester, secretary New York Central and Hudson River Railroad Company; William D. Bishop, director New York, New Haven and Hudson River Railroad Company; James Moore, general superintendent Central (of New Jersey) Railroad Company; A. A. Folsom, general superintendent Boston and Providence Railroad Company; D. L. Harris, president Connecticut River Railroad Company.

Officers.—President, Strickland Kneass, Philadelphia, Pa.; Treasurer, A. A. Folsom, Boston, Mass.; Secretary, A. McCallum, Boston, Mass.; secretary's office, room No. 15, Boston and Lowell passenger station, Boston, Mass.

REPORT.

OFFICE OF THE EASTERN RAILROAD ASSOCIATION,
Boston, Mass., March 24, 1879.

To the Members of the Eastern Railroad Association.

GENTLEMEN: In submitting this the twelth annual report, your committee congratulates the members on the continued prosperity of the association. On referring to the reports of the secretary and treasurer herewith, it will be seen, from the details of the business transactions therein set forth, that the association has proved of increased usefulness to its members, while financially its condition is very satisfactory.

Your committee also congratulates the members on the successful results of the litigation assumed by the association on their behalf, as noted in that part of the secretary's report devoted to this the most important branch of the business of the association. In view of the results obtained in this respect, your committee is fully impressed with the conviction that very large sums of money have been saved to the members, and to railroads generally, by the determined and persistent opposition made to what was believed to be "unjust claims for patented inventions." In this regard it must be a matter of great satisfaction to the members to know that no case which has been opposed by the association has yet been declared against them on final adjudication to the Supreme Court of the United States.

Since the last annual meeting several important changes have occurred which call for particular notice.

With much regret your committee accepted the resignation of Messrs. Isaac Hinckley as president, D. L. Harris as secretary, and John B. Winslow as treasurer. The resignation of these gentlemen, who so long and so ably filled their responsible positions, is felt to be a great loss; but we have the satisfaction of knowing that, while unable longer to continue the active duties of their former positions, they still take a deep interest in the welfare of the association, and continue to aid in its administration by their valuable counsel.

We have also to note the resignation of S. M. Whipple, esq., who has heretofore acted as expert and general agent of the association to investigate and report on patent claims and to prepare for defense in contested cases.

Under the new constitution such services require to be performed under supervision of the secretary, and form part of his duties. It is therefore believed that, with the addition to the clerical force of the secretary's office already made, the office of expert and general agent as heretofore existing may be dispensed with. Several important changes have been effected by the amended constitution, which, after due discussion and deliberation, was adopted at the special meeting of the association on the 4th day of December, 1878.

Copies of the amended constitution, and also of the by-laws, were forwarded to the members, and their representatives have doubtless made themselves familiar with the same.

Your committee, however, think it proper here to refer to some of the provisions of the constitution as amended.

Particular attention is called to Article VI, which is designed to regulate the action of all concerned when a claim is made for the use of a patented invention and said claim is submitted to the association for action.

Section 1 of this article makes it the duty of the executive committee to negotiate with an inventor or patentee whose claim it is considered inexpedient to contest; but attention is drawn to the fact that the committee must first be requested to do so by a member. In this respect the section differs from section 3 of Article VII of the old constitution.

Section 2 is substantially the same as section 4 of Article VII of the old constitution; but it will be observed that if a member fails to acknowledge receipt of notice sent by the committee for fifteen days after its date, the terms of settlement proposed shall be considered as accepted by such member.

Attention is also called to section 3 of this article, as by its terms the members, in order to avail themselves of the services of the association for defense, or in settlement of claims, must notify the secretary of any suit or claim brought against them. And if any member has previously declined, or shall subsequently decline, the basis of settlement recommended by the executive committee, the association will not be responsible for any expenses for litigation such member may incur.

Section 4 prohibits any member settling any suit or claim brought against it, after being advised by the secretary that a similar suit or claim is in charge of the association for defense in behalf of any of its members, without the consent of the secretary, indorsed by the president.

This provision of the constitution may appear tyrannical, and it does to a certain extent deprive members of the liberty of individual and independent action in the settlement of claims; but the subject has been well considered, and the rule is believed to be essential to the successful carrying out of the main object of the association, to wit, the protection of its members against unjust claims made for patented inventions.

One member may find it expedient to settle a claim under special inducements; but the money thus paid enables the party making the unjust claim to prosecute other members, which in most cases he would otherwise be unable to do. Again, the weaker members of the association might be unduly influenced in the settlement of such claims when they learned that a more powerful member had found it expedient to settle.

Such methods of influencing the settlement of claims are well known to those engaged in the manipulation of fraudulent patent claims, and, if allowed to prevail, the influence and salutary effect of the association would be destroyed. To obtain the best results, the members of the association must act as a unit, and it is believed that this unity of action has been the true cause of our success heretofore.

Your committee also think it proper to direct attention to the fact that by the amended constitution the duties and responsibilities of the secretary's office have been increased. (See section 2, Article V.) One of the objects sought to be attained by extending the duties of the secretary so as to include the management of litigated cases was economy. Heretofore the executive committee, as a matter of necessity, had to employ counsel whenever suits were brought against any of the members and pay whatever bills were presented without full knowledge of the actual services rendered. As a remedy for this unsatisfactory state of affairs it was thought advisable to employ as secretary an attorney having experience in the practice of the patent law and who could, if necessary, practice in any of the United States courts having jurisdiction in patent cases. For particulars respecting the present method of carrying on the business of the association we refer to the accompanying report of the secretary.

On referring to said report it will also be found that the secretary is prepared to furnish information respecting several subjects not specially inquired of, but of general interest to the members, such as the early histories of the "electric telegraph," "power brakes," "sleeping cars," etc.; but as the regular duties of his office have proved onerous, it is not to be expected that he can give much attention to the collection of such general information. It is therefore suggested that when anything of interest in this connection comes to the knowledge of any members the same be communicated to the secretary, so that, under the direction of your committee, he may be enabled to distribute such information to the other members.

We also call attention to the suggestions of the secretary as to the formation of a scientific library by voluntary donations of spare books by the members, to which end your committee have appropriated a limited amount to secure a complete set of the drawings of patents relating to railroads and such reports on patent cases as will materially aid in carrying out the objects of the association, as well as to the importance of collecting models with a view to the formation of a museum of inventions. Your attention is particularly called to the means suggested to prevent the grant of fraudulent patents.

Recent developments show that our members can not be too careful, when taking a license, to see that the language of the agreement or license affords them proper protection in the use of the patented invention for which the license is given; and in this connection the following suggestions may be acceptable:

1. Be sure that the party who gives the license has a legal title to the patent. This can be ascertained by making application to the Commissioner of Patents for a certified abstract of the assignments of the particular patent for which the license is to be given.

2. Be sure that the license covers the right to use the invention, any improvements thereon which the inventor may have made and patented, or for which patents may hereafter be obtained by the inventor or his assignees.

3. Be sure that the license covers the right to use the patented device, not only on your own roads, but on any roads and branches which may be leased, or otherwise connected therewith, during the life of the patent or patents.

4. Be sure that the license covers the right to use the patented device during the entire period for which letters patent are or may be granted or extended, including any reissue of the same.

Attention is respectfully called to the resolutions adopted at the meeting of your committee December 4, 1878, a printed copy of which was sent to the members at that time. Said resolutions are to the effect that the association can not, under the constitution, undertake to defend the members against claims for infringement of letters patent until said claims have been examined and reported on by the executive committee; so that when suits are brought previous to such examination and report the expenses incurred in defending the suit must be borne by the individual members sued, unless said suit, upon examination, be accepted by the executive committee, in which case all expenses will be assumed by the association.

This does not prohibit the secretary from giving all the information on the subject at issue which may be in his possession, or from rendering aid in the proper defense of such suit prior to the action of your committee. Such services are at all times available to the members, but anything that may be done or any expense that may be incurred is subject to the approval of the executive committee.

On referring to the report of the treasurer it will be found that the account up to December 31, 1878, stands as follows:

Balance from preceding year	$17,958.44
Collections under assessments	17,819.85
Collection of interest	460.00
Total	36,238.29
Less expenditures	15,678.21
Balance	20,560.08

Respectfully submitted.
By order of the executive committee.

STRICKLAND KNEASS, *President.*

EXHIBIT D.

Membership of the Eastern Railroad Association for the year ending March, 1883.

	Miles.
Allegheny Valley and branches	259
Baltimore and Ohio and branches, also 18 other railroad corporations	1,495
Boston and Albany and branches, also 4 other railroad corporations	372
Boston, Concord and Montreal and branches, also 2 railroad corporations	166
Boston and Lowell, also 6 railroad corporations	197
Boston and Maine and branches, also 6 railroad corporations	606
Boston and Providence and branches, also 1 railroad corporation	67
Boston, Barre and Gardener and branches	37
Camden and Atlantic and branches, also 1 railroad corporation	70
Carolina Central and branches	241
Catasauqua and Fogelsville and branches	25
Cental Railroad of New Jersey, also 2 railroad corporations	545
Central Vermont Railroad, also 5 railroad corporations	353
Cheshire Railroad, also 2 railroad corporations	80
Connecticut and Passimpsic, also 1 railroad corporation	147
Concord Railroad, also 4 railroad corporations	142
Connecticut Railroad, also 1 railroad corporation	80
Concord and Claremont, also 1 railroad corporation	71
Danbury and Norwalk	37
Delaware and Hudson Canal and Railroad, also 10 railroad corporations	568
Eastern Railroad, also 7 railroad corporations	283
Fitchburg Railroad, also 1 railroad corporation	151
Housatonic Railroad, also 4 railroad corporations	126
Hartford and Connecticut Western, also 2 railroad corporations	105
Lehigh Valley Railroad, also 2 railroad corporations	306
Long Island Railroad, also 11 railroad corporations	325
Manchester and Lawrence, also 1 railroad corporation	26
Maine Central, also 3 railroad corporations	470
Naugatuck Railroad, also 1 railroad corporation	66
New York Central and Hudson River Railroad, also 2 railroad corporations	1,118
New York, New Haven and Hartford Railroad, also 2 railroad corporations	203
New York, Philadelphia and Baltimore, also 2 railroad corporations	82
New Haven and Northampton, also 1 railroad corporation	137
New London Northern, also 1 railroad corporation	121
New York and Lake Erie, also 5 railroad corporations	452
Northern Central, also 5 railroad corporations	343
Northern (N. H.), also 1 railroad corporation	100
Northeastern Railroad, also 5 railroad corporations	102
Ogdensburg and Lake Champlain	118
Old Colony, and 2 railroad corporations	477
Pennsylvania, also 23 railroad corporations	2,401
Pennsylvania Company, also 7 railroad corporations	864
Pittsburg, Cincinnati and St. Louis Railroad, also 7 railroad corporations	1,507
Philadelphia and Reading, also 2 railroad corporations	847
Philadelphia, Wilmington and Baltimore, also 8 railroad corporations	383
Pennsylvania and New York canal and railroad, also 1 railroad corporation	95
Portland and Ogdensburg	94
Providence and Worcester, also 3 railroad corporations	66
Petersburg	63
Providence, Warren and Bristol	15
Raleigh and Gaston, also 1 railroad corporation	196
Richmond, Fredericksburg and Potomac, also 2 railroad corporations	82
Richmond and Allegheny, also two railroad corporations	235
Rome, Watertown and Ogdensburg, and 2 railroad corporations	265
Seaboard and Roanoke	80
Sullivan Company	26
Troy and Boston, also two railroad corporations	46
Vermont Valley	24
West Jersey, also 4 railroad corporations	163
Wilmington, Columbia and Augusta	192
Wilmington and Weldon	198
Worcester and Nashua, also 1 railroad corporation	95
Total	19,198

Two hundred and fifty-five corporations.

EXHIBIT E.

Constitution and by-laws of the Eastern Railroad Association, now in force.

CONSTITUTION.

ARTICLE I.

This association shall be called "The Eastern Railroad Association." While having for its general purpose the promotion of the railway interests, its leading object shall be the protection of its members against unjust claims made for patented inventions.

ARTICLE II.

This association shall be composed of railroad companies of New England and any others, at the discretion of the executive committee, subscribing to the articles and contributing to the expenses of the association. Each company to be represented by a duly authorized person; but no railroad company whose earnings are mainly derived from the transportation of passengers upon an elevated railroad within the limits of a city shall be admitted as a member of the association, except upon such terms and conditions as may be prescribed by the executive committee.

ARTICLE III.

SECTION 1. The affairs of the association shall be managed by an executive committee of nine members, who shall be elected every year at the annual meeting of the association. They shall submit at each annual meeting of the association a report of the operations of the past year and of its financial condition, and any member of that committee ceasing to be the representative of the company for which he is appointed shall cease to be a member of said committee; and in all cases where a member of the executive committee is absent from two consecutive stated meetings of said committee, unless such absence is caused by sickness or absence from the country, it shall be equivalent to a resignation of said member, and it shall be the duty of the executive committee to fill the vacancy thus created at the next stated meeting following.

SEC. 2. Said committee shall organize by the election of a president, vice-president, general counsel, secretary and treasurer (the president, vice-president, and treasurer to be selected from its own members), who shall also be president, vice-president, general counsel, secretary and treasurer of the association. A majority shall constitute a quorum for the transaction of business. They shall also appoint such standing committees as they may deem requisite.

SEC. 3. Said committee shall provide a suitable place for the general office of the association, where all models, books, papers, and documents may be deposited for safe-keeping.

SEC. 4. Said committee shall have power to elect such other officers and employees, and appoint such legal counsel, as may be necessary for the interests of the association, and fix salaries and compensation, and prescribe the duties of all officers, agents, and employees; shall fill vacancies in its membership, and make by-laws for its own government.

SEC. 5. Meetings of the executive committee may be called at any time by the president, or shall be when requested by any two members of the committee.

ARTICLE IV.

SECTION 1. The annual meeting of the association for the election of the executive committee and for the transaction of other business shall be held on the second Wednesday in May, at such hour and place as may be designated by the executive committee, and the fiscal year of the association shall terminate on the 31st of December.

SEC. 2. Special meetings of the association shall be called by the president upon the request of two members of the executive committee, or at the written request of the representatives of not less than five companies. Notice of any meeting of the association shall be given by a written or printed notice directed to each member, and deposited in the post-office at least ten days prior to the day of such meeting.

SEC. 3. The representatives of ten companies shall constitute a quorum at all meetings of this association. Each company shall be entitled to one vote.

ARTICLE V.

SECTION 1. Whenever, in the opinion of the executive committee, a patent submitted for examination by any member is valid, or whenever it is deemed inexpedient to contest any claim made upon a member of the association for the use of a patented invention, it shall be the duty of said committee, at the request of any of the associate members, to negotiate either for the use of said patent or for a settlement of the claim preferred, and, when effected, to report the same to each associate member for acceptance.

SEC. 2. If any member declines accepting the basis of settlement so offered (and a failure to acknowledge receipt of said notice for fifteen days after its date shall be deemed an assent to the terms thereof), the association shall not be responsible for the defense of any suit or for the expenses of any litigation against that company, and growing out of that case, incurred subsequent to date of said notice.

SEC. 3. Whenever a suit is brought against any member of the association for infringing upon a patent reported upon as invalid, or whenever a claim is made against any member for the use of a patent reported upon as valid, and for which a basis of settlement has been agreed upon as aforesaid, it shall be the duty of that member to make a report of such suit or claim to the secretary, and thereafter the said committee shall manage the same at the expense of the association, provided the member so reporting has not previously declined or shall not subsequently decline such basis of settlement as has been or may be recommended by the executive committee.

SEC. 4. Members of the association shall not settle any suit or claim against them after being advised by the general counsel that a similar suit or claim is in charge of the association for defense in behalf of any of its members without the consent of the general counsel, indorsed by the president.

SEC. 5. Whenever the executive committee shall adopt a report relating to a patent, and shall not deem it for the best interests of the association to assume or continue the expenses of litigation growing out of such report, it may at its discretion so notify the member to whom such report is made, and the association shall not hereafter be at any legal or other expense on account thereof; but said committee may compromise and settle the claim, or purchase a license for such member at the expense of the association: *Provided*, That in the opinion of said committee such settlement or purchase can be effected at less expense to the association than the cost of carrying on the litigation in behalf of such member.

ARTICLE VI.

Any member willfully violating these articles may be stricken from the roll of membership by a vote of two-thirds of the members present at any annual or special meeting, provided due notice of such proposed action shall be given in the call of said meeting.

ARTICLE VII.

The president of the executive committee shall confer with the officers of similar railroad associations in the United States in relation to the settlement of patent claims and the trial of patent cases, and said committee may,

if they deem it advisable, contribute from the funds of the association to aid in the defense of any patent case the issue of which involves the interests of the members of the association.

ARTICLE VIII.

The executive committee shall have the power, and it shall be their duty from time to time, as often as they judge the interests of the association require, to make assessments upon members of the association, one-half, as nearly as practicable, in proportion to their gross receipts for the fiscal year preceding the making of the assessment, and one-half in proportion to the length of their roads, for any expenses already incurred or hereafter to be incurred, which, in the opinion of the committee, should be borne by this association. If any company shall neglect to make the proper returns called for by the treasurer after assessment is made, or neglect to pay the treasurer the sum assessed upon it before the 31st day of December thereafter occurring, it shall be deemed to be in default and shall not be entitled to the privileges of membership, and if it shall fail to pay the sum assessed upon it within three months after notice of default from the treasurer, it shall thereupon cease to be a member of the association.

ARTICLE IX.

Any company may withdraw from this association by giving notice in writing to the secretary, provided such company shall, nevertheless, be liable for its proportion of the expenses of the association for the fiscal year ending December 31 next ensuing.

ARTICLE X.

This constitution may be altered or amended by a vote of two-thirds of the members present at any regular or special meeting, provided due notice of said proposed alteration or amendment shall have been given in notice for said meeting.

BY-LAWS.

ARTICLE I.

The annual meeting of the association and the election of an executive committee shall be held in the city of New York, and the stated meetings of the executive committee shall be held on the second Thursday of the months of March, September, and December and on the second Wednesday of the month of May in each year, at such place and hour as the committee may from time to time designate. Special meetings of the executive committee shall be called in the same manner as provided in the constitution for the meetings of the association.

ARTICLE II.

The general office of the association shall be located, until further action by this commitee, at Washington, D. C.

ARTICLE III.

The executive committee shall, at its first meeting after election, organize by election from its own number a president, vice-president, and treasurer; a secretary and general counsel, not members of the committee, and also a finance committee, to be composed of three members of the executive committee. All elective officers shall serve for the ensuing year, or until their successors be elected.

ARTICLE IV.

Five members of the committee shall constitute a quorum for the transaction of business, which shall be in the following order:

1. Minutes of the last meeting read.
2. Report of treasurer.
3. List of applications for membership made since last meeting.
4. Report of general counsel.
5. Other business.
6. Reports on patents, etc.

ARTICLE V.

SECTION 1. It shall be the duty of the president or vice-president to preside at all meetings of the association. In the absence of the president or vice-president, a president pro tem. may be appointed. The presiding officer shall name or appoint all special committees, unless otherwise ordered by the association, and the president shall be ex officio a member of all committees.

SEC. 2. The vice-president, when called upon, shall assist the president in the performance of his duties, and during the absence or at the request of the president shall officiate in his place.

SEC. 3. The general counsel shall give his time exclusively to the service of the association, and receive therefor such salary as the executive committee may fix. He shall make all required examinations and reports as to scope and validity of letters patent and questions of infringement of same, and prepare cases for defense before the courts. He shall answer all inquiries from members of the association relative to patent matters, and furnish them with written information regarding patents or patent claims that may be in the possession of the executive committee. He shall keep the minutes of the meetings of the association and of the executive committee; shall have charge of the office, models, archives, and property not pertaining to the investments or finances of the association, and perform such other duties as the executive committee may direct.

SEC. 4. The secretary shall give his time exclusively to the service of the association, and receive therefor such salary as the executive committee may fix. He shall keep the books of the association, excepting those in charge of the treasurer; shall notify the members and the executive committee of all meetings of their respective bodies. He shall have charge of the rooms of the office building in the city of Washington, D. C., not occupied by the association, rent same, collect the rents, and account to the treasurer therefor. He shall assist the general counsel, and perform such duties as may be designated by him, and, in the absence of the general counsel he shall take charge of the office, models, archives, and property not belonging to the finances of the association, and perform such other duties as the executive committee may direct.

SEC. 5. The treasurer shall collect all assessments as made by the executive committee, and disburse all the moneys of the association, under the direction of the executive committee. He shall keep a regular set of books containing the accounts of the association, and of all the funds that may pass through his hands, and keep a separate account as treasurer at such bank or banks as the executive committee may approve. He shall make report at each stated meeting of the executive committee of his receipts and disbursements in such form as the said committee may direct, and at the stated meeting in March shall submit a general statement of the financial condition of the association, and a detailed statement of receipts and expenditures of the past fiscal year, duly audited by the finance committee. All payments shall be made by orders of the treasurer, audited by the secretary, and approved by the president.

ARTICLE VI.

No alteration or amendment shall be made in these by-laws until presented at a stated meeting and adopted at a subsequent meeting by a majority of the whole committee.

STANDING RESOLUTIONS.

Resolved, That the secretary be instructed that in making reports to members, as directed by section 3, article 5, of the by-laws, previous to being submitted to the executive committee, he append thereto a printed notice to the effect that said reports are of no effect or binding upon the association until approved by the executive committee.

Adopted March 12, 1879.

Resolved, That the secretary be instructed to notify all railroad companies, members of this association, that hereafter all applications from such company asking for information from the association in regard to any patent device must be made through the president, vice-president, general manager, or superintendent of such company, or such officer or agent of said company as may be thereto specially authorized by resolution of the board of directors of said company.

Adopted March 10, 1880.

Resolved, That the executive committee be authorized to fix upon and establish an entrance fee that shall be chargeable to all companies desiring to connect themselves with the Eastern Railroad Association after this date, said entrance fee being intended to cover the proportional interest in funds of the association now invested.

Adopted at annual meeting, May 11, 1881.

Resolved, That it is not thought advisable for the association to introduce or, as an association, advocate legislation in Congress; but its members should promote any bill that may be offered to amend the patent laws so as to require the patentee or owner of a patent to give notice of any claim for infringement, and to commence suit thereon within a reasonable time after such notice is given.

Adopted December 14, 1881.

Resolved, That this association will, through its general counsel, furnish to any of its members any information it may be able to give in relation to the legal construction, effect, and bearing of any license or assignment made by the inventor or owner of any patent to one of the members; but, inasmuch as such licenses and assignments have been drawn or accepted by the officers or counsel of such members without action by or consultation with this association, the association can not properly take charge of or assume the expense of any litigation growing out of or connected with such licenses or assignments.

Adopted December 15, 1881.

Resolved, That the secretary notify all persons applying to the association for the privilege of making oral argument before the executive committee relating to patents that such privilege can not be granted, but that the executive committee will receive and consider any argument in writing that may be presented to it.

Adopted December 13, 1883.

Resolved, That in all future patent suits against members of this association the secretary be, and is hereby, instructed to require from the plaintiffs bonds or security for the costs, when such security can be legally demanded.

Adopted March 13, 1884.

In the matter of reports called for by members respecting inventions for which applications for patents are pending in the Patent Office,

On motion, it was—

Voted, That the general counsel be directed to notify the members making such inquiries that the association can not, consistently with its constitution and by-laws, give any advice or express any opinion in regard to any invention for which application for letters patent has been made and is pending in the Patent Office.

Adopted May 12, 1886.

Resolved, That the office of general counsel and secretary, created by resolution adopted May 12, 1880, be discontinued, and that the offices of a general counsel and a secretary be created in accordance with amendments to by-laws.

EXHIBIT F.

The following extracts from the technical journals represent the consensus of public opinion regarding the character of said Eastern Railroad Association, to wit:

[From the Railroad Car Journal, December, 1892.]

RIGHTS OF PATENTEES AND INVENTORS.

We have several times previously given space in this journal to the publication of the circumstances and proceedings in the suit of W. K. Tubman against the Watson Manufacturing Company for infringement of his patent. We have given unusual prominence to the case for the reason that it has brought up a much wider issue than the mere damage sustained by the owner of the patent—an issue of vital interest to inventors or owners of patented railroad appliances.

It would appear from the testimony that Tubman in his suit encounters a more formidable opponent than the actual defendants. He claims that the Eastern Railroad Association is maintaining the defense with the object of defeating his claim, and that with such an organization in existence, pursuing the methods it does, a poor inventor can not possibly hope to maintain his rights to a patented device which the association chooses to advise its members to use without the payment of royalty. The testimony, which we print in another column, of Mr. Andrew McCallum, the counsel of the association, can not be regarded as in any way rebutting the serious charges made against the association by Tubman. We quite fail to see why the proceedings of the Eastern Railroad Association should not be made public. The owner of a patent should certainly be entitled to learn the substance of the association's report to its members upon his invention; for railroads are becoming notorious by reason of the frequency with which they appropriate the ideas of inventors without compensation. The testimony in Tubman's case will be read with interest by inventors or owners of patents on railroad devices.

[From the World's Progress, March, 1892.]

APPROPRIATING PATENTS.

In another article in this issue we have discussed briefly the exercise of a practically assumed right by the Government to appropriate to its own use, without compensation, any patented article or invention it may please to want. That form of appropriation will have attention, and then will be duly regulated by law, just as soon as the abuse becomes so common as to produce public outcry. The sole reason why this law has not been made is that the number of those harmed is comparatively small. So far as the need in equity and justice for such a law is concerned, it seems to be commonly admitted that it is now urgent.

But there is another form of this appropriation which is more common, and consequently more aggravating. It is where a rich and powerful corporation deliberately takes and uses a patented device or invention and then says, coolly and impudently, to the patentee: "Help yourself if you can." Then the issue so made is almost invariably governed by the length of the purse, and in the end the single-handed inventor finds himself outwinded by the long delays he can not prevent and the large expenses he is forced to pay

to carry on his suit. We have now in mind a particular form of this organization that is accustomed to use any patented invention in the line of its business that it pleases to appropriate. We refer to the railroad associations, of which there is one at the East and one at the West. Ostensibly these associations are for self-protection against causeless litigation and the annoyance of importunate and unreasonable inventors. So far as this protective idea goes, the motive of these associations is very proper; but when these associations go further and assume the right to appropriate any invention they wish to use, and thus force the inventor into the courts to endeavor to get redress, these associations are all wrong.

The consequence is that the single-handed inventor rarely wins in any such suit. It must be said, in justice to these associations, that they allege that they always pay for the use of any and all really new and valuable improvements. But this assertion is hotly denied by the body of inventors who have, as they assert, been ruthlessly defrauded of their rights.

It seems to us that some law can be framed that will secure justice to both parties; that, on the one hand, will enable the inventor to contest his rights with some show of a fair trial, and, on the other, protect the parties who do not wish to be causelessly annoyed by every inventor who is willing, properly or improperly, to invoke the aid of the law. Under the new patent law in Germany, a wanton infringement is made a criminal act. We do not say this is the way to deal in this country with the matter, but it is one way, and the existence of that law proves that the abuse of which we now write has already begun to attract deliberate attention. The attention of the House Committee on Patents has been called to the matter and an earnest attempt made to secure some legislation by Congress to prevent the alleged abuses.

[From the Scientific American, March 12, 1892.]

Legislation is certainly needed to put a stop to combinations formed like the Eastern Association for the express purpose of nullifying the privileges granted to inventors by Congress.

[From Locomotive Engineering for November, 1892. Angus Sinclair, editor, 912 Temple court, New York.]

PROPERTY RIGHTS IN PATENTS.

A decision was rendered last month by the United States Court of Appeals in a suit brought by the Edison Electric Light Company against the United States Electric Light Company that is of interest to many people who are not in any way concerned in proprietary rights in electrical appliances. Edison was the original inventor of the incandescent lamp, where light is produced by the electric current passing through a resisting medium inclosed in a vacuum. Several parties imitated this invention, and have been selling incandescent lamps which seemed to avoid the Edison patents. The court has now decided that every known form of incandescent lamp, and every possible form of this lamp, infringes the Edison patents.

This means practically that when an inventor secures a foundation patent for any device, the imitations which obtain the same results by different mechanical arrangements are infringements. The decision is a little more emphatic than several others previously made of the same tenor. The well-known decision on the Richardson safety-valve patents was substantially the same as that now rendered concerning electric lights.

This decision ought to be of direct interest to many railroad companies, for there is no class using mechanical appliances more given to patronizing articles that are notoriously pirated imitations of patents. The great variety of functions demanded of railway machinery presents an unparalleled field for inventive genius, and it is industriously cultivated. But no sooner does an inventor produce an appliance or improvement which promises to be in demand than there is a host of imitators doing their best to produce something which will do the same functions and avoid infringing the original patent. The principal work done by the mechanical engineers employed by some railroad companies is the designing of forms of patented articles which shall perform the functions of the original without incurring the liability to pay royalty. This is a small, mean business, and is nothing more than dishonesty; for it is stealing a man's ideas and dressing them so that their identity may be disguised.

The plain decisions of the courts ought to discourage this sort of industry. The only reason why railroad companies are not paying royalties on numerous patents that they are using illegitimately is the delay and expense that must be incurred in lawsuits for infringements of patents. Law's delays are so notoriously tedious in patent suits that those who have been injured patiently suffer wrong rather than engage in the long and expensive fight. We have recently heard of a movement among men of means to purchase the orignals of patents that have been largely imitated by railroad companies. Should this be done, some of the companies are likely to have to pay damages that will put the money paid to settle the Tanner brake suits far into the shade.[a]

That in the years 1877 and 1878 the said Eastern Railroad Association, in combination with a similar association in the West, endeavored to secure legislation in Congress which would enable the members of the association to appropriate patented inventions without being compelled to pay for them. The following selections from "Arguments before the Committees on Patents, Forty-fifth Congress, second session, Miscellaneous Document No. 50," represent the views of many reputable patent attorneys and others regarding the railroad combination to appropriate patent property, to wit:

W. C. Dodge, esq., Washington, D. C.:

"On the part of the railroads it is a demand that they shall be allowed to appropriate any invention they please, and then to have the law so changed as practically to prevent their being compelled to pay for them" (p. 69).

"Or, which of these public-spirited railroad companies, now asking you to change the patent laws for their special benefit, would invest their capital in building their roads if, when built, the dividends were to go into other pockets than their own?" (p. 70).

"That resolution was introduced by a member whose firm had been made to pay quite an amount in damages for the use of a patented invention which they had appropriated without leave or license of the owner; and it is a striking coincidence that this movement to change our laws was inaugurated by the railroad combination, who, as they tell you, have in like manner been mulcted in heavy damages for a similar appropriation of patented inventions, and which the owners would gladly have sold or licensed them to use for far less than the sum awarded by the courts. As proof of this it is stated that the owner of the swage block patent, for the use of which these companies complain they have been made to pay an exorbitant price—over $100,000—offered to let the same company have the use of his patent for its whole term for $1,000, which they agreed to pay, but when the papers were to be executed the company insisted on the party taking pay in the bonds of the company, worth only 90 cents on the dollar, and because the owner of the patent refused to be thus swindled out of one-tenth of the price agreed upon they refused to complete the arrangement, and told him they would use it in spite of him, and he might help himself if he could. I submit that it does not become parties who have acted thus to now come here crying like a whipped schoolboy and ask Congress to change the law simply to relieve them from the consequences of their own willful violation of the law" (p. 72).

J. J. Storrow, esq., counsel for the Bell Telephone Company:

"There will be cases undoubtedly where defendants will willfully infringe patents. Nay, there will be cases where rich defendants will band themselves together and say to the patentee unless he will sell his invention to them at a price agreeable to them, that they will drag him for ten years through the courts, at an expense which is a flea-bite to them, but ruinous to him" (p. 135).

W. W. Hubbell:

"These railroad companies infringed a patent beyond all question, and they knew the inventor was poor and could not bring suits all over the United States against these different railroad companies, and they have taken a rule upon him for security of costs, and he, in his inability to furnish it, has been barred and thrown out of court. This was done over here in Baltimore. The Baltimore and Ohio Railroad Company did that to my knowledge, where they infringed a patent" (p. 163). (See standing resolution No. 7 in constitution.)

G. H. Christy, esq., counsel for Westinghouse Air Brake Company:

"I think, further, that it is a dangerous remedy to put into the hands of a wrongdoer, particularly if he is a wealthy party or corporation, and I use the word corporation not in any ill sense, for it is one of the most honest and legitimate ways of carrying on business; but it is especially dangerous to give the power to seventy or eighty wealthy corporations to pounce down on an inventor and snatch from him all his just rights, as was the case with Goodyear, and reduce him to absolute beggary; and as was the case with Pullman when he was jacking up houses in Chicago; or as with Westinghouse, who was not able to pay me his firs t fee for his first caveat.

"Now, if it is good to put in the handsof an associated power representing such a consolidated amount of wealth, and with the unscrupulous character for which railroads are noted (I speak of it only as an entity, and not in regard to its officers)—I say it is a very dangerous thing to put such a grant of power into the hands of such an organization in order that they may sit down on and squelch an inventor without any money to fight them. Now, then, if I have got seventy or eighty railroad companies at the back of me with their capital and their employees, it is a very singular circumstance if I can not cook up some testimony among them.[a] I do not say that Brother Raymond would, but I do not know who his successor might be. It is putting a dangerous remedy in the hands of a most dangerous class—the wealthy part of our country, who want to use an invention without paying for it" (pp. 254, 255).

Hon. Elisha Foote, ex-Commissioner of Patents:

"You might as well do directly what this section does indirectly, and pass an act that every railroad which is not making profits or dividends shall have the privilege of taking any patents they please with impunity; and, if you make the thing entirely consistent and rational, you should also say that they may enter upon anyone's land and cut their ties, and go into rolling mills and take their rails, or any other property they choose to take, and they shall have them without responsibility to anybody.

"Take the case of this Westinghouse brake, which, I understand, the patentee manufactures himself and puts onto cars at a very reasonable price. Now, suppose any of these Chicago railroads, making no money, should think it desirable for them to take and use this brake without paying anything for it. This section would undoubtedly authorize them to do so without any compensation, and they could grab any amount of property with impunity" (p. 413).

"What chance would the poor inventor have against these powerful corporations? None but a very wealthy person could enter into such a controversy. The roads would not need the other provisions of the bill. This would enable them to take and use any patent they please with impunity, and no one would dare to sue them" (p. 415).

"Suppose any of these wealthy corporations should call upon a poor inventor to commence a suit against them, and to encounter a big railroad combination, with all their able and learned counsel in their employ? It would be impracticable; he would have to give up his patent" (p. 418).

Albert H. Walker, esq., author Walker on Patents:

"Now suppose the Baltimore and Ohio Railroad Company see the wonderful invention, and think that is a good thing, and a good deal cheaper than coal, and say: 'We will proceed to infringe Mr. Vance's patent, and we will fight him ten or fifteen years, if he sues us, with the probable result of his exhausting his means before he gets a decree.' Such a course of defiant infringement is, in many cases, the deliberate purpose of railroad men. It was the avowed practice of H. E. Sargent, the superintendent for many years of the Michigan Central Railroad, and one of the members of the Western Railroad Association. He has avowed it as his universal principle never to pay anything voluntarily to a patentee. He says: 'Whenever our attention is called to a patent of value, we use it, and in a few cases we are made to pay, by plucky inventors; but, in the aggregate, we pay much less than if we took licenses at first.' I admit the railroad companies do not generally avow such a plan of action, but I know they entertain such ideas" (p. 396).

7. That the substance of the following article, which correctly sets forth the character, objects, and methods of the Eastern Railroad Association, was published in the Railway Age in 1891, to wit:

The Eastern Railroad Association should be broken up, because:

1. It is a secret society, with a secret constitution and by-laws, organized, not like most voluntary associations, for charity or mutual assistance in times of sickness, poverty, or distress, nor for moral or intellectual culture, nor for the promotion of science or the arts, nor for the advancement of man's estate, but, judged by its actions for many years, for the spoliation of the property of inventors. It has no charter. It does not report annually to any commonwealth. Its right to exercise its franchises is a usurpation. It is not based upon any contract with the people of any State. It is an irresponsible body. It is organized selfishness.

2. It is a permanent conspiracy, inasmuch as its constitution requires unity of action by all its members in opposing individual patentees, and this whether each member (railroad) is directly interested or not in the particular controversy. It is well-established law that a combination to attain an end, even lawful in itself, constitutes a conspiracy when such combination subjects the individual to its combined and concentrated power.

3. The members of the association intermeddle in what is none of their business. The precepts of international law do not allow a disinterested nation to intermeddle in a contest between two other nations. Our National Government can not intermeddle with the local affairs of a State. The man who interferes with his neighbors' quarrels receives no sympathy if he gets his head broken. Boys in their sports cry: "Hands off!" "Fair play!" The courts have well-defined rules as to when and how interested parties may intervene in suits. But this association will not ask leave to intervene.

4. The association violates section 8, Article VIII, of the Constitution of the

[a] In the Tanner brake suit the railroad associations manufactured evidence which was of such an outrageous character that even the counsel of the Western Association discarded it. A. H. Walker, esq., of Hartford, Conn., author of "Walker on Patents," can give particulars. The Supreme Ruler only knows how much of the testimony in this case was "cooked up."

[a] In 1889 the association "*reissued*" a patent, with an added drawing, from its office on F street, in Washington. The reissue then was introduced in evidence for the purpose of securing a narrow construction of a patent claim

United States: "To promote the progress of science and useful arts by securing for limited times to * * * inventors the exclusive right to their * * * discoveries."

Mr. W. S. Huntington, in the National Car Builder some time ago, speaking of the Eastern and Western Railroad Associations, remarked: "The inventors are now practically in their power." "Many inventors who had labored to improve railway appliances abandoned the field and exercised their ingenuity in other directions, where there were fewer obstacles."

5. It is a trust; the most powerful and wealthy trust in the United States—the Standard Oil is an infant beside it—more powerful than any that has had being since the enactment of Statute 21, James I, abolishing monopolies. This statute has been called the Magna Charta for British industries, and may equally be called the same for American, inasmuch as it established legitimate competition. "This statute," Hume said, "contained a noble principle and secured to every subject unlimited freedom of action, provided he did no injury to others nor violated statute law." This association closes the market against inventors and owners of patents, and prevents free competition.

6. It interferes with the administration of justice in the courts. Its methods are somewhat as follows: If a railroad wishes to use a patented invention, the matter is referred to the general counsel of the association. He investigates and sees what is most expedient to do. He ascertains whether the owner of the patent is a poor man, without means to bring a suit, or a wealthy and influential citizen; whether it is cheaper to pay a small license fee or to appropriate the invention and fight the owner through the court of last resort. If appropriated and the owner brings suit against the railroad infringer, the entire strength and means of the association are brought to bear to crush him, so as to terrify other patentees from bringing suit for the spoliation of their property, and every member of the association joins in the defense against him, whether using the invention or not. It closes the market against the patentee by the first report on his patent. Its constitution forbids any member paying anything to the owner, because such payment would serve to establish a measure of damages should the owner ultimately win his suit. In one of the association's reports the president exhorts the members to "act as a unit," and says: "This unity of action has been the true cause of our success heretofore." Its general counsel in 1879 boasted that the association had never been compelled to pay anything for infringement of letters patent. The seal of the United States on a patent has no significance in its eyes. The little building 614 F street is bigger than the United States Patent Office.

All suits against any member of the association are defended by its general counsel, who travels on passes while taking evidence and at all other times in defending the suit, and he avails himself of every means within his power per fas per nefas to defeat the suit. Delays, obstructions, manufactured evidence, appeals, and all sorts of trickery are resorted to as occasion demands.

If the complainant is finally successful he can seldom prove "profits" or "damages," and as his patent has generally expired before a final judgment is secured, an injunction will not issue. The complainant has been to great expense and trouble and, after having won his suit, can not collect a cent. It is "more expedient" and cheaper to pay costs than to take licenses in the first instance.[a]

The following boast was made by the association's general counsel, A. McCallum, in closing the thirteenth annual report to the members of the association, to wit: "It appears to be the fact that during the whole period of thirteen years, during which the association has been in existence, no suit defended by it has resulted in a judgment against a member on appeal to the highest court; and that while some claims have been settled after suit was brought, no member (railroad) defended by the association has yet, by process of law, under execution, attachment, or otherwise, been compelled to pay anything on account of infringement of letters patent."

EXHIBIT G.

[Memorandum. Alexander T. Britton et ux. Mary, William C. McIntire et ux. Frances B., to William D. Bishop, of Bridgeport, Conn.; Theodore N. Ely, of Altoona, Pa.; Albert A. Folsom, of Boston, Mass. Deed in trust, dated June 18, 1886. Recorded June 26, 1886.]

Consideration, $25,000.

Parts of lots 17 and 18, in square 456.

Beginning on the north line of said lot 18, distant 49 feet west of the northeast corner thereof on F street, and run thence south 159 feet 1½ inches to a public alley, thence west 24 feet 4½ inches, thence north 159 feet 1½ inches to north line of lot 17, and thence east 24 feet 4½ inches to the beginning.

To hold unto the only use and benefit of parties of second part, their heirs, and to the survivors and survivor of them and the heirs and assigns of the survivor.

In and upon the following trusts:

First. In trust for the sole use and benefit of the members of a certain association known as the Eastern Railroad Association.

Second. The said parties of the second part, or any of them, shall at any and all times and from time to time convey the same land and premises, or any part thereof, to such person or persons to such uses and purposes and in such quantity or quality of estate or estates, whether in fee simple absolute or by way of trust or mortgage as the executive committee of said association shall name, limit, or appoint, such limitations or appointments to be deemed sufficiently evidenced by the signature of the secretary for the time being of said association affixed to the instrument of conveyance, and on any conveyance or conveyances being made as aforesaid the grantee or grantees in any such conveyance or conveyances shall take the title, discharged from all responsibility on the part of the grantee or grantees to see to or account for the due application of the purchase money, or any part thereof.

General warranty to parties of second part.

Recorded in Liber 1189, folio 253.

EXHIBIT H.

Letters from Whitney, Olney, and Griggs.

DEPARTMENT OF JUSTICE,
Washington, D. C., August 23, 1893.

WILLIAM K. TUBMAN, Esq., *Baltimore, Md.*

SIR: Your petition of August 18 in relation to the Eastern Railroad Association has received careful attention.

The facts stated in your petition, so far as material to the relief asked, are that you are bringing suit in the Federal courts in Connecticut and Pennsylvania, respectively, against two railroad companies for infringement of letters patent for an improvement in railway car windows; that these suits are being defended in the name of the defendant corporations by the Eastern Railroad Association; that one of the objects of this association is to combine all the railroad companies of this part of the country for the purpose of dealing with patentees, it being provided by the constitution of the association that negotiations with patentees should be carried on by the executive committee of the association; that no royalties should be paid, except with the consent of the executive committee, and that all suits for infringements should be defended by the association.

Your claim is that this combination is a violation of the antitrust law of July 2, 1890, and you ask me to direct the United States attorneys for the districts in which the suits are pending immediately "to institute proceedings in equity to restrain the Eastern Railroad Association from continuing in force against yourself the provisions of its constitution above referred to."

The antitrust law provides that every "contract, or combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations" is illegal, and that every "person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several States or with foreign nations" is guilty of a misdemeanor. I do not think that the combination you refer to comes within the purview of the act.

A patentee is the owner of a monopoly of the right for seventeen years to the sole manufacture, use, and sale of the article which he has invented. In this instance the article invented is one that can only be used by railway companies. You are the only producer and they are the only consumers. You allege that all the possible consumers of the article in a certain territory combine against the sole producer for the purpose of preventing its price being raised above the figure which they are willing to pay. It may be that this combination abuses its power, and, as you aver, either reduces the royalty to a grossly inadequate figure or violates the patentee's rights alto gether, relying upon its ability to tire him out in litigation. These evils, however, are not those which the antitrust law was enacted to remedy, and their redress must be found elsewhere. I do not think that a combination of present consumers of a given commodity effects a restraint or a monopoly of trade or commerce within the meaning of the act.

Moreover, I do not perceive that you can not obtain, by proceedings in your own name, whatever remedy, if any, could be afforded by the suit you ask to be brought. It has been the opinion of this Department that the right of a person injured to sue for violation of the act of 1890 is not to be regarded as denied because, by the express terms of the statute, the United States may initiate an equivalent proceeding. General considerations of public policy require that private parties with ample remedies for the redress of their alleged wrongs in their own hands are not to be encouraged to expect Governmental interposition in their behalf. For these reasons the prayer of your petition must be denied.

Respectfully,

EDWARD B. WHITNEY,
Acting Attorney-General.

DEPARTMENT OF JUSTICE,
Washington, D. C., December 11, 1893.

WILLIAM K. TUBMAN, Esq.,
Baltimore, Md.

SIR: Your communication of November 27, asking a reconsideration of your petition for the bringing of suit against the Eastern Railroad Association, under the antitrust law act of 1890, has received careful examination. I am unable to perceive, however, that the matter was not properly disposed of by the Acting Attorney-General in his letter of August 23 last.

The remarks of Congressmen quoted by you as to the depression of prices by middlemen in order that they may obtain an undue share of the profit between producer and consumer do not apply to combinations of the consumers themselves to obtain a reduction of prices. You do not refer to any authorities holding such combinations to be illegal in case of purely private sales; nor have I been able to find any.

Nor do I think that my refusal to direct suit in the name of the Government precludes you from relief. I am aware that the late Judge Billings decided last winter in a case in Louisiana that a private person could not sue for relief under section 4 of the act. His opinion, however, contains no reasons for the decision, and it does not appeal to my judgment, and I do not think that his decision alone should be controlling in a matter of so great magnitude. The Department of Justice has but a limited appropriation for maintenance of suits, and it has never been considered that the Attorney-General should commence suit except with the belief that he had a fair prospect of winning it. I do not think that Congress intended to conclude by the Attorney-General's opinion parties believing themselves to be injured.

In your communication you charge that officers of the Eastern Railroad Association are guilty of various acts which are crimes independent of the antitrust law. If you are possessed of evidence which will establish such crimes, it should be submitted to the district attorney for the proper district.

In acting upon your communications it has been assumed that you are the owner of a lawful patent which has been infringed by the railroad companies, although a Federal court has decided that you have no rights in the premises, a decision which might be held to dispose of your application.

Respectfully,

RICHARD OLNEY,
Attorney-General.

DEPARTMENT OF JUSTICE,
Washington, D. C., May 23, 1900.

F. E. STEBBINS, *Washington, D. C.*

SIR: In the matter of the application of William K. Tubman, requesting me to institute proceedings under the act of July 2, 1890, commonly know as the antitrust law, against the Eastern Railroad Association, having waited a reasonable time for Hon. J. M. Wilson to appear, I must infer from his failure to appear that he does not care to add anything to the argument you have submitted, and I therefore proceed to dispose of the matter.

The complaint is that a large number of railroad companies have formed this association for the purpose of advising its members with respect to the purchase or use of railway patent rights and of assisting them in the defense of claims for the infringement of such patents. It is urged that patent rights are the subject of interstate commerce and that the association constitutes a combination in restraint of trade or commerce among the several States.

The same application has been twice made to the Department and twice denied, first by Acting Attorney-General Whitney, in a carefully considered communication under date of August 23, 1893, and afterwards by Attorney-General Olney, in his letter of December 11, 1893.

In addition to the considerations mentioned by them, the following are in point:

A patent right is essentially a monopoly. The patentee is granted the exclusive right, for a term of years, to make, use, or vend the patented article. This right is absolutely within his control. He may omit to use it himself and refuse to permit anybody else to use it. He may permit one person to use it and without assigning any reason refuse to permit another to do so. He may sell the right in parcels, giving one person license to use the patent in one place and another license to use it elsewhere.

[a] The theory of the association regarding patent property is somewhat analogous to that held by the defendant in Campbell Printing Press and Manufacturing Company *v.* Manhattan Railway Company, 60 O. G., 894, decided March 9, 1892.

Such being the nature of a patent right, may not the association complained of be considered as a reasonable and fair arrangement for the mutual benefit and protection of railroads in transactions relating to patents? Before a railroad company can safely purchase a patent right or use an invention, it must be assured that the patent is valid and its use will not operate as an infringement. So, too, if a claim for infringement is made, the company has a right before paying it to make a full investigation, and may do this individually or through others. In what way does it unlawfully interfere with the rights of the patentee for the railroads to create a board of experts which shall be furnished with all the information they have respecting patents, and to which shall be referred for investigation and report all questions relating to patents? A man who offers a patent for sale does not enter the open field of competition. If his patent is valid there can be no competition.

The patent is a monopoly which no person can lawfully infringe, and which he can refuse to sell at all or sell for what he pleases. There is no competition to fix a reasonable price for patent rights. The patentee may demand a thousand or a million dollars. It is worth what he can get for it. If it is infringed, he has his remedy in the courts. If he makes a claim for damages because of infringement, he can not object to the person or corporation threatened seeking advice and information from any source before paying or resisting it.

Another thing to be considered is, that to provide the safest service and to secure the best results railroads must be built and equipped in a uniform manner throughout the United States. Passengers and employees are alike interested in this, and Congress has recognized the need by requiring automatic couplers and other safeguards on interstate railroads.

For these reasons a patented appliance for use on railroads may be of general concern, in which event one railroad can not safely adopt it without consulting the others. This of itself makes the creation of an association, with a board of experts, to which patents may be referred for investigation and report, of exceptional propriety and benefit.

The application must therefore be denied.

Respectfully,

JOHN W. GRIGGS, *Attorney-General.*

This letter was written by Solicitor-General Richards and signed by Griggs, who prepared the answer to the bill in equity in the case of United States *v.* The Northern Securities Company et al.

EXHIBIT I.

OPINION OF WILLIAM E. CHANDLER, MARCH 24, 1902.

A combination of all or a large number of railroads to contest patents on all articles required for railroad use, in which each railroad agrees not to settle with any patentee without the consent of a committee of the combination, nor while any claim is pending against any other member of the combination, and by which the combination agrees to defend all suits against each railroad and to pay the expenses of such defense and pay any judgments which may be recovered, is an illegal conspiracy in restraint of trade under the act of Congress of July 2, 1890 (26 Stats., 209).

The object is to enable the combination to control and fix the prices to be paid as royalties upon all inventions, and does not allow each railroad to make its own settlements with the patentees. It is a conspiracy to get lower prices for what the combination buys, as contradistinguished from a conspiracy to get higher prices for what a combination produces and sells; and both are obnoxious to the law against monopolies.

Patents are property created by express national law. A patented article has attached to it a special value growing out of the patent. Congress having decided that it is for the public good that inventive genius shall be stimulated by patent monopolies, all patents and all patented articles are proper subjects of trade and commerce, and as such are protected by all the laws which protect other merchandise. If it is desirable that they shall exist, it is desirable that there shall be unhindered trade therein, and such trade can not be lawfully lessened by combinations and conspiracies to diminish the value thereof through lawsuits, to fix the prices which shall be paid therefor, and to otherwise prevent free traffic therein.

The railroads can no more combine to fix low prices which they shall pay than an association of patentees can combine to fix high prices which they shall charge.

The fact that the patentees are for a limited period legal monopolists gives no right to the railroads to establish an illegal combination to limit the monopolies. Congress can abolish patents; the railroads can not.

All the above propositions seem clear and not doubtful. The facts in the case of the Eastern Railroad Association are all of record in their own books and reports, and are too plain to need recital. The association is formed expressly for the purpose above supposed, and for no other purpose. To be sure, it is stated that its object is only to resist illegal patents, but that recital does not change the avowed purpose to allow no patents to be settled for by any one member of the association except with the assent of a committee of all the railroads, and to defend any claims against any member and to pay the expenses and the judgment, if any is recovered. The Joint Traffic Association contended that its object was not to fix and maintain unreasonable rates, but only rates which should be reasonable. The subterfuge did not avail with the Supreme Court, and the subterfuge that the open combination of all the railroads to control the settlement for all patents is only intended to apply to illegal patents will be equally worthless.

It is difficult to believe that an illegal combination so plain and evident should have existed during all these thirty years last passed. It can not be doubted that the President and the Attorney-General, when they know the facts, will act with as much promptness and vigor as they have in the case of the Northern Securities Company, where the facts and the law are not so clear and plain as in the present case, because in the first the purpose is not stated in words, while in the latter it is openly and expressly avowed.

The foregoing opinion is given in full view of the letter of Acting Attorney-General E. B. Whitney, of August 23, 1893, and the letter of Attorney-General Olney of December 11, 1893. Those gentlemen were members of Mr. Cleveland's Administration, and, like Attorney-General Judson Harmon, were doubtless influenced in their opinion by their close relations to their President, of whom Mr. William J. Bryan, on March 21, 1902, spoke as follows:

"For four years he stood between the people and reform; for four years he made the White House the rendezvous of cunning and crafty representatives of predatory wealth; for four years the corporations and syndicates controlled his Administration."

Insensibly to themselves, perhaps, Mr. Whitney and Mr. Olney were controlled by surroundings like these, and Messrs. McKenna and Griggs mistakenly refused to reverse the decisions of their predecessors, doubtless overcome by the lingering malaria of the late Administration. But there is no such atmosphere now in the White House or in the Department of Justice. President Roosevelt and Attorney-General Knox are the friends of the people and reform, and not representatives of predatory wealth, and it is impossible that they should not suppress a combination so evidently illegal as that of the Eastern Railroad Association.

WM. E. CHANDLER.

EXHIBIT J.

OPINION OF UNITED STATES SENATOR TURNER.

UNITED STATES SENATE CHAMBER,
Washington, D. C., May 17, 1902.

H. B. MARTIN, Esq.,
Secretary Anti-Trust League, Washington, D. C.

DEAR SIR: From the papers submitted to me it appears that the Eastern Railroad Association is a trust formed by several hundred railway companies operating east of the Mississippi River, whereby each company contributes to a fund controlled by trustees, engages to be bound by the action of the trustees, and to do nothing whatever in the matters committed to the said trustees; and under and by virtue of the trust agreement the fund thus created is to be used by the trustees—

First. To investigate concerning the validity and utility of all patents granted for improvements and devices to be used in connection with the operation of the railways.

Second. To defend all suits brought by patentees against railways, members of the trust, for using any such improvements and devices.

Third. To compromise such suits when, in the opinion of the trustees, the patent is valid, provided the sum paid by the way of compromise be not more than it would cost to litigate the suits.

Fourth. When patent rights are found to be both valid and useful, to negotiate and purchase the same for the benefit of the members of the trust, and upon such terms as the trustees may determine.

The companies agree that they will not negotiate or deal with patentees either in the matter of purchase or by way of compromise for illegal use, but that all such negotiations and dealings shall be by the trustees. The effect of the agreement is far-reaching, as a moment's reflection will readily show, upon the value of the property of patentees and upon their ability to vend the same throughout the several States covered by the agreement. The patentees, as to all such States, are reduced to the necessity of dealing with a single purchaser. This purchaser is armed with a large fund to fight in the courts all patents which it can not purchase on its own terms. It is an impudent bully which takes any property that it pleases upon such terms as it pleases, and is armed with a club to beat its victims to death if they decline to submit.

Since the trust is interstate in its scope and operations, has for its object the restraint of trade in patent rights, is created by contract, has taken and maintained the trust form, and is, moreover, a criminal conspiracy at common law, thus presenting all the features denounced by section 1 of the act of July 2, 1890, it necessarily follows that it is illegal if, first, a patent right is property which may be said to enter into and form a part of trade and commerce; and, second, if a combination to lower the value of property entering into interstate commerce is as much "in restraint of trade," within the meaning of the act of 1890, as a combination to raise the value of such property would be.

It does not require either profound consideration or an extended examination of authorities to see that the question of correctness of both the foregoing subjunctive propositions must be answered in the affirmative.

First. A patent right is property. It is created by statute, and the freedom of vending it in all the States is declared by statute. The fact that it is incorporeal in character and intangible does not change its character as property. Justice Davis, of the Supreme Court of the United States, in ex parte Robinson, 2 Biss., 309, uses the following language concerning the character of patents and the free right to vend them within the United States:

"The property in inventions exists by virtue of the laws of Congress, and no State has a right to interfere with its enjoyment or to annex conditions to the grant. If the patentee complies with the laws of Congress on the subject he has the right to go into the open market anywhere within the United States and sell his property."

Inventions secured by patents have been specifically declared to be property by the Supreme Court of the United States in the following cases: Brown *v.* Duchesne, 19 Howard, 197; Cammeyer *v.* Newton, 94 U. S., 225; Densmore *v.* Schofield, 102 U. S., 375; Soloman *v.* United States, 137 U. S., 346.

Being property and the right to freely vend them in the several States being secured by statute, why are not patented inventions as much within the spirit and purpose of the act of 1890 as any other species of property? It is impossible to conceive of any reason why they are not. There is no such reason. Indeed, as to many tangible articles of property covered by patents, the patented idea involved in and connected with them constitutes a great part of their value, and in some instances the greater part. The protection which the law carries for such articles against combinations in restraint of trade therein is a protection for both the value of the articles considered simply as manufactured articles and the value of the patent right which inheres in and belongs to them. We see, then, that the law does include within its purview the patent right when connected with tangible, physical, property, and it is impossible to conceive why it should not be taken to include the patent right when disconnected with the tangible, physical property.

Second. Is it not a combination to lower the value of property entering into interstate commerce "in restraint of trade" within the meaning of the act of 1890? The evil most in the public mind at the time of the passage of that act was the existence of trust combinations formed to increase the price of manufactured articles, but that combinations might be formed for the opposite purpose could not have escaped the intelligence of Congress, and that combinations and conspiracies had existed in the past for that purpose, and constituted indictable crimes at common law, was well known to the members of both Houses. The terms of the act are general. They are "every contract, etc., in restraint of trade or commerce among the several States," etc. Since it is as much in restraint of trade to depress the value of articles of property as it is to enhance them, and indeed more so, and since the history of the law showed that conspiracies for the first purpose were as likely to occur as conspiracies for the second, and that they were equally as injurious as the second kind, it is impossible, in view of the broad and comprehensive language employed, to conclude that Congress did not have both kinds of contracts and conspiracies in view.

It is true that only contracts and conspiracies of the second kind have been before the courts since the passage of the act of 1890, but that is no argument against the view here taken. The law has been in force a comparatively short time and it requires much time for cases involving every phase of any law to arise and be adjudicated. It may be observed, however, of these cases which have been adjudicated that the reasoning on which the judgments proceeded was as applicable to the one case as to the other, and that in none of the opinions is there the most remote suggestion that the law was not intended to cover both classes of cases. Can anyone doubt that if all the grain dealers in the United States should enter into a combination to commit the purchase of all corn bought in the United States to the hands of one firm or corporation, thereby compelling the farmers whose necessities compel them to sell to sell at any price this firm or corporation might fix, that such combination would be declared to be in restraint of trade and commerce within the meaning of the act of 1890? If such a combination would be in restraint of trade and commerce, then this combination is in restraint of

trade and commerce. The only difference in the two cases is one of degree in the number of individuals affected and the public injury inflicted.

These considerations do not appear to have occurred to Acting Attorney-General Whitney, Attorney-General Olney, or Attorney-General Griggs when they declined to intervene against this trust combination at the request of Mr. Tubman. Mr. Whitney contents himself with declaring that he did not think a "combination of present consumers of a given commodity effects a restraint or a monopoly of trade or commerce within the meaning of the act." Why such a combination does not have such an effect he does not undertake to show, unless his general statement that a patentee is the owner of a monopoly and that the railroads are the sole consumers and the patentee the sole producer can be taken as a reason in favor of his contention. The considerations stated by him appear to be entirely foreign to his conclusion. The latter is a complete *non sequitur*.

Attorney-General Olney does not discuss the questions involved at all, and it is evident that he gave them only perfunctory consideration, if he gave them any consideration. Attorney-General Griggs evidently did not see the features of this combination which enabled it to kill competition and to control at will the prices to be paid inventors for their patented inventions. He speaks of it as if its sole purpose was to keep in touch with new inventions affecting railway business and to examine and report concerning their validity, utility, and value. He does make one statement which bears on the subjects I have been discussing, but it is nothing but a bare statement, and, moreover, it is palpably incorrect. He says "if his patent is valid there can be no competition." There can be competition between railways for the purchase of valuable railway patents. Suppose there was only one line of railroad from the Atlantic to the Pacific coast having the right to use the Westinghouse air brake, would not that line of railway have a great advantage over its competitors in the matter of passenger traffic, and if such a patent right were put up for sale for the exclusive use of two or more competing lines of railways, would there not be keen competition for its purchase? If the free right to vend patented inventions were not broken down and destroyed by this combination, there would be such inventions for which rival lines of railways would compete.

I have not thought it necessary to quote from the contract by which the Eastern Railroad Association was formed. That contract, and the constitution and by-laws of the association made to carry it out, shows its objects and purposes to be what I have stated. If I have committed an error, it is in understatements rather than overstatements. Neither have I deemed it necessary to quote from, or refer to, the several cases construing and applying the act of 1890. They are too well known to the profession to require more than the mention I have made of them.

In conclusion, I think that the question of the character of this association may well be again submitted to the Attorney-General for examination, and for the action of the Department after such examination, with the confident hope and expectation that that examination will induce a different opinion, and cause different action to be taken from that reached and taken when the matter was before under consideration in the Department of Justice.

Very respectfully,

GEO. TURNER.

EXHIBIT K.

Circuit court of the United States, district of Massachusetts. In equity. No. 2471. William K. Tubman *v.* Wason Manufacturing Company. Affidavit of John J. Harrower. Filed February 10, 1894.

I, John J. Harrower, of Washington, in the District of Columbia, make oath and say that I am secretary of the Eastern Railroad Association, whose office is at 614 F street NW., in said Washington; that Robert J. Fisher, counsel of said association, has directed me to appear on his behalf for the purpose of having forwarded to him for use in a cause in equity now pending in the circuit court of the United States for the eastern district of Pennsylvania, brought by the same complainant, Tubman, against the Pennsylvania Railroad Company (the said Eastern Railroad Association having carried on the defense in both of said causes on behalf of the defendants therein), certain exhibits, being models introduced as evidence by said defendant per said association, entitled in the printed record of this cause as follows: Defendant's Exhibit, "Defendants' car;" defendants' Exhibit," "Roberts's car;" which said models are now in the custody of the clerk of this court.

JNO. J. HARROWER.

Sworn to before me this 10th day of February, A. D. 1894.

ALEX. H. TROWBRIDGE,
Clerk United States Circuit Court, Massachusetts District.

I respectfully request that the said exhibits be forwarded by the clerk of this court to Robert J. Fisher, esq., counsel for the said Eastern Railroad Association, on the condition that they be carefully preserved in their present condition so that they can be returned to the custody of the clerk of this court whenever an order of court may be made requiring such return.

Very respectfully,

JNO. J. HARROWER.

ORDER.

[February 10, 1894.]

Colt, J. Ordered that said exhibits be delivered as prayed for, subject to the further condition that they be kept or used in the said court of Pennsylvania, subject to the order for return to this court.

By the court:

ALEX. H. TROWBRIDGE, *Clerk.*

FEBRUARY 10, 1894.

Models forwarded to Robert J. Fisher, esq., per Adams Express.

Hearing no further from the President or the Department of Justice, the following correspondence occurred, which closes the chapter of this consistent refusal upon the part of the Administration to act upon the plain facts presented:

THE AMERICAN ANTI-TRUST LEAGUE, NATIONAL OFFICE,
1229 PENNSYLVANIA AVENUE, SECOND FLOOR,
Washington, D. C., April 3, 1902.

Hon. GEORGE B. CORTELYOU,
Secretary to the President.

SIR: You will doubtless remember that on March 26 we placed in your hands an opinion by the Hon. William E. Chandler relative to the violation of the Federal antitrust law by the Eastern Railroad Association, and requested that the same be delivered to the President.

On December 21, 1901, we submitted to the President in person and filed certain printed documents and papers, among them being a copy of the associations' unlawful agreement and a "statement" relating to the legal aspects of the same, and the President promised that he would give the matter careful consideration and call the attention of the honorable Attorney-General to it. Since the above date we have not received any communication from either the President or the Attorney-General relating thereunto.

We would be pleased to have the opportunity of discussing this matter with the President in person if you can make arrangements for us to do so.

Respectfully, yours,

H. B. MARTIN, *Chairman,*
F. E. STEBBINS, *of Counsel,*
Joint Committee Anti-Trust League and D. A. 66, Knights of Labor.

EXHIBIT L.

WASHINGTON, D. C., *May 27, 1902.*

Hon. THEODORE ROOSEVELT,
President of the United States.

SIR: On December 21, 1901, the undersigned placed in your hands certain evidence in the form of papers and documents showing that the Eastern Railroad Association, a voluntary combination of nearly all railroad corporations in the fifteen Atlantic coast States, exists and pursues its iniquity in violation of the Federal antitrust law. You received the papers and stated that you would give the matter careful consideration and call the attention of the Attorney-General to it.

On January 23, 1902, we addressed a communication to the honorable Attorney-General, asking what action, if any, had been taken in the matter. Thus far the Attorney-General has failed to make any reply whatsoever.

On March 26, 1902, we placed in the hands of your secretary, Mr. G. B. Cortelyou, to deliver to you in person, a legal opinion by the Hon. William E. Chandler to the effect that the Eastern Railroad Association was an "illegal conspiracy," Mr. Chandler having carefully examined a substantial duplicate of the evidence filed with you on December 21, 1901.

On April 3, 1902, we addressed a letter to Mr. Cortelyou relative to the disposition made of Mr. Chandler's opinion and expressed the desire for a personal interview with the President, and in reply received the following letter from your secretary:

WHITE HOUSE,
Washington, April 5, 1902.

MY DEAR SIR: I have your letter of the 3d instant, and in reply would say that your previous communication was by the President's direction brought to the attention of the Attorney-General on March 27. I would suggest that you communicate with Mr. Knox on the subject.

Very truly, yours,

GEO. B. CORTELYOU,
Secretary to the President.

Mr. H. B. MARTIN,
American Anti-Trust League,
1229 Pennsylvania avenue, Washington, D. C.

On May 21, 1902, we called at the Department of Justice and was told by the secretary to the Attorney-General that he was at the White House and that we could call up the Attorney-General's office by telephone at 2 o'clock p. m., and arrange for an interview. Upon leaving we gave the secretary a copy of a legal opinion, prepared with great care by the Hon. GEORGE TURNER, showing that the Eastern Railroad Association was an illegal trust, and requested the secretary to hand the same to the honorable Attorney-General. At 2 o'clock Mr. Martin communicated with the secretary by telephone as agreed and was informed that "the Attorney-General will not be able to take up the case." Mr. Martin replied: "Will not take up the case at all?" and the secretary responded: "He says he will not be able to take it up at all."

Mr. Martin: "We called to see him at the suggestion of the President." The secretary: "He says he will not be able to take it up at all." On the morning of May 22, Mr. Martin received through the mail, and in a Department of Justice envelope, the copy of the opinion by Hon. GEORGE TURNER, delivered to the secretary on the previous day, and which was the sole paper inclosed in the envelope. The postmark indicated that the opinion had been returned very soon after its delivery to the Attorney-General's secretary.

Believing in the law, "the very least as feeling her care, and the greatest as not exempted from her power," and that it should not be suspended and the courts closed, we again request consideration of our petition and that the Attorney-General be directed to institute suit in equity against the Eastern Railroad Association.

Among the papers filed with you on December 21, 1901, is a true copy of the constitution and by-laws of the association, which alone is ample ground for a suit. The decisions in United States *v.* The Trans-Missouri Freight Association and United States *v.* The Joint Traffic Association were rendered solely upon the agreements themselves. We will at any time furnish the Attorney-General with the original copy of the Eastern Railroad Association's agreement and proofs of its authenticity, and submit additional evidence of the association's unlawful and criminal acts and doings. The opinions of Hon. William E. Chandler and Hon. GEORGE TURNER should not be disregarded, as they embody the views of most eminent publicists, gentlemen learned in the law, both of them "too wise to be deceived, and too good to do wrong. The Hon. GEORGE F. HOAR has also verbally expressed the opinion that the Eastern Railroad Association violates the antitrust act and it is believed he will reiterate his belief if solicited so to do. The late Hon. Jeremiah Wilson, some two years ago reviewed all the evidences submitted by us on December 21, 1901, and repeatedly in person visited the Department of Justice for the purpose of soliciting the Attorney-General to bring suit.

We submit this communication with the confident belief that if you once fully understand the nature and character of the Eastern Railroad Association you will direct proper action to be taken by the Department of Justice.

In an article written by yourself and published in the Cosmopolitan, November, 1895, "Taking the New York police out of politics," are statements which apply to the enforcement of the antitrust law:

"Our enforcement of the Sunday excise law caused most disturbance. Up to the time we took office no official had ever made a serious and consistent effort to enforce the law. Almost all men of much experience insisted that the law could not be enforced. After carefully considering the matter, however, we came to the conclusion that it could be enforced, and that in any event we had no alternative save to try and enforce it if we wished to retain our self-respect or obey our oaths of office.

"We stood on the principle that the law should be honestly and fairly enforced while it remained on the statute books.

"It is a lamentable thing when the people and the public officials grow to think that laws should only be enforced as far as the officers of the law think that public opinion demands their enforcement. It is such a belief that inevitably leads to lynching, white capping, and all kindred forms of outrage."

In view of all the foregoing facts in this case we are compelled to appeal to you, Mr. President, to take the steps necessary in this emergency to compel your immediate subordinate, the Attorney-General, to proceed at once to enforce the Federal antitrust law against the Eastern Railroad Association. This case has been for months before the Attorney-General, and we believe that further delay can only be subversive of justice.

Respectfully submitted.

H. B. MARTIN, *Chairman,*
F. E. STEBBINS, *of Counsel,*
Joint Committee American Anti-Trust League and District Assembly 66, Knights of Labor.

Mr. SPOONER. As there are several Senators who desire to speak upon this resolution—among others, I think, the Senator from Iowa [Mr. ALLISON]—before it is disposed of I ask unanimous consent that it may go over without losing its privilege.

The PRESIDENT pro tempore. The Senator from Wisconsin asks that the resolution may retain its place on the table. Is there objection? The Chair hears none, and it is so ordered.

Mr. HOAR. The request is for one day?

Mr. SPOONER. For one day.

Mr. VEST subsequently said: I understand that the Senator from South Carolina has finished his remarks upon the resolution which I had the honor to submit some time ago on the coal question. If that be so, and if no other Senator wishes to speak on the resolution, I simply rise to move its indefinite postponement.

The PRESIDENT pro tempore. There are several Senators who have indicated a desire to speak, and by unanimous consent the resolution still lies on the table.

Mr. VEST. I wanted to indefinitely postpone it.

The PRESIDENT pro tempore. The Senator from Wisconsin [Mr. SPOONER] asked unanimous consent that it might lie on the table, and his request was granted.

Mr. VEST. I beg pardon; some one was talking to me at the time and I did not hear the request. Very good; let it lie on the table.

S. R. GREEN.

Mr. SIMON. I ask unanimous consent for the present consideration of the bill (S. 5561) for the relief of S. R. Green. It is a very small bill and it will take but a moment to dispose of it.

The Secretary read the bill; and by unanimous consent the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes to pay to S. R. Green, of Clackamas County, Oreg., $85, the same being the amount deposited by him, in the names of James Tracy and S. R. Green, in the First National Bank of Portland, Oreg., on September 1, 1897, to the credit of the United States Treasurer for office fees in connection with the survey of the Della, Lone Grave, Idle Fancy, and Cyclone quartz-mining claims in Lane County, Oreg., which survey was duly abandoned, and although a demand made for the return of the $85 so deposited, the sum was covered into the Treasury of the United States

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

STATEHOOD BILL.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 12543) to enable the people of Oklahoma, Arizona, and New Mexico to form constitutions and State governments and be admitted into the Union on an equal footing with the original States.

Mr. FORAKER. Mr. President, this bill as it has come to us from the House provides for the admission to statehood of the Territories of Oklahoma, New Mexico, and Arizona. That part of the bill which admits Oklahoma to statehood contains this provision:

Provided, That the constitutional convention provided for herein shall, by ordinance irrevocable, express the consent of the State of Oklahoma that Congress may at any time, or from time to time, attach all or any part of the Indian Territory to the State of Oklahoma after the title to said lands in said Indian Territory is extinguished in the tribes now claiming the same, and the same assigned in severalty and subject to taxation.

A majority of the Senate Committee on Territories have reported adversely upon this bill, and they have recommended in their report that we adopt a substitute which they at one time introduced and subsequently withdrew. I do not know whether it has been again introduced or not.

Mr. BEVERIDGE. No; we withdrew it with notice that we would reintroduce it.

Mr. FORAKER. I understand it has not yet been reintroduced, but that notice has been given that it will be reintroduced at some time in the future. So we may consider it as really before us. They have recommended, I say, that we adopt a substitute, which they have thus brought before us for consideration, consolidating the Indian Territory with the Territory of Oklahoma and providing for the admission of the two Territories as one State, to be known as the State of Oklahoma.

Now, inasmuch as I propose to say very little about Oklahoma, I shall speak of that first. Standing alone, considered on its merits, without regard to the other Territories mentioned, I think all will concede that Oklahoma is entitled to statehood. She has a sufficient area; she has sufficient property to enable her, without burdensome taxation, to support a State government, and she has a sufficient population, both in numbers and intelligence and with respect to every other quality that should be considered in this connection.

There are those, however, who are opposed to the admission of Oklahoma, notwithstanding she possesses these qualities, if, to admit her, they must, at the same time—as passing the House bill would do—admit the other Territories of New Mexico and Arizona, to the admission of which they are opposed for reasons that I shall consider presently.

There are others, and I am one of them, opposed to the admission of the Territory of Oklahoma to statehood if it must be now consolidated with the Indian Territory, as proposed by this substitute measure. I do not object to its ultimate consolidation, as the bill which has come to us from the House proposes and provides. I think it is manifest to all that they are so situated, being contiguous to each other, and one being so much the complement of the other, that they ought to be united. It would not make a State of too great area, and of course it would not make a State of too much wealth or too much population or too much intelligence.

But, Mr. President, the difficulty about consolidating these Territories at this time, as proposed by the substitute measure, is that it is impracticable to do it, as I understand the facts, without doing injustice to the people of Oklahoma Territory.

In order that I may present what is in my mind, in that connection I call attention to the fact, which has already been commented upon by those who have addressed the Senate upon this bill, that all the lands in the Indian Territory originally belonged to the Indian tribes; that they have had no Territorial government in the Indian Territory such as the other Territories have had; that they have had, so far, no school system established. I believe the Senator from Minnesota [Mr. NELSON] told us yesterday that there are but sixteen schools in the Indian Territory, and they are private schools, as contradistinguished from public schools. He told us in that same connection that in consequence of this condition there is great illiteracy in the Indian Territory, and he appealed to us in the closing sentences of his speech to admit the Indian Territory to statehood because there was that illiteracy, and because they had up to this time no government whatever except only that provided by the Indian tribes, forgetting, apparently, that in the opening sentences of his speech he had appealed to us to reject the petition of Arizona for statehood on the ground of illiteracy and similar unsatisfactory conditions.

Attention should be called also to the absence of other conditions. They have, as I am told, no roads whatever, at least none worthy of serious mention, in the Indian Territory, not even the most common, ordinary highways. If you want to go about through the Territory, you must follow Indian trails or bridle paths, and there are no bridges over the rivers or streams. That is what I am told. The Senator from Wisconsin [Mr. QUARLES] smiles incredulously. If I am in error, I will be obliged if he will correct me.

Mr. QUARLES. Mr. President, inasmuch as the Senator has appealed to me and inasmuch as I have some personal knowledge of the situation there, and I know the Senator wishes to keep exactly within the line of fact, I will state the fact is that they have many good highways, but they have absolutely no system. They have no legal method of acquiring any new highways. They have good highways and good bridges, and the character of the Territory is such that roads are very easily made and require very little expense in making them.

Mr. FORAKER. Mr. President, I am very much obliged to the Senator from Wisconsin for imparting that information. Perhaps I should have made the statement that there was no system of highways.

Mr. QUARLES. That is quite right.

Mr. FORAKER. Where four or five hundred thousand people are living there is no doubt some way to get from one settlement to another, or of getting about over the country, but I have been told by people who live there and people who have a right to speak from knowledge of the conditions there—I have been told this within the last twenty-four hours—that they have no road system whatever, and if you go about over the Territory you go in some such way as I have indicated.

Mr. BEVERIDGE. Mr. President——

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

Mr. FORAKER. Certainly.

Mr. BEVERIDGE. One circumstance alone, I will say to the Senator, will show the inaccuracy of the statement that there are no roads, although of course there is no system of roads.

Mr. FORAKER. I said there was no system of roads.

Mr. BEVERIDGE. I know. I refer to the very large volume of domestic commerce which exists there. It is very large; indeed, as large as that of Oklahoma.

Mr. FORAKER. Mr. President, while the statement as I originally made it was strictly in accord with the information which had been given me, yet the modification which the information now imparted requires does not change the purpose I had in view in referring to it.

What I wanted to call the attention of the Senate to is that if

the Indian Territory be now admitted to statehood, it will be necessary for the State government to provide funds for the construction of highways, if not to the full extent I indicated, yet to a very considerable and a very expensive extent. My informant told me it would cost more than $16,000,000, as had been estimated, to make the necessary highways the Territory ought to have to enable it to be anything like equal in that respect to Oklahoma as it is now. In addition to that, Mr. President, it will be necessary to establish a school system and provide support for it. Now, where is the support for the school system, and where is the money for the construction of the highways to come from? In addition to that, it will be necessary to establish all kinds of ordinary public institutions, benevolent institutions, penal institutions, and asylums. Where will the money come from?

Every Senator here knows, or should know, that the lands of the Indian Territory are not taxable except in a very small part. Originally they all belonged to the Indian tribes and were nontaxable. Under the legislation of recent years there has been an attempt to dissolve the tribal relations and get rid of the tribal title. In that behalf we have provided for allotments in severalty to the members of the various Indian tribes, but the statutes providing for the allotment of these lands provide that they shall not be taxable after an allotment in the hands of the allottees for a period of twenty-one years, in at least most cases, and that if the allottee see fit to sell, having first the approval of the Secretary of the Interior, he may do so after five years, and his lands so sold shall be taxable only in the hands of the allottee.

Now, in addition to that, town sites are taxable, but the town sites that are taxable and the lands that have passed into hands, as I have indicated, where they are taxable are comparatively but a very insignificant portion of the territory embraced within the boundaries of the Indian Territory; that is to say, only an inconsiderable portion of these lands are taxable. Personal property there is taxable, I suppose, but practically the lands are not taxable.

In other words, then, there is no public domain whatever in the Indian Territory. There never has been. There are no lands there that can be thrown open to preemption by homestead settlement. There are no lands there that can be set apart for the endowment of a school system, as in other Territories has been done. There are no lands there that can be set apart for the endowment of penal and benevolent institutions, as was done in the Territory of Oklahoma and other Territories, and there are no lands there that can be set apart for the endowment and maintenance of institutions of higher education, such as State universities, as was done in the case of Oklahoma, and as has been done in other cases.

I call attention to that particularly because the Senator from Minnesota, in his closing sentences on yesterday, told us it would be no hardship upon the people of Oklahoma to unite the Indian Territory with Oklahoma at this time because, in the first place, the bill made provision for the endowment of the common school system in the Indian Territory, just as has heretofore been done in Oklahoma and in other Territories.

I call the attention of the Senate to what the provision is that is thus referred to. I find it at section 7 of the substitute, page 53 of the print, which I have before me. It reads as follows:

SEC. 7. That upon the admission of the State into the Union sections numbered 16 and 36 in every township in Oklahoma Territory, and other lands, equivalent to sections 16 and 36, in every township in Indian Territory, shall be granted from the public domain in Oklahoma Territory, in lieu of sections 16 and 36 in every township of Indian Territory, except sections 16 and 36 in either Territory, or parts thereof, that have been reserved, sold, or otherwise disposed of by or under the authority of any act of Congress: *Provided*, That said indemnity lands, in lieu of sections 16 and 36 of the townships in the Indian Territory, shall be selected in such manner as the legislature may provide, with the approval of the Secretary of the Interior, and shall be granted for the support of the common schools of said proposed State of Oklahoma; etc.

In other words, Mr. President, the provision which has been brought before the Senate in this substitute, and which was commented upon by those who have spoken in support of the substitute, is one that, as I have said, is absolutely impracticable. It is a provision that means, if it means anything, that inasmuch as there is no public domain in the Indian Territory out of which land can be set aside for the purposes of education, we shall set aside, out of the public domain in Oklahoma Territory, an equivalent to two sections for every township in the Indian Territory. How many acres would that require? That would be 1.280 acres for every section, or every square mile, in the Indian Territory. There would have to be that much set aside to put the Indian Territory on an equality with the Territory of Oklahoma. That is what the substitute bill proposes to do. But, inasmuch as the Indian Territory has no public domain, it is proposed to go to the public domain of Oklahoma to get it; and we are asked to accept that kind of a proposition as doing justice as between the Indian Territory and Oklahoma Territory in the matter of endowing a common school system.

The area of the Indian Territory is about 31,000 square miles, I believe. So there would have to be something more than 3,000,000 acres set aside under that provision out of the public domain of Oklahoma. But that is not to be set aside out of the public domain of Oklahoma, according to the provisions of this bill, until there shall have been first set aside out of that same public domain 1,450,000 acres specifically provided for, and provided for not only in the bill which came to us from the House of Representatives, but provided for also in the substitute reported by the majority of the committee. These 1,450,000 acres are to be set aside for the following purposes:

For the benefit of the Oklahoma University, 200,000 acres; for the benefit of the Agricultura land Mechanical College, 250,000 acres; for the benefit of the Colored Agricultural and Normal University, 100,000 acres; for the benefit of normal schools, 250,000 acres, and 650,000 acres to be disposed of as the legislature may provide, said lands to be selected in such manner as the legislature may provide, with the approval of the Secretary of the Interior.

Mr. President, recognizing that to set aside such large bodies of land—1,450,000 acres—to meet these specific purposes, and something more than 3,000,000 acres to meet the general purposes I have spoken of, and not to allow them to be entered upon by settlers or taken possession of or developed—recognizing that that would be a serious drawback in the development of that Territory, the committee have provided in their substitute that all these lands shall be offered for sale to the highest bidder at not less than $10 an acre. In that way they propose creating a fund out of which to provide education for those poor people of the Indian Territory, of whom we heard so much spoken yesterday in commiseration, and to provide for these institutions of higher learning and for the penal institutions and the benevolent institutions necessary to statehood. Naturally, one would be rather pleased with the fairness of that proposition as it reads on its face; and I thought, inasmuch as the Indian Territory had no public domain, it was a right and proper thing for the United States Government to take all these lands from its domain elsewhere, and from nowhere else so appropriately as from Oklahoma, and thus make good the deficiency that existed. But I wanted to see how it would work out, and therefore I went to the office of the Commissioner of Public Lands and got his last official report—that made last year. I wanted to see how much of the public domain the United States Government yet has in the Territory of Oklahoma. At page 198 of this report I find a table, the title of which is as follows:

Statement, by States, Territories, and land districts, and also counties where practicable, showing the area of land unappropriated, etc.

I look at the table there found as to Oklahoma, and I find that there are yet, or were last June, when this report was made—it does not show anything later than that—there were then yet in Oklahoma of unappropriatad lands only 3,789,976 acres. It is therefore out of that 3,789,976 acres that all this appropriation must come, and all the lands so set aside are to be sold at $10 an acre. I thought that that was a pretty good price for wild land, and I thought I would like to know what kind of land it was, and so I made inquiry as to that. I have not had an opportunity to get any official report upon it, but I learn from the report of the Commissioner of Public Lands that 3,000,000 acres of this land is in Beaver County.

I looked on the map and I found that Beaver County was what was known a few years ago as "No Man's Land." It runs across the upper end of Texas, intervening between Texas and Kansas and Colorado; the Cherokee Strip, I believe it was originally called. That is Beaver County. Three million acres of that remnant of the public domain of Oklahoma are in Beaver County. Then I pursued the inquiry so as to learn what kind of land it is which is to sell at $10 an acre to the highest bidder, with which to endow a common school system, and I learned that there was not an acre there, in all probability, that would bring as much as $1, and a great deal of it would not bring anything. A great many homesteaders at first went in and made homestead entries there, but they have practically all been abandoned because it is a dry, arid, rocky, and objectionable kind of soil. It is also topographically objectionable, and the soil is filled with gypsum and other ingredients that make the water so objectionable that the land is not suitable for either men or beasts, and it has been practically abandoned.

Well, that narrows the thing down a good deal. There is not an acre in Beaver County of the whole 3,000,000, more or less, that could be sold, according to the information I have, for one dollar—not one—and there are vast areas of it that could not be sold for anything.

That is the kind of a bill, Mr. President, the majority of this committee have brought here and have asked the Senate of the United States to accept, upon their recommendation, as a provision for the endowment of a common-school system, needed more there, according to the representation of the Senator from Minnesota [Mr. NELSON], made in this Chamber yesterday, than in any other place in the United States—a mere barren provision that will bring nothing.

Now, look a little further. Deducting that 3,000,000 acres, we have 789,976 acres left, or less than enough to make the specific appropriation provided for the State university, for the benevolent and penal institutions, and for other specified purposes. So there would not be one acre left for a school system for the Indian Territory of that which is even passably good land; but there is a great deal of the remaining 789,976 acres that is not good.

In Woodward County, which lies next to Texas and immediately south of the Cherokee Strip, they have practically the same kind of soil, and if you will look at the reports on file you will see there are no settlers there. The Government has had even to withdraw the land office from Beaver County.

Three hundred and forty-nine thousand acres of this residue are situate in Woodward County, which were to be devoted to school purposes in the Indian Territory, to be put up and sold at auction, according to the Senator who addressed us yesterday, at $10 an acre, to create a fund for the support of the common-school system, and all of the same general quality.

I might run through this table and point out other lands of the same nature belonging to this residue, but if you will go south on the map you will see that the county next below Woodward is Roger Mills County, and the one next below is Greer County, and nearly all this remnant of land is in the counties of Greer, Roger Mills, Woodward, and Beaver, and all of that land that remains unappropriated is comparatively valueless land. I doubt if you can find an acre in the whole of it that is worth $10; very little that has any present value whatever.

Mr. BEVERIDGE. Are those western counties?

Mr. FORAKER. They are western counties, running down the line.

Mr. BEVERIDGE. And the land gets progressively bad as you move west?

Mr. FORAKER. Yes, until you come to New Mexico. [Laughter.] I shall speak of that presently.

I am talking now, Mr. President, about the substitute bill which the majority of the committee have brought in here as a result of their visit to these Territories and of an "investigation on the ground." They recognize—and the Senator from Minnesota dwelt upon it yesterday at great length—that in the Indian Territory there is an abnormal degree of illiteracy, and that there is an unusual necessity for statehood, in order that a common school system may be established, and that those people may be prepared for citizenship in the United States; and this is the way that it is proposed to do it.

Mr. President, I commenced by saying that I would not say much about Oklahoma, and I will not. I have said all this to support the statement I made, namely, that it is impracticable at this time to consolidate the Indian Territory with Oklahoma and admit the two as one State without doing a violent injustice to the people of Oklahoma. No man will question but that in the Indian Territory there must be highways, and persons have suggested, in giving me information, that that will be a very burdensome expense to the State government. We all agree that there must be a system of education of some kind established; and no system is as good as the common school system, and that, we know, will be burdensome.

If you unite the Indian Territory with Oklahoma Territory at this time, you do it when, practically, there are no lands subject to taxation in the Indian Territory; you do it when unusual burdens must be borne by somebody; and if these unusual burdens are to be borne, by whom can they be borne except only by the people of the Territory of Oklahoma?

Yesterday the Senator from Minnesota, in closing, said also—and seemed rather to congratulate himself on that fact—that, although he had spoken many days in addressing the Senate, and had gone at great length and with great elaboration into this whole subject, he had not found it necessary to speak one harsh or unkind word of anybody. That was his parting consolatory remark.

Mr. President, I have some hesitation about saying what I had in my mind to say in answer to that suggestion by the Senator. I will not say what I had it in mind to say, but I will say that the Senator in making that remark was not justified by the record which he himself had made.

Now, I shall pass that with this simple remark and come to what I want more particularly to say, that in this bill providing for the admission of Oklahoma to statehood is found a provision that I read in my opening sentences, a provision that is fashioned after the provision that was embodied in the law making Oklahoma a Territory. Oklahoma and the Indian Territory were at one time one Territory, and Oklahoma was carved out of the Indian Territory. The provision of that law was that Oklahoma should be added to from the Indian Territory as from time to time the Congress of the United States might see fit to add. The provision in this House bill is that Oklahoma shall now irrevocably give her consent that she may be added to from time to time from the Indian Territory as her lands are freed from present conditions and are made taxable. We have full power as to the Territory, and the purpose of that provision is that we may avoid the necessity of tying on to Oklahoma a Territory for which Oklahoma will have to bear the burden of government without having any help, practically and comparatively speaking, from the Indian Territory.

If we admit the Territory of Oklahoma with the obligation on the part of Oklahoma to put into her constitution such a provision, irrevocable in its character, we can, as these lands are alloted and as they are aliened and come into the hands of people who will have to pay taxes on them, from time to time add from the territory of the Indian Territory, and ultimately the entire Indian Territory can be combined with Oklahoma Territory, and we will have one State of the two Territories, as it seems to me manifestly we should have, and only one; but it would be an injustice to do it now.

Now, Mr. President, I want to pass from Oklahoma. I want to speak about New Mexico and Arizona, but before I speak as to the merits of these two Territories I want to speak a word or two as to the political aspects of this question.

PLATFORM DECLARATIONS.

The Senator from Minnesota opened his speech with a reference to our Republican national platform declarations concerning the admission of these Territories, and in that connection announced that he did not feel bound by them and called the attention of Senators to the fact that they were not made under oath. [Laughter.] They were not made under oath, although I heard a good deal of swearing at Philadelphia; not, however, at the platform. But I appreciate what the Senator said; no, I do not appreciate it either, but I note what he said.

Mr. President, it is not necessary, I trust, that a platform declaration should be sworn to in order to command credibility. I can understand, however, how it is that a Senator who simply sat in the convention at Philadelphia, thinking about who should be nominated for the Presidency or the Vice-Presidency, or what the declaration of the platform should be in regard to the tariff or the money question, might pay but little attention to what would be said about the admission of Territories to statehood. I can understand how he might regard that as not a vital matter, and how he might not pay any attention to it at all, not knowing even what declaration was made at the time he voted for the adoption of the platform. I can understand how a man might even belong to the general committee on resolutions and not have accurate knowlege, or feel bound by a declaration of that kind in the sense in which he would feel bound by a declaration in regard to some matter that was directly in issue before the people; but that is not the case with a man who helped draft it.

It was my fortune to be not only a member of the committee on resolutions in the National Republican Convention of 1896, but I was also chairman of that committee, and I was a member of the subcommittee and chairman of the subcommittee that drafted that platform. I knew then exactly what we were putting in that platform. We put it in after giving a hearing to everybody who wanted to be heard; we put it in there, thinking it would strengthen the cause of Republicanism throughout the West. It was not an idle thing; it was not an ill-considered thing on the part of those who did it; it was carefully considered, and it was done after it had been thoroughly discussed.

When we came to Philadelphia in 1900 I was not chairman of the committee, nor the chairman of the subcommittee, but I was a member of the committee and a member of the subcommittee that drafted that platform. In 1896 we put in a qualified declaration. Let me read it:

> We favor the admission of the remaining Territories at the earliest practicable date, having due regard to the interests of the people of the Territories and of the United States. All the Federal officers appointed for the Territories should be selected from bona fide residents thereof, and the right of self-government should be accorded as far as practicable.

In 1900 we dispensed with all qualifications and boldly and unqualifiedly declared as follows:

> We favor home rule for, and the early admission to statehood of, the Territories of New Mexico, Arizona, and Oklahoma.

Now, Mr. President, if we are to be told that is not binding because it was not under oath, or if we are to be told that for any reason whatever we are now to disregard it; if, in other words, insincerity is to be written across that declaration of the Republican national platform, it shall not be written by my hand.

I can understand how a man might think even in 1896 or in 1900 that these Territories ought to be admitted to statehood and might now think differently, but before any man has a right to change his mind he must profess to have new light of some kind or other. I have no new light. I was in earnest then. I knew what I was doing, and every other member of that committee knew what he was doing. There was a careful hearing. That declaration was not put in there to help the opposition. It was

put in there to help the Republican party; and we put it there because we thought it was right. I feel to-day just as I did then, and I intend to vote now when it is not a mere platform proposition as I voted then, because I am in earnest now as I was then.

Having said that much, I want now to speak particularly about the Territories of

NEW MEXICO AND ARIZONA.

When you come to consider the question whether or not any particular Territory is entitled to statehood, there are three general propositions to be considered. One is area. Is the Territory sufficiently large, or is it too large? Nobody objects to area in this case. The area of New Mexico and the area of Arizona are large; but nobody claims that the area of either Territory is too large, and certainly nobody has claimed that it is not large enough. So I pass area by. So far as mere acreage is concerned, mere extent of territory, these Territories are quite acceptable according to every precedent that we have established.

There are only two other general questions remaining. One is, have the people wealth enough within that Territory, sufficient property, to support statehood without unduly burdening themselves by taxation in order to raise revenue? If they have, then the remaining question, and the only question remaining, is one of population. Is that sufficient, and is it of proper quality?

In the report made by the majority of the committee, presented to the Senate by the Senator from Indiana, a great deal is said, to which I shall make response presently, about the rule established by the ordinance of 1787. He speaks in that connection of the rule established as to population, and he seems to argue and contend that we ought to be governed by whatever our fathers, wisely considering the question, saw fit to establish as a rule at that time. I call his attention, and I call the attention of the Senate, to the fact that in the ordinance of 1787, to which he has thus appealed, there is not one word as to how much property a Territory shall have. Except Vermont, Maine, and Texas, all the Territories that we have created into States have come into the Union after having had the ordinance of 1787 applied in their government, or under our treaties with France, Spain, or Mexico.

Mr. CLAY. Mr. President——

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

Mr. FORAKER. Certainly.

Mr. CLAY. I desire to ask the Senator from Ohio if it is not true that we have admitted heretofore 13 States with less taxable wealth than either Arizona or Mexico now possesses?

Mr. FORAKER. Yes, I believe so.

Mr. CLAY. And is it not true that Indiana at the time she came into the Union had less taxable wealth than either of these Territories and that Minnesota had less taxable wealth?

Mr. FORAKER. Mr. President, the railroads alone in the Territory of New Mexico are worth more than twice all of the taxable property of both Indiana and Ohio at the time those two States were admitted.

PROPERTY QUALIFICATION.

What I was going to call attention to, however, is that this ordinance of 1787 does not say anything about property; what it speaks about is "free inhabitants." Whenever there are a certain number of free inhabitants, certain rights shall follow; not when there are so many millions of property.

When you come to the treaties with France, Spain, and Mexico, under which we have admitted all the remaining Territories into the Union of States, there is talk about the inhabitants, but there is no talk about wealth or the property that would be subject to taxation.

The theory under which the framers of the ordinance of 1787 proceeded, doubtless, was that whenever there was a requisite number of free inhabitants, citizens of the United States, in a given Territory, they would have all the other things necessary; and it was not necessary for them to be enumerated to enable them to maintain statehood.

But, passing that, and speaking of it as though it is something that we are compelled by precedent to consider, what is the fact as to property in New Mexico and Arizona? I do not want to be too tedious about this, but, as I said awhile ago, if we look no further than the railroads, they have got more property than many of our Territories had when they were admitted.

On page 13 of Senate Document 2206, part 2, entitled "Views of Mr. QUAY," appears a statement as to the property in New Mexico that would be subject to taxation. I do not want to read it, but I will ask to have it inserted in the RECORD just as it appears here. If there is no objection, I will ask that it be put into my speech at this place. I call attention to the fact, however, that it is an itemized statement showing the railroads, showing the acreage fit for agriculture, showing the mines, showing the stock, showing the general products, and showing all the other kinds and classes of property to be found in the Territory, and that the aggregate, according to this statement, is $283,000,000.

The evidence presented before this committee, roughly tabulated, shows the present property of the Territory that will be subjected to taxation when it is admitted as a State as follows:

7,000,000 acres of railroad land, with its coal, iron, and timber, at $5	$35,000,000
7,000,000 acres of private patented land grants, with its timber and, in some instances, its minerals, at $5	35,000,000
2,000,000 acres of agricultural land, at $10	20,000,000
3,000 miles of railroad, with its franchises, equipment, machinery, shops, etc., at $20,000	60,000,000
Patented mines and plants	25,000,000
7,000,000 sheep and goats, at $2	14,000,000
21,000,000 pounds of wool, at 8 cents	1,680,000
1,700,000 head of cattle, at $20	34,000,000
50,000 head of horses, at $10	500,000
100,000 head of burros, at $2	200,000
City lots and buildings	25,000,000
Stocks of goods	12,500,000
Household furniture of all kinds	4,120,000
Jewelry	2,000,000
Cash, bonds, stocks, mortgages, etc	5,500,000
Produce of mines—coal, iron, gold, silver, copper, lead, etc	5,000,000
Produce of farms—alfalfa, wheat, and other crops	2,500,000
All other kinds of property	1,000,000
Total	283,000,000

I have read the report of the governor of New Mexico, and that report sustains all that is said here. I have read the speech of the Senator from Vermont [Mr. DILLINGHAM], and that practically sustains all that is said here. I do not think there can be any difference of opinion, Mr. President, as to the truth of the proposition that they have at least two hundred millions of taxable property in the Territory of New Mexico. That is very conservative. Now, if they have $200,000,000 of property in the Territory of New Mexico, that is, as I said a while ago, much more than we have had as a rule in other Territories which have been admitted to statehood, and there is no question—every man can take a pencil and figure it for himself—that it is sufficient to sustain the burdens of statehood without any undue rate of taxation.

Mr. President, how far are we to go in this matter? We sat here and listened hour after hour to a very interesting and very able narration of facts and data compiled by Senators who have addressed us to show of what the property in those Territories consisted; to show that there was only a certain percentage of lands suitable for agriculture without irrigation, and only a certain percentage that could be irrigated, and that the products of the mines were only of such and such value, and other data like that. All that is not any concern of ours. All we are concerned about is whether or not there is enough property there in the aggregate subject to taxation to support statehood without any unreasonable burden. It does not make any difference whether it consists of agricultural land, of mineral products, of manufactures, of banking capital, or what not. The accidental remark, "banking capital," recalls to my attention something that is not included in this report, I believe; something, however, I saw in the governor's report, that in the Territory of New Mexico they have 14 national banks—I believe that is the number—and 12 Territorial banks or private banks, with an aggregate resource for the whole number of banks of about $10,000,000 and with a surplus of seven and a half millions. And yet Senators talk about a community which has banking establishments of that character and such industries as that represents not being entitled to statehood!

Consider, now, the railroads. According to the governor's report, made early in the year, they had over 2,000 miles of railroad. I do not recall the exact figures. If anyone is curious to know the exact figures by reference to his report he can get them. I saw the statement only a day or two ago that during the present year they have added to it until now they have about 2,600 miles of railroad in the Territory of New Mexico.

I do not take time to consult figures and give them accurately, because it does not matter what the exact figures would show, whether a few miles more or less. All we need to know is what are the aggregates. Details may be interesting, but they are not essential.

What, now, is the value of the railroads constructed and put into operation in the Territory of New Mexico? I saw a statement somewhere, made, I think, by the Senator from Minnesota, that he estimated the railroads as of the value of $7,500 per mile. I made inquiry of the railroad commissioner to know what was the probable average cost of railroads in New Mexico and in that Western country, and his answer was that the railroads in New Mexico and that Western country cost on the average, according to the statistics they had, about $81,000 a mile. That is the response of the commissioner of railroads. That seemed to me very high. But, with the limited knowledge I have about the cost of railroad construction and the value of railroad property after it has been constructed and put into operation, I suppose it would be a conservative estimate to say that these railroads are worth $30,000 a mile. I do not believe they could be constructed and equipped, as all these are, and put into operation for any such sum of money. Mr. President, I know enough about it to know that they could not be. Every Senator here who has made any

observation at all must know that fact. If they have 2,600 miles of railroad worth $30,000 a mile in New Mexico, you see at once what a great aggregate of value it makes.

Now, turn to the speech made by the Senator from Vermont, who is opposed to the admission of New Mexico, and who was arguing to show that New Mexico did not have sufficient industrial development to entitle her to admission, and you will find that he says that the annual product of Arizona—it is not the taxable property in Arizona, but the annual product—consisting of copper and silver and gold and other minerals, and agricultural products, is $33,567,537, or twice as much, in all probability, as all the property in Indiana subject to taxation was worth when it was admitted into the Union in 1810, far more than all the property in Ohio was worth when it was admitted, and a great deal more than all the property in Tennessee was worth when it was admitted. That is not the aggregate value; it is the annual product in dollars and cents, and it is not the annual product as I give it, but the annual product as given by an opponent of this measure, the distinguished Senator from Vermont, who made a most able and interesting speech on this subject, so far as the facts are concerned. And this was his statement as to Arizona, the smallest in population of these three Territories.

Now, Mr. President, admitting, however, as the Senator from Vermont did and the Senator from Minnesota did, that New Mexico and Arizona have the property values of which I speak, they say, to use the language employed by the Senator from Minnesota yesterday, that they are now in a stagnant condition; there is no development; there is no going ahead; and there is no prospect as there was a prospect for Indiana and Ohio and Illinois and the other Territories when they were admitted into the Union.

Mr. President, a grosser injustice could not be done to that people. Let us see if they are not going ahead. I have here a statement which shows that during the past twelve months, ending on the 31st day of last December, there were constructed and put into operation within the Territory of New Mexico 358 miles of railroad. Does that look like stagnation? I do not know how many miles were built in Indiana, but I doubt if so many were built there. There may have been. We will all hope so. But it is a pretty lively community in which there is that amount of railroad building going on.

Now, let me call attention to something else. Here are the internal-revenue receipts collected from New Mexico. In 1890 she paid $37,671.19 internal-revenue taxes into the Treasury of the United States. Of course since then the war taxes have come, but they do not account for all the growth. In 1901, the latest year for which I have the statistics, she paid $58,609.31. Here are her post-office receipts. Now, please note what has been done in this stagnant community. In 1890 her total post-office receipts amounted to $45,639.62. In 1902 they amounted to $93,684.17. Since June 30, 1900, when the census was taken, they have established in New Mexico 76 new post-offices, as the post-office authorities have certified. I have their letter to that effect.

It is very difficult for me to keep Arizona and New Mexico apart, and it just occurs to my mind that it is not necessary I should do so. They run naturally together. I think I am safe in saying that if I give the data as to New Mexico, you can assume that everything which has occurred there has occurred also in Arizona in the same proportion that the population of the one Territory bears to the population of the other—practically the same. That will save me the trouble of going into all this in detail as to both. But inasmuch as I have it before me, let me show you what great growth there has been in Arizona in the matter of post-office receipts. This table, sent me by the Third Assistant Postmaster-General, shows that for the year ending June 30, 1890, the post-office receipts in Arizona amounted to $28,416.06 and for the year ending June 30, 1902, to $129,267.95. The internal-revenue receipts from Arizona in 1892 were $17,965.90, and in 1901 they were $61,698.96.

Mr. President, does that look like a stagnant community? But that is not all. We have heard a great deal about the undesirability of the agricultural lands in New Mexico. I have some figures here which will show that they are at least sought after by people who are hunting for homes in that far distant frontier country. From June 30, 1900, when the last census was taken, down to the 20th day of December, 1902, there were entered at the various land offices in New Mexico, most of them being homestead entries, 1,271,517 acres.

Mr. BEVERIDGE. Mr. President——

Mr. FORAKER. In just a moment.

Then I have, written January 1, coming later than that, a letter from one of the registers—the one at Roswell. In this letter, dated January 1, 1903, addressed to Hon. B. S. RODEY, Washington, D. C., the writer says:

DEAR SIR: I have only time to report that this office had 205 homestead entries in December.

That was during the last month alone.

This ought to mean 205 settlers.

J. L. GEYER.

Now I will hear the Senator from Indiana, if he desires.

Mr. BEVERIDGE. It was not very important. I was going to ask the Senator whether he meant to have the Senate infer from this million or two acres of land entered that that many homesteads had been taken up in the sense that farms had been located and farmers located on them, because the Senator will, I am sure, bear me out when I state that many of these so-called homestead entries are made for the purpose of grazing in conjunction with grazing ranches; mere water holes. That is the point.

Mr. FORAKER. The information I have, and it comes from the representatives of the Government, from the Government officers there who made the entries, is that most of the entries are for actual settlers who propose to live on them.

Mr. BEVERIDGE. What is that?

Mr. FORAKER. Most of them, I say, are for actual settlers.

Mr. BATE. I will suggest there that if these lands are taken for grazing and stock purposes, is it not necessary for some one to be there?

Mr. FORAKER. Certainly. The statement I have here is that eight-tenths of these entries are for homesteads of a hundred and sixty acres each. About a million and a quarter acres of land have been entered since the census was taken. The Senator suggests that possibly some of this land thus entered was not to be devoted to agriculture as we understand it in this part of the country.

Mr. BEVERIDGE. I think the Senator is going to say just exactly what I was going to suggest. I have not the slightest doubt that some, perhaps many, of these homestead entries in the neighborhood of Roswell or in the district irrigated about there were taken up as farms by actual settlers. But the point to which I called the Senator's attention was that many others of them were taken up as portions of grazing ranches. He will recall the testimony of Professor Newell, that last year, in going over a great district of such homestead entries, he found the water holes dry.

Mr. FORAKER. Suppose he did find the water holes dry?

Mr. BEVERIDGE. They are not farms.

Mr. FORAKER. It is very interesting to know about the rivers that dry up and the rivers that do not dry up, and the artesian wells that flow and the artesian wells that do not flow, but what has that to do with the general proposition? What I am talking about is, first, that there is enough property there to sustain statehood, and when the Senator makes the point that they have uninviting conditions in New Mexico, he but emphasizes the right of these people to the reward of statehood. From the beginning of this Government down to this time we have put a premium upon the action of adventuresome and aggressive men who would go out, contending against the conditions of nature, to subdue nature, and make it a suitable place for people to live.

Mr. BEVERIDGE. I am not going to interrupt the Senator again——

Mr. FORAKER. I do not care how much the Senator interrupts me. I am always glad to hear him.

Mr. BEVERIDGE. Thank you.

Mr. FORAKER. I want to debate this question.

Mr. BEVERIDGE. The Senator misunderstood the point.

Mr. FORAKER. I was going on to answer the remark of the Senator.

Mr. BEVERIDGE. The point is that on many of these so-called homestead entries there is not anybody, and therefore there is no person of adventuresome spirit or of any other kind of spirit for the Government to encourage or otherwise. That is the point.

Mr. BATE. If I may be permitted to make a suggestion——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Tennessee?

Mr. FORAKER. Certainly.

Mr. BATE. They have to have some one, a family, there before they can make a homestead entry. The law requires it.

Mr. BEVERIDGE. Not a family.

Mr. FORAKER. I call attention to what this officer of the Government says:

I have only time to report that this office had 205 homestead entries in December. This ought to mean 205 settlers.

He does not say it does mean it, but he understood it meant it. What I want to say is that that does not matter for the purposes I have in view in this connection. I am coming to the question of population presently, and I will say something about how many people there are there. For the present I am discussing the question whether they have enough taxable property in the Territory to maintain statehood without being unduly burdened with a rate of taxation. I think I have abundantly shown it; and now I am answering the charge that although they may have enough to support statehood, they are not growing; that they are "stagnant."

Mr. President, a greater libel was never uttered against a brave

and intelligent and patriotic people than that which has been repeated over and over again in this Chamber ever since this report came in here. I cite you to the post-office receipts, I cite you to the establishment of new post-offices, I cite you to the internal-revenue receipts, I cite you to the construction of railroads to show that they are anything but stagnant. There is as much business activity there, for the number of people, as you can find among 200,000 American citizens anywhere where the flag of America floats. Nowhere will you find greater activity. It is the very opposite of stagnation.

Now they say, "Yes. these entries have been made"—a million and a quarter acres; 205 homesteads in one land district in one month in New Mexico—"but how do you know that they are not intended for grazing purposes? Nobody will live upon them." I do not care as to that for present purposes. We have been told over and over again since this debate began about the arid wastes of New Mexico; about the millions and millions of acres that are to be found there unsuited to agriculture and which it is impossible to irrigate, and how it is all in consequence of no value.

Mr. President, my information, and I believe it is reliable, is that there is practically not an acre in New Mexico that is not capable of being utilized by that community for their own good, and especially for the good of this whole people. The good Lord in His providence made the arid lands of New Mexico for just the purpose they are subserving. That is to be the great meat supply for the hundreds of millions of people that are to occupy this country in the years to come. There, on those lands, which we are told are of no value, are to be found to-day millions of stock, consisting of horses and cattle and sheep. The majority of the committee do not know it. They did not stop in the Territory long enough to find it out. But that is the fact; the records show it, and every man who is informed knows it. And that is not all. The herds are increasing. More and more the cattle and other stock multiply, and all to our great good. I say all honor to the man who goes into that Territory, braving its hardships, submitting to its privations, engaging in any business he may find there lawful and proper to engage in, whether it be mining or manufacturing or an agricultural pursuit, or the grazing of horses and cattle and sheep.

As I said a few minutes ago, and I do not want to be diverted from that, the committee have proceeded upon the theory that because the people of New Mexico have peculiarly difficult conditions to contend against they ought to be denied statehood. They do have peculiarly difficult conditions to contend against. But all the greater is the reason, when they have surmounted those difficulties, when they have bravely contended against them, that we should remember that they have a right to govern themselves, according to the principles of the American Constitution. That is all we are contending for. That is what will be denied them if this bill fails—something that is not only due them upon general principle, according to general precedent, but which is due them according to contract obligations as solemn as one nation ever entered into with another.

Now I come to another point, Mr. President. Perhaps I have said enough on that topic. The point I wanted to make was that these Territories have a sufficient area, that they have sufficient property subject to taxation, to enable them to sustain statehood without being unduly burdened. In the next place, I have tried to show, answering the remarks of the Senator from Minnesota particularly in that regard, that they are not stagnant, as has been charged, but that they are alive, that they are growing. No community in the United States—and the Senator from Indiana can not find one when he comes to address the Senate and point it out—can show a greater development of an industrial character than that of New Mexico. I mean that he can not find one where among 200,000 people, situated as that people are, there has been an equal growth of post-offices and postal receipts and of internal-revenue receipts and of land entries during the same period of time. And all this is true and equally true, in proportion, of Arizona.

Now, Mr. President, I come to something else. I said a moment ago that there were three general questions which should be considered. One was area, about which there is no contention, and another is wealth and taxable property, and I have dwelt upon that sufficiently. It is all right, although the ordinance of 1787 did not require it, nor did any of the treaties under which we acquired territory require it, to consider whether or not the inhabitants there are progressive and aggressive, developing their resources and multiplying their wealth; and if I have spoken to any purpose I have shown that they are doing that in both New Mexico and Arizona.

POPULATION.

Now I come to the question of population, and before I take it up specifically let me make some general observations. In the first place, the Senator from Minnesota told us with great particularity how long it has been since the first settlements were made in Arizona and in New Mexico, and then he commented upon that and called attention to it and repeatedly called attention to the fact that they were among the oldest settled Territories in the United States; and then he pointed to the fact that notwithstanding they had been settled for two or three hundred years they have only this population, insufficient, as he claimed, to entitle them to statehood.

Mr. President, why is it there has been this backwardness in the growth of population? You do not need to go outside of the speech of the Senator from Minnesota to find the answer. He pointed it out when he told us that New Mexico and Arizona were until only a very few years ago inhabited by wild and savage Indians, and he might have added Indians against whom for our people there the Government did not interpose any sufficient protection. Being thus overrun by Indians, people would not go there until it was made safe, when they could go to some other place where the tide of population was running. But that is not all. Take New Mexico. We acquired that Territory from old Mexico. We entered into a stipulation with respect to private property there—that all rights should be protected and titles be made secure. But how did we discharge that obligation? Not until 1891, I believe it was, did we take any effective steps or measures to settle the disputed Spanish land-grant titles in New Mexico. We then created a court, the Court of Private Land Claims, and set it to work. It is now completing its labors. I believe the time in which it was to complete its labors was extended at the last session until June, 1903. At that time its work will be concluded.

I have here the report of the United States attorney for that court. According to it it appears—I will not stop to read it—that that court has heard and has settled the title to more than 20,000,000 acres. These Spanish land grants, long years ago made, overlapping each other and duplicating each other, made it almost impossible for anybody to go into New Mexico and get a good title. Out of about 26,000,000 acres that were involved in these Spanish land-grant claims the court rejected all except about 2,000,000 acres, thus returning more than 20,000,000 acres to the public domain.

It has been only within the last two or three years that a man going into New Mexico had any assurance that he could acquire a good title to land when he went there. That was enough to keep people out. Did the committee which visited that Territory tell us anything about that? There is report after report on file in the Interior Department and in the Department of Justice as to the effect of this condition on the Territory, retarding development there, retarding settlement there, keeping back the growth of population; and report after report as to the good effect that would follow from their adjudication; and the good effects are following.

It is because these claims have been settled that men can go there now and get title which they could not heretofore, and for that reason they are going. It is for that reason that their post-offices are multiplying, their postal receipts growing, their internal-revenue receipts growing. It is no wonder that the population has not grown more rapidly. The only wonder to me is that it has grown as rapidly as it has grown.

ORDINANCE OF 1787.

Now, Mr. President, let us speak of the question of population. The committee in their report, to which I have already referred, undertake to tell us that the ordinance of 1787 lays down a rule as to the population necessary to entitle a Territory to admission to statehood, and they undertake to state what that rule is. The committee seem to have gone through the ordinance of 1787 as they are reported to have gone through the Territory—too rapidly to have gained a just comprehension as to what the ordinance does provide. The ordinance of 1787 does not establish any such rule as the committee has deduced from it, and there is no warrant whatever for their deduction.

I had before me the speech of the Senator from Vermont [Mr. DILLINGHAM], which has been printed in pamphlet form and in which I marked what I wanted to read.

Mr. BEVERIDGE. Here it is.

Mr. FORAKER. But I had one here which was marked. As I remarked, I had before me awhile ago the speech made by the Senator from Vermont [Mr. DILLINGHAM]. In that speech he quoted from the report of the committee as to what the committee says as to this rule, and with approval unqualifiedly stated that the ordinance of 1787 did establish the rule as laid down in the report of the majority of the committee. Here is what I refer to, said on that subject by the committee. I will read from the report:

> The last work performed by the Continental Congress relates to this, and, as Daniel Webster declared, is second in the importance, value, and wisdom of its provisions only to the Constitution itself. This was the famous ordinance of 1787 for the government of the Northwest Territory.
>
> This ordinance provides for the future division of said Territory into not more than five nor less than three States, and it fixed the boundaries of three of them, namely, Ohio, Indiana, and Illinois. The fifth article of that ordinance provides that—
>
> "Whenever any of said States shall have 60,000 free inhabitants therein

such State shall be admitted, by its delegates, into the Congress of the United States on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government."

The committee then go on:

It is thus seen that the fathers, even in the eighteenth century, provided—

First. For very large States as to area and resources (for it was then well known that the Northwest Territory was rich in agricultural resources and the natural home of a mighty population); and

Second. That each of these States must have a population which, in comparison with the population of the rest of the Republic at that time, was very heavy indeed.

This rule was referred to by President Washington in his message transmitting to Congress the constitution of Tennessee, and President Washington added that—

"As proofs of the several requisites to entitle all the Territories south of the Ohio River to be admitted as a State into the Union, Governor Blount has transmitted a return of the enumeration of its inhabitants, etc."

"SIXTY-THOUSAND RULE" BASIS FOR SLIDING SCALE.

This number, however, was not intended to be a permanent requisite, but a standard referring to the population of the rest of the nation at the time. By comparing 60,000 (the number of people required for statehood in 1787) with the population of the nation at that time we find the ratio which statesmen of that day deemed essential as between communities applying for statehood and the nation itself. At that time the population of the United States was less than 4,000,000. If 60,000 were required as the first requisite for statehood when the population of the nation was less than 4,000,000, the same rule would require a population at the present time of over 1,153,000; and every reason supporting the rule of 60,000 established by the fathers' ordinance of 1787 requires as many more than 60,000 now as the population of the nation itself at present is larger than it was one hundred and fifteen years ago.

They go on at considerable length to further discuss the matter, but I have read enough to show what they claim is the rule established by the ordinance of 1787.

Mr. President, the committee did violence to the ordinance of 1787 when they made that quotation as the expression of that ordinance upon the subject they undertook to discuss. The ordinance of 1787 does state a rule, but it is not the rule of the committee. The only rule that is established by the ordinance of 1787 is that which is found at the conclusion of the declarations which precede the ordinance proper, the whereases, I will call them. There, speaking of the purposes for which that Territory was to be organized and civil government established over it, they say, among other things:

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these Republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory; to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the Federal councils on an equal footing with the original States at as early periods as may be consistent with the general interest.

That is the rule established by the ordinance of 1787. No other rule was ever laid down by that ordinance except the one to which I now call attention.

Mr. BEVERIDGE. The Senator does not mean to say, I hope, that the quotation in the committee's report from the ordinance of 1787 is not in that ordinance?

Mr. FORAKER. No; I do not. The quotation made by the committee from the ordinance of 1787 is correctly made, so far as it goes; but the Senator omitted, when he was undertaking to deduce a rule from the ordinance of 1787, that which was more controlling in the matter of establishing a rule than that which he quoted. When the Senator quoted from the ordinance of 1787 he but partly quoted, and he omitted to quote a proviso which limits and controls that which he did quote. I invite the attention of the Senate to this. Here is the whole clause from which, only in part, the Senator quoted. Now, let us see what it is, the whole of it.

And whenever any of the said States shall have 60,000 free inhabitants therein—

It does not say anything about having railroads, banks, and taxable property besides—

and whenever any of the said States shall have 60,000 free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided*, The constitution and government so to be formed shall be republican and in conformity to the principles contained in these articles; *and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than 60,000.*

The last part of this clause was not quoted by the Senator when he was establishing his rule.

But is not that a part of what the ordinance said on the subject with respect to which the committee made the quotation? I submit, Mr. President, that if our attention is to be invited to the ordinance of 1787, there ought to be a fair quotation, and if we are to have a quotation from it at all, we ought to have all that properly relates to the subject.

Now, Mr. President, from that the Senator argues in his report that this ordinance required that there should be 60,000 people before statehood could be allowed. This he says was the rule of our fathers. They did not require any such thing. What they required was not that there should be 60,000 people for statehood, but that there should be statehood for 60,000 people.

In other words, Mr. President, the framers of the ordinance of 1787 laid it down as a rule that the Territories of the Northwest should be admitted to statehood whenever that could be done consistently with the general interest, whether they had 60,000 people or not, but that whenever they should have 60,000 people they should have an absolute right to come into the Union; that they should not be kept out any longer.

It was not a percentage that they were trying to establish. The Senator proceeds, after having laid down that rule, to argue that 60,000 was but a certain percentage which he figures out of the then population of 4,000,000, and that, according to that percentage, established by the ordinance of 1787, there ought to be 1,153,000 people in any given Territory to-day to entitle it under that rule to admission. His whole percentage idea is untenable. It finds no warrant in the ordinance.

Mr. President, that ordinance was adopted in 1787. There was practically not a white man living, as a settled inhabitant, in the territory northwest of the river Ohio at that time. The first settlement, with the institution of civil government that followed, was at Marietta, Ohio, in 1788. It was known by the framers of the ordinance that it would be probably fifteen or twenty years, as it was, before there would be any Territory in the Northwest Territory having 60,000 free inhabitants within it to apply for admission, and they knew that the rest of the country would be growing in population in the meanwhile.

They knew then just as well as they knew later that Ohio would not have 60,000 people until some fifteen or twenty years afterwards, and that there would be a growth for fifteen or twenty years of the 4,000,000 then inhabiting the 13 original States before she could apply for statehood; and the percentage of 60,000 would not then be of 4,000,000, but of whatever the population might be at that time.

They knew more. They knew that probably Ohio would be the first, as she was, and that Indiana would probably be the second, Illinois the third, and that of the two other States created out of that Territory, Michigan and Wisconsin, it would be, as it was, probably sixty years after the ordinance of 1787 before the last of them could be admitted. They knew that what they were doing was not to establish a percentage, but that they were laying down an iron-clad contractual obligation for the benefit of the people who might go into those Territories, that whenever they might have 60,000 free inhabitants, no matter if there were 50,000,000 in the United States, they would have not only a right to ask for admission but a right to be admitted. That is what they knew; that is the rule they established; that is the rule they afterwards recognized and followed. Ohio was the first case. She was admitted in 1802, long before she had 60,000 free inhabitants.

She was not admitted as a matter of right, because she had not yet reached the point where she could demand admission, but she was admitted because, according to the rule laid down in the ordinance of 1787, our fathers found it to be consistent with the general public interest to admit her without regard to her population, and so they admitted her when she had only 42,000 free inhabitants.

Indiana was admitted in 1816 and Illinois in 1818. Indiana had more than 60,000 when admitted, though considerably less at the then last census preceding. Illinois had but 34,000 when she was admitted in 1818. Michigan was admitted in 1837, and Wisconsin was not admitted until, I believe, 1848; and when Wisconsin was admitted we had, according to the census taken a year or two afterwards, in 1850, a population of 31,000,000 people.

Mr. SPOONER. The whole country?

Mr. FORAKER. The United States, I say, had a population at the next census, following only a year or two afterwards, that of 1850, of 31,000,000 people.

So the rule laid down by the fathers when they framed the ordinance of 1787 was that any one of these five Territories might be admitted at any time if it should be found consistent with the public interest, without regard to whether it had 60,000 free inhabitants or not; but whenever it had 60,000 it had a right to admission; and the idea underlying the rule was that it was due to 60,000 Americans living in a Territory that we should be willing to give them the right to govern themselves, as a reward for that which they had done for the whole country in going out into the wilderness and conquering it, driving out wild beasts and the still more wild, savage men.

Now, that is not all. Wisconsin had a right to come in when she did in 1848 if she had had only 60,000 people. She had more than that number; but if she had had only 60,000 she would have had a right to come in. The fathers looked forward to that and so provided. In doing so, they were not striking a percentage of 4,000,000 as a basis, for they contemplated only 60,000 in the Territory and 31,000,000 in the United States.

FAMILIAR HISTORY.

Let me here digress a moment to recall some familiar history with respect to our territory.

The ordinance of 1787 applied to the territory northwest of the river Ohio, now the States of Ohio, Illinois, Indiana, Michigan, Wisconsin, and part of Minnesota. Shortly afterwards, in May, 1790, the Congress passed an act extending the provisions of the ordinance of 1787 to the territory south of the river Ohio, expressing in that act that the inhabitants of that territory south of the river Ohio should by virtue of that act become invested with all the rights and privileges guaranteed by the ordinance of 1787.

Two or three years afterwards—I have forgotten exactly the date; in 1794, I believe it was—Tennessee, which was a part of the territory south of the river Ohio, applied for admission into the Union.

Mr. BATE. In 1796.

Mr. FORAKER. Yes; in 1796. First, Vermont was admitted. Let me correct what I have said. The territory south of the river Ohio embraced what are now the States of Kentucky, Tennessee, Alabama, and Mississippi. The first Territory admitted was that of Vermont, which had belonged to New York. There was no stipulation in that case as to the time when she would have a right to enter the Union; but there was a stipulation in the ordinance of 1787 as to all the territory northwest of the river Ohio, and by virtue of extending it to the territory south of the river Ohio the same rights of admission accrued to Kentucky, Tennessee, Alabama, and Mississippi.

Mr. BACON. I will correct the Senator, with his permission. At that time Alabama and Mississippi were not Territories of the United States, but territory of the State of Georgia.

Mr. FORAKER. Yes; they were a part of the State of Georgia, as Kentucky was a part of the State of Virginia and Tennessee was a part of the State of North Carolina.

Mr. BATE. She was independent.

Mr. FORAKER. Alabama and Mississippi were a part of Georgia and South Carolina.

Mr. BACON. Kentucky and Tennessee, I understand, were Territories.

Mr. BATE. The State of Tennessee was the State of Franklin about that time.

Mr. FORAKER. That is true. I do not mean that they were a part of those States in the sense that they were included within the State government. They were territories belonging to those States.

Mr. BATE. Afterwards Franklin came in as a part of the territory of North Carolina.

Mr. FORAKER. For my purposes——

Mr. BACON. That is not true as to the State of Georgia. The jurisdiction of the State of Georgia extended to the Mississippi River in the original grant.

Mr. FORAKER. I think so, but there is a strip across the northern end of both Alabama and Mississippi that belonged to South Carolina. I remember that. I once had occasion to examine it. I did not think this was an important matter and I was not trying to quote accurately. I simply want to say that the provisions of the ordinance of 1787 were extended to the territory south of the river Ohio, and thus came to apply to all this territory.

TENNESSEE.

The first to act under it was the Territory of Tennessee. How did she do? The Senator from Indiana in his report alludes to the message of George Washington in that connection as though George Washington was approving the rule for which he contends. The record refutes the claim.

The State of Tennessee proceeded, without any enabling act being first passed by the Congress of the United States authorizing it to do so, to hold a convention and frame a constitution and adopt it, and to choose a legislature and elect Senators and Congressmen.

Mr. BEVERIDGE. And to take a census.

Mr. FORAKER. I will come to that in a minute. She did that, and she sent her representatives here with a notice to the General Government that on a certain date the Territorial government which the Congress had established for her would go out of existence and the State government would come in.

When the Constitution was submitted to George Washington he transmitted it to the Congress of the United States, calling attention to the provision of the ordinance of 1787, which had inured to the benefit of Tennessee by reason of extending the ordinance to the territory south of the river Ohio, and saying, in that connection, that they claimed to have the requisite population, and they did have 60,000 free inhabitants. They had 54,000 whites and 6,000 free negroes, and, so far as the record shows, they did not have anything more. I do not know how much property they had; but there was nothing said about manufacturing establishments, nothing about banks. I do not suppose that there was a bank of issue at that time in the Territory. Of course we know that there was not. There was but little of anything.

Mr. CARMACK. The taxes were paid in 'coon skins.

Mr. FORAKER. The taxes were paid in 'coon skins, as the Senator says. At any rate, we know, Mr. President, that the only question as to Tennessee was, "Do you have 60,000 free inhabitants?" And she answered, "Yes; we have counted them." She did not let us count them. She did not consult the National Government. They said, "We stand on our right, under the ordinance of 1787. We have the right to come into the United States whenever we have 60,000 free inhabitants and we find that we have them; we are entitled to statehood, and here we are." George Washington conceded their right as far as he could. I wish to read what he said—and will do so in a moment.

The point I am contending for in this connection is that what the ordinance of 1787 conferred was a right to demand admission whenever there were 60,000 people. The Senator will remember that the ordinance of 1787 was afterwards extended to Oregon, and Oregon demanded admission on the same ground. She was allowed admission before she had the 60,000, but it was agreed, without any dissent whatever, that because of the conferring upon her of the rights enumerated in the ordinance of 1787 she would be unquestionably entitled to admission whenever she had 60,000.

I read now from House report, first session Fiftieth Congress, 1887–88, volume 4, the committee report, by Mr. Harrison, to accompany Senate bill 967. I call attention to the following as to the State of Tennessee. In this report Mr. Harrison reviewed the history of the different acts of admission of Territories by Congress to statehood:

The following extract from Hough's American Constitutions (vol. 2, p. 318) shows the course taken by the people of Tennessee:

"A convention, elected for preparing a State constitution, met at Knoxville January 11, 1796, and the next day a committee of two from each county was appointed to prepare a constitution. A bill of rights was reported on the 15th, and a frame of government on the 27th, by Daniel Smith, chairman of this committee. Their labors being completed, on the 6th of February an engrossed copy was read and passed; on the 19th an engrossed copy was forwarded to the President, with a notification that on the 28th day of March, at which time the legislature would meet to act on the constitution, the temporary government established by Congress would cease. This notification, with accompanying documents, was received by the President February 28, and laid by him before Congress on the 8th of April. The claims of the new State for admission were not recognized by all, but, after an energetic discussion, the bill became a law on the 1st of June, 1796. The principal grounds of opposition were that the proceedings had not been authorized by an enabling act of Congress; that the census being taken by those most interested in showing a large return might be liable to error; and that it belonged to Congress to decide whether one or more States should be formed in the ceded Territory, and to establish the time and manner of organization."

The message of President Washington, transmitting the constitution to Congress, is so full of interest that we copy it in full:

"Gentlemen of the Senate and House of Representatives: By an act of Congress passed on the 26th of May, 1790, it was declared that the inhabitants of the territory of the United States south of the river Ohio should enjoy all the privileges, benefits, and advantages set forth in the ordinance of Congress for the government of the territory of the United States northwest of the river Ohio; and that the government of said territory south of the Ohio should be similar to that which was then exercised in the territory northwest of the Ohio, except so far as was otherwise provided in the conditions expressed in an act of Congress passed the 2d of April, 1790, entitled 'An act to accept a cession of the claims of the State of North Carolina to a certain district of western territory.'

"Among the privileges, benefits, and advantages thus secured to the inhabitants of the territory south of the river Ohio appear to be the right of forming a permanent constitution and State government, and of admission as a State by its delegates into the Congress of the United States on an equal footing with the original States in all respects whatever when it should have therein 60,000 free inhabitants:

"*Provided*, The constitution and government so to be formed should be republican, and in conformity to the principles contained in the article of the said ordinance.

"As proofs of the several requisites to entitle the territory south of the river Ohio to be admitted as a State into the Union, Governor Blount has transmitted a return of the enumeration of its inhabitants, and a printed copy of the constitution and form of government on which they have agreed, which, with his letters accompanying the same, are herewith laid before Congress.

"G. WASHINGTON.

"UNITED STATES, *April 8, 1796.*"

That led to a debate in which some of the most distinguished statesmen of that day participated. Mr. Madison spoke, and he said:

The inhabitants of that district of country were at present in a degraded situation: they were deprived of a right essential to freemen—the right of being represented in Congress.

As far back as that in our history the right of self-government seems to have been greatly appreciated.

Laws were made without their consent, or by their consent in part only. An exterior power had authority over their laws: an exterior power appointed their executive, which was not analogous to the other parts of the United States, and not justified by anything but an obvious and imperious necessity. He did not mean by this to censure the regulations of this provisional government, but he thought where there was doubt Congress ought to lean toward a decision which should give equal rights to every part of the American people.

Mr. Macon said:

"There appeared to him only two things as necessary to be inquired into: First, was the new government republican? It appeared to him to be so; and, secondly, were there 60,000 inhabitants in the Territory? It appeared to him there were; and if so, their admission as a State should not be considered as a gift but as a right."

Mr. Gallatin said:

"The people of the Southwestern Territory became ipso facto a State the moment they amounted to 60,000 free inhabitants, and that it became the duty of Congress, as part of the original compact, to recognize them as such and to admit them into the Union whenever they had satisfactory proof of the fact. * * * Either you must acknowledge that their admission depends

solely on the condition of the compact being fulfilled, to wit, their having the number required, or you declare that it rests upon another act, which may be done or refused by the other party; that Congress have the power, by neglecting to lay them out into one or more States, or by refusing to pass a law to take a census, to keep them forever in their colonial state."

He cites some others; but I have read enough to show the character of the debate, and to show that Tennessee, when she presented herself, did not come as a petitioner, but came as one having a right, demanding that she be recognized, that she be admitted, and she did not ask in vain when she applied to George Washington, then President of the United States, for a recognition of her right. He transmitted her constitution to Congress, calling the attention of Congress to the fact that under the provisions of the ordinance of 1787 she appeared to have a right to admission, because she had 60,000 free inhabitants.

MICHIGAN.

Later this question again arose when Michigan, in 1837, applied for admission. I do not want to weary the Senate, but I want to read briefly from one or two of these cases.

Michigan repeatedly asked to be admitted, and admission was denied her. Finally she proceeded without any authority from Congress, or any permission from Congress, organized a State government, and then sent on her Senators and Representatives to Washington; and they demanded recognition, and here is what occurred——

Mr. BEVERIDGE. I think it is pertinent to ask the Senator a question at that point. Do I understand him to indorse the position that Michigan and Tennessee took, that they had a right to declare their Territorial governments terminated by their own act and come here and demand, whether the Congress of the United States saw fit or not, to be admitted into the Union? Is that the Senator's position?

Mr. FORAKER. Mr. President, it is not material whether I indorse that position or not. I think that is a debatable proposition; but the ablest men representing this Government in Congress at that time, Mr. Madison, Mr. Gallatin, and such men, took that position, and George Washington took that position.

Mr. BEVERIDGE. Did he?

Mr. FORAKER. Yes, he did; and I have just read what he said in his message, that Tennessee appeared to have a right to organize a State government and be admitted when she had 60,000 free inhabitants.

Mr. BEVERIDGE. The reason I asked the question of the Senator was that I have listened with care to the Senator's able argument, and it seems to me the point he is now addressing himself to is that a Territory may, whenever it has a certain number of inhabitants, terminate its Territorial government of its own motion, and declare, as in the case of Tennessee, that it ceases to exist in that condition, and becomes a State by its own action without reference to the action of Congress. It is important to know whether that is the position of the Senator.

Mr. FORAKER. It is not important to know, for I am not making any such contention; but I will answer the Senator with all courtesy and respect if he will just give me the chance to do so.

Mr. BEVERIDGE. I will.

Mr. FORAKER. No Territory can cease to be a Territory and enter upon the enjoyment of the rights of a State until Congress acts concurrently with it by the recognition of its Representatives, but a Territory can do as was done in the case of Tennessee, take the position that there was a contractual obligation between the United States and that Territory that it should be admitted to statehood whenever it had 60,000 free inhabitants. That position was taken later in the case of Michigan, and the claim was recognized in both instances, after an able debate in each case. It was said in the debate in respect to Michigan:

They have taken a census of the Territory; they have formed a constitution, elected their officers, and the whole machinery of a State government is ready to be put in operation; they are only awaiting your action. Having assumed this attitude, they now demand admission as a matter of right; they demand it as an act of justice at your hands.

So the debate goes on. I read this, Mr. President, in order that I may support myself in denying, as I have done, that any such rule as that contended for by the committee was laid down in the ordinance of 1787. No such rule was ever heard of, thought of, or even suggested until in this instance, so far as I have been able to discover.

I have read enough to show it was contended in every instance, when the question arose, just as I have contended here, that whenever a Territory to which the ordinance of 1787 applied asked for admission, Congress was free to admit it, whether it had 60,000 free inhabitants or not; but that it was compelled to admit it if it did have that population, or violate its plighted obligation. Not only was that claim made, but in every instance that right was recognized until it became an established rule.

OREGON.

The ordinance of 1787 was extended to Oregon, and when Congress came to admit Oregon the same argument was made. I will not stop to read it, but it is embodied in the same report, and anybody can read it who desires to do so.

I want to pass to something else. I want to quit that, however, with this general statement; and if I have talked to any effect I am warranted now in making the statement that the rule laid down by the ordinance of 1787 was not a rule of percentage. That ordinance did not say, or say anything in the nature of such a thing, that a Territory whenever it might have such a percentage of population within its limits of the whole population of the United States as 60,000 bore to 4,000,000 it should be entitled to admission, but it said that whenever 60,000 free inhabitants are found within any Territory they ought to be given statehood, that they should have statehood. That is what they obligated themselves to give, and what they did give in every instance; and where there was any question in the admission of a Territory to statehood after it had 60,000 inhabitants, it was because of some of the phases of the very troublesome question then uppermost in American politics—the question of slavery. There was a time when there was an effort to balance State against State, when States were admitted together, as, for instance, when Missouri and Maine came in together; and in so far as there was any delay in recognizing this plighted obligation, it was due to facts of that character, and to nothing else.

Mr. SPOONER. Will the Senator permit me to ask him a question only for information?

Mr. FORAKER. Certainly.

Mr. SPOONER. The Senator is very familiar with the history of the admission of Territories into the Union. I was at one time, but I am not now. Does the Senator remember any instance, except, perhaps, in the case of Nevada, where a Territory was admitted into the Union which did not possess, excluding Indians not taxed, a population equal to the then ratio of representation in the House of Representatives?

Mr. FORAKER. Mr. President, there are instances of that kind——

Mr. SPOONER rose.

Mr. FORAKER. If the Senator will allow me, I was about coming to discuss that rule.

We have had two rules, and only two.

Mr. SPOONER. But what is the fact?

Mr. FORAKER. I am speaking of a fact now, and I will come to the other facts in a minute. It is not material to follow it out, but I will tell the Senator we have had two rules as to the population requisite. One rule was that establised by the ordinance of 1787, and the other rule was that established by our treaty with France, which we followed in our treaty with Spain when we acquired Florida, and subsequently followed, with a parenthetical modification, in our treaty with Mexico. I will speak of that presently.

In every instance where the ordinance of 1787 applied, or was extended so that it did apply, to a new Territory, the rule prescribed by it was followed and was determined to be the one that should govern as to its admission—and that was that Congress might admit it whenever it saw fit, whether there were 60,000 inhabitants in the Territory or not, but that that Territory had a right to demand admission whenever it might have 60,000 people.

TREATIES.

The other rule was this: In 1803 we made the Louisiana purchase under a treaty entered into with France; a treaty with which all Senators are familiar. There occurred in that treaty language that I want to quote in this connection. Article III of the treaty with France provided:

ARTICLE III.

The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution—

"According to the principles of the Federal Constitution"—that is a phrase to which I call special attention—

to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

While I am about it I will call attention to the next treaty in which that occured in connection with territory ceded to us, which was the treaty with Spain entered into February 22, 1819:

ARTICLE VI.

The inhabitants of the territories which His Catholic Majesty cedes to the United States by this treaty shall be incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities of the citizens of the United States.

Then followed, in 1848, the treaty of Guadalupe-Hidalgo, the ninth article of which reads as follows:

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States and be admitted, at the proper time (to be judged of by the Congress of the United States), to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution.

Senators will observe that the language is practically the same that I have read from the treaties with France and Spain, and different in effect as to the treaty with Mexico only as it is made different by the parenthetical clause that Congress should have the right to judge as to the time of admission.

ARKANSAS.

Under the first treaty with France we took all that vast domain of territory that has since been erected into so many States and Territories. Arkansas was one of the Territories of the Louisiana purchase admitted to statehood; and in connection with the admission of Arkansas the question arose what was meant by the phrase "admitting her to statehood according to the principles of the Federal Constitution." Everybody, almost, agreed that admitting her according to the principles of the Federal Constitution meant admitting her when she might have a population equal to the unit of representation in the House of Representatives, whatever that unit might be at the time; that in this free, popular Government of ours representation was an essential part of all legitimate government; and that whenever a people inhabiting an area we had designated as a Territory reached the point in the development of population where they were equal to the unit of the ratio of representation, they were entitled to be admitted to the Union. That was the position taken.

Now, Mr. President, I want the attention of the Senator from Indiana to this fact: Not only was that the contention in the case of Arkansas, but it was the contention in the case of Florida as well. She was admitted under the treaty with Spain. In that debate the contention was that she had a population equal to that unit of representation; and she was admitted. The question arose, in connection with numerous other Territories when they applied for admission to statehood, and notably years afterwards, in connection with the application of Kansas to be admitted to statehood.

On this point Mr. Douglass said, in a minority report made by him:

While the Constitution of the United States does not, in terms, prescribe the number of inhabitants requisite to form a State of the Union, yet, in view of the fact that representation in the House of Representatives is to be in the ratio of Federal population, and that each State, no matter how small its population, is to be allowed one representative, it is apparent that the rule most consistent with fairness and justice toward the other States and in harmony with the general principles of the Federal Constitution is that which, according to the ratio of population for the time being, is sufficient for a representative in Congress. A reference to the debates which have occurred in all the cases touching the sufficiency of population in the admission of a State will show that the discussion has always proceeded on the supposition that the rule I have indicated was the true one; and the effort has been, on the one side, to prove that the proposed State had sufficient population, and on the other, that it has not the requisite numbers to entitle it to admission in substantial compliance with that rule. (Page 55, minority report by Mr. Douglass, February 18, 1858. Senate reports, first session Thirty-fifth Congress.)

Mr. BEVERIDGE. And then the rule of 60,000 inhabitants was abandoned.

Mr. FORAKER. The sixty-thousand rule was not abandoned. The sixty-thousand rule was not invoked because the ordinance of 1787 never applied to the Louisiana purchase. What I contend is that while as to all the Territories to which the ordinance of 1787 applied the sixty-thousand rule did apply, and was recognized as applying, whenever it came to territory outside of that purchase to which the ordinance of 1787 was not extended then the unit of representation was the rule, and that in such cases it was adopted and followed.

Mr. BEVERIDGE. Does the Senator agree to that rule of representation now?

Mr. FORAKER. Yes, I do.

Mr. BEVERIDGE. Then what will the Senator say as to Arizona?

Mr. FORAKER. Now, Mr. President, the Senator has asked me a question which he thinks is bothersome.

Mr. BEVERIDGE. No, I do not.

Mr. FORAKER. The rule which I tell the Senator has always been contended for is this, that Congress could, in every instance, admit to statehood when the Territory was under the ordinance of 1787, without regard to the fact whether it had 60,000 inhabitants or less, but when it had 60,000 it was governed by that rule, and Congress had to admit as a matter of right or disregard our obligation; and that when it came to a Territory organized out of territory acquired under these treaties they could admit before they had a population equal to the ratio of representation if Congress so desired, but that it was the duty of Congress to admit when the population was equal to the ratio. Congress, acting upon this rule, has admitted, in many cases, before the population was equal to the ratio. In fact, in only a very few cases did they wait to admit a Territory until it had a population equal to the unit of representation. In a number of cases they did, but in quite a number they did not. Now, let me read as to that. Here is what John Quincy Adams said—and I call the attention of the distinguished Senator from Massachusetts to it—in the Arkansas case. He said:

I can not, consistently with my sense of obligations as a citizen of the United States and bound by oath to support their Constitution—I can not object to the admission of Arkansas into the Union as a slave State: I can not propose or agree to make it a condition of her admission that a convention of her people shall expunge this article from her constitution. She is entitled to admission as a slave State, as Louisiana and Mississippi and Alabama and Missouri have been admitted by virtue of that article in the treaty for the acquisition of Louisiana, which secures to the inhabitants of the ceded Territories all the rights, privileges, and immunities of the original citizens of the United States, and stipulates for their admission, conformably to that principle, into the Union.

And throughout this debate it was conceded, as in all the other debates substantially, that whenever a Territory which belonged to any of these cessions and was governed, therefore, by that clause of the treaty, had a population equal to the unit of representation, it was entitled as a matter of right to admission.

Mr. HOAR. Mr. President, may I ask the honorable Senator a question, that I may understand his very interesting proposition?

Mr. FORAKER. Certainly.

Mr. HOAR. I ask the Senator whether by the term "territory," when he speaks of a Territory having certain rights, he means Territory organized under the laws of the United States or whether he means a tract of territory?

Mr. FORAKER. I mean simply what I have been talking about. I have been reading from the record, and I have been showing what was said and what was done in the case of Tennessee and in the case of the other Territories that were governed by the ordinance of 1787. There it was held that they might be admitted to statehood earlier than the time when they had 60,000 inhabitants, but that they had a right to claim admission and to have it conceded to them when they did have 60,000. When it came to the other class of territory, that which we acquired by treaty under cession from France, cession from Spain, and cession from Mexico, the rule has been just as invariable as it has been under the ordinance of 1787, that whenever Congress might see fit to do so it could admit organized Territories from this territory to statehood, but that it was under obligation to do so, whether it discharged that obligation or not, whenever the Territory had a population equal to the ratio of representation.

Mr. HOAR. The Senator will allow me in one sentence to make my meaning clear. I do not rise for any argument or any delay, but only to understand what I regard as one of the most interesting and important doctrines that could be laid down in debate here.

I understand the Senator—without going into the historical question at all now—to claim that there is an obligation now resting upon the Congress of the United States to admit a Territory which contains a population equal to the unit of representation.

Mr. FORAKER. Whenever such a case is made out.

Mr. HOAR. That is the claim which the Senator is supporting by these historical citations. Now, when he lays down that proposition as to our present obligations to a Territory, does he mean an organized Territory with a legislature or does he use the word "territory" in the other sense of a tract of country containing that population?

Mr. FORAKER. Well, Mr. President, I mean a Territory established by the United States Government, carved out of territory governed by the ordinance of 1787 in the one case or acquired under treaty in the other.

Mr. HOAR. Then that question is preliminary to another, if the Senator will understand——

Mr. FORAKER. I do not object to interruptions, except that it is getting late.

Mr. HOAR. I will not burden the Senator. He may be quite sure I shall endeavor not to do so.

Then does the Senator doubt that if there be an organized Territory of the United States, with 60,000 people and a legislature, the United States have the absolute power and right, if they think the public interests require, to abolish that Territory, cut it up into a half dozen Territories, or to annex it to some other Territory containing half a dozen times its population?

Mr. FORAKER. Well, Mr. President, I do not know that I comprehend in full the question of the Senator; but whether I do or not, I do not understand the purpose of it. In this case is involved the question—and I do not know whether the Senator has reference to that or not—whether the Indian Territory shall be added to Oklahoma. If so, it is a practical question.

Mr. HOAR. My question is this: I want to test the Senator's argument that there is a right creating an obligation on the part of Congress to admit a Territory when it has a population equal to the unit of representation. Now, I wish to test that argument by inquiring whether the Senator doubts that this being called a Territory which has that right is a being which at any moment can lawfully be abolished by Congress, lawfully be cut up into half a dozen smaller ones, or lawfully be annexed to a larger one with ten times its number, because it seems to me——

Mr. FORAKER. I object, Mr. President, to being any longer interrupted. I want to conclude my remarks.

Mr. HOAR. Very well.

Mr. FORAKER. I do not see the pertinency of the question, but I shall answer what I understand it to be.

I have been standing here for two hours arguing intelligent propositions, and not hesitating to tell people what I had reference to—not putting anything theoretically. I have been saying that under the ordinance of 1787 a right arose as to the Territories to which that ordinance applied as the organic government. I have been saying that under treaties with Spain, France, and Mexico a right arose as to the inhabitants of the territory ceded by those treaties, and I have been telling what that right is. I am not talking about abstract propositions. I do not know whether the Senator from Massachusetts has in mind Guam, Tutuila, or the Philippines, or what; but whatever he has in mind, I answer him that I am discussing the contractual obligations of this Government, with a view to making application of them to the case before the bar of the Senate.

Mr. HOAR. So was I.

Mr. FORAKER. Now, if the Senator in asking me a question will tell me what he has in mind, I will take pleasure in answering him, but I do not want to be involved in theoretical discussions.

I was about proceeding to show to the Senator from Indiana [Mr. BEVERIDGE] that in the debate with respect to Oregon this question arose, and Mr. Harrison calls attention in that connection to this fact. One of the members, Mr. Clark, said:

> I claim that Oregon has a right to come in under the ordinance of 1787, and that it is the duty of Congress to admit her on the same principle and according to the same rule established in that ordinance for the Northwest Territory.

Mr. Harrison, after citing quotations from all the leading debaters in that debate, adds the following:

> It is worthy of remark here that in this debate it was conceded on both sides that the possession of a population equal to the ratio of representation in the House of Representatives was all that could be demanded of a Territory applying for admission.

That is the rule, and there never was a departure from it until this late day. What I have been contending for is simply this, that when we come to a Territory that was a part of the Louisiana purchase, which we have seen fit to organize, or a Territory that was part of the purchase from Spain, the rule was not 60,000 inhabitants, as fixed by the ordinance of 1787, but the unit of representation, whatever it might happen to be at the time. That being the rule, it was followed as to every Territory, nobody disputing it in any serious way; that was the rule that obtained, that a Territory had a right to be admitted whenever she could show that she had a population equal to the ratio of representation and show that she belonged in the territory acquired by either the Spanish or the French cession.

TREATY WITH MEXICO.

I come now to the cession from Mexico. It is said with respect to that cession that the rule which we applied as to the cession from France and the cession from Spain does not apply, because there was interpolated in the treaty the parenthetical clause to which I have already referred. The article reads as follows:

> The Mexicans who, in the Territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution.

Now, it is said that because that parenthetical clause is inserted—"to be judged of by the Congress of the United States"—the same rule does not apply to territory acquired from Mexico, which it was conceded by everybody, until very recently, applied to territory acquired from France and territory acquired from Spain. Now, that does modify it. There is no question about that. So far as the naked legal obligation is concerned, it gives the Congress a right to postpone indefinitely admission to statehood. But history, concurrent with the negotiation and ratification of that treaty, shows conclusively that it was understood by the representatives of this Government who framed it and secured its ratification that it meant the admission to statehood of New Mexico, just as California was admitted to statehood, in the then near future, and there was no thought of waiting fifty years for such admission.

I might quote here at very great length, but it is enough for me to quote on that point from the messages of President Polk and President Taylor. President Polk said, in his annual message of December 5, 1848, page 641 of the Messages and Papers of the Presidents, speaking of the slavery question and the difficulties arising as to its right to go into the Territories and be there established:

> It is fortunate for the peace and harmony of the Union that this question is in its nature temporary, and can only continue for the brief period which will intervene before California and New Mexico may be admitted as States into the Union.

That is one expression. President Taylor said, in his annual message of December 4, 1849, page 19 of volume 5 of the Messages and Papers of the Presidents, after discussing California:

> The people of New Mexico will also, it is believed, at no very distant period present themselves for admission into the Union. Preparatory to the admission of California and New Mexico the people of each will have instituted for themselves a republican form of government, laying its foundation in such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness.

I might read at much greater length, but I am hurrying through, to conclude, if I can, this afternoon. Then at page 27 of the same volume, in a special message dated January 23, 1850, President Taylor said:

> With a view to the faithful execution of the treaty so far as lay in the power of the Executive, and to enable Congress to act at the present session with as full knowledge and as little difficulty as possible on all matters of interest in these Territories, I sent the Hon. Thomas Butler King as bearer of dispatches to California, and certain officers to California and New Mexico, whose duties are particularly defined in the accompanying letters of instruction addressed to them severally by the proper departments.

Thus he lay before Congress the claims of these two Territories, the claims of New Mexico as well as the claims of California, to admission to statehood under the treaty of Guadaloupe Hidalgo, concluded in 1848.

At that time, Mr. President, no one had a thought but that the same rule was to be applied to New Mexico that was applied to California and that had been applied—I mean the same rule of right—under the treaties with France and the treaties with Spain. While, therefore, under the parenthetical clause the legal effect is changed and Congress has a right to judge and has not broken any strictly legal obligation, yet it is in violation of our moral obligation to that people that we have not given them statehood ere this.

So, then, I claim with respect to New Mexico, it being a Territory organized by us, that she has reached a point, as shown by the last census, where her population is sufficiently large to indicate that she is entitled to admission to statehood as a strict moral right under the treaty by which she was ceded by Mexico to the United States. Such being the case, New Mexico has a right to the benefit of the rule arising under the treaties. I want now on that point to read one thing further from Mr. Harrison's report contending for the rule that whenever a Territory shows it has a population equal to the unit of representation it is entitled to statehood. He concludes the discussion with this statement:

> It may be said of this rule that it is not arbitrary, but founded on reason. It preserves an equality of representation. If we go beyond this, it becomes a matter of arbitrary caprice, of whim, or of party emergency.

That seems to me to be good, sound doctrine. It seems to me to be the announcement of a rule safe to follow. We know that it is a rule which has been recognized in every debate with respect to statehood since this Government was inaugurated and Territories commenced to be admitted. Mr. Harrison called attention to the fact that in the case of Oregon it was conceded by everybody, on both sides, that that was the rule of right which should obtain where they had come in under the treaty, and the right was to be admitted "according to the principles of the American Constitution." That clause was so construed by Mr. Madison, by Mr. Gallatin, by all the great men of the early days of the Republic, and has been followed in an unbroken line of cases from that time until this, so far as recognizing and admitting it may be concerned, although it has not always been acted upon.

So I say while Congress is all powerful and not required to follow any rule, except the general interest, yet when it seeks to follow a rule of right, there are but two that have ever been recognized. One is that a Territory shall be admitted, if it come under the ordinance of 1787, when it has 60,000 people, without regard to how great the population of the whole country has become. The other is when it has a population equal to the unit of representation, it is entitled to come in.

Mr. President, at this point, if it is agreeable to the Senate, I should like to suspend until to-morrow, at which time I will conclude my remarks, if the Senate will allow me to do so.

I desire to state, so that nobody will think I am going to take an undue amount of time, that it will require for me to say all I want to say, in addition, not more than three-quarters of an hour at the outside. I shall look over my notes and conclude my remarks to-morrow.

ADJOURNMENT TO MONDAY.

Mr. ALDRICH. I move that when the Senate adjourn to-day it be to meet on Monday next.

The PRESIDENT pro tempore. The Senator from Rhode Island moves that when the Senate adjourns to-day it be to meet on Monday next.

Mr. QUAY. Mr. President, if I may have the indulgence of the Senate, I desire to say that I have consulted with the senior member of the minority of the Committee on Territories in relation to the statehood bill, and there is no objection to an adjournment until Monday on this occasion if it is the desire of the Senate to do so. But hereafter any adjournment of that character will be resisted.

Mr. BEVERIDGE. Just one word.

Mr. ALLISON. If I may say a word, I had hoped the Senator having charge of the unfinished business would suggest that we hold a session to-morrow. Of course nobody after this Thursday

will make a proposition to adjourn over from Thursday until Monday.

Mr. ALDRICH. I think this will be the last motion of the kind.

Mr. BATE. Undoubtedly.

Mr. ALLISON. It will be resisted if it is made.

Mr. BEVERIDGE. On behalf of the majority of the committee—and the suggestion is brought out by the statement of the Senator from Pennsylvania—I merely desire to state that of course it is immaterial to us, as we are prepared to go on at any time.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Rhode Island, that when the Senate adjourns to-day it be to meet on Monday next.

The motion was agreed to.

POST-OFFICE AT INDIANOLA, MISS.

Mr. McLAURIN of Mississippi. Mr. President, I rise to a question of privilege. On the 3d day of this month a statement was published in the Washington Post purporting to be a statement made by Secretary Cortelyou for the President in reference to the suspension of business in the Indianola post-office in the State of Mississippi. In that statement I find this language:

The postmaster recently forwarded her resignation to take effect on January 1, but the report of inspectors and information received from various reputable white citizens of the town and neighborhood show that the resignation was forced by a brutal and lawless element purely upon the ground of her color, and was obtained under terror of threats of physical violence.

Immediately after seeing this I telegraphed to Hons. T. R. Baird and P. C. Chapman, of Indianola, and asked them for a full statement of the facts. Mr. Baird was not in town. Mr. Chapman sent me a statement, which I will presently read. I have not before presented this to the Senate because of the fact that the Senate has been engaged in discussing some very important measures, both in the morning hour, and thereafter the regular order of business, the statehood bill, which is now under discussion, and for the further fact that my time has been engaged mostly in an effort to obtain a reopening of the post-office, which was closed, I believe, on the 2d day of this month; probably on the 1st day of the month.

It will be noticed that this statement alleges that "the resignation was forced by a brutal and lawless element purely upon the ground of her color, and was obtained under terror of threats of physical violence." In my efforts to obtain the reopening of this post-office I have been treated with very great courtesy by both the President and the Postmaster-General, but I have failed to obtain the reopening of the office, and I believe now that the President is acting upon misinformation and is ill advised about the matter.

Mr. Chapman is a lawyer of standing and reputation in that community. He is an ex-representative in the legislature of that State. He served a term of four years, commencing in January, 1896, in the legislature as the representative of Sunflower County, in which county Indianola is situated. This is his statement; but before I read it I want to say, lest it escape my attention, that I know the people of that community, and they are not a lawless nor a brutal element. They are a high-toned, chivalrous, intelligent, industrious, and thrifty people, and a law-abiding people.

This is dated at Indianola, January 6, 1903:

Hon. A. J. McLAURIN, *Washington, D. C.*

DEAR SIR: Your telegram of the 5th just delivered, and I take pleasure in giving you the facts as to resignation of the postmistress—

It will be observed that in this letter she is called the "postmistress," an office that does not exist in the United States, the office being postmaster—

Your telegram of the 5th just delivered, and I take pleasure in giving you the facts as to resignation of the postmistress. The facts are, briefly stated, that about the 1st of October the citizens of Indianola held a meeting and appointed a committee of three to circulate a petition asking Minnie Cox to resign; this petition was to be returned at a meeting of the citizens to be held a week later. The petition was circulated and was signed by a large number of citizens of Indianola. Wayne Cox, husband of Minnie Cox, on the evening of the second meeting, called at my office and said he desired to have me state to the mass meeting that night that he had discovered that the citizens of Indianola did not wish his wife to act as postmistress any longer, and he would therefore request that I read the inclosed resignation of his wife as postmistress to the mass meeting that night, which resignation he delivered to me.

The resignation was signed by his wife. The only request made in regard to the resignation was that his wife should have time to get her reports ready and get the office in shape so that she might get out with a perfect settlement of the affairs with the Government. He stated further that he had been a citizen of this county for years, and that the white people were his friends and had always treated him properly, and that he and his wife did not wish to hold the office when a petition had been freely signed by the citizens of Indianola, asking for her resignation. This resignation was read to the mass meeting, as requested, the resignation was accepted, and the time named for the resignation to take effect was January 1, 1903.

I was present at both of the meetings and can state of my personal knowledge that no threats or intimidations were made by any party at these meetings, no committee was appointed to notify Minnie Cox, and no official representative from either of these meetings had any communications with Wayne Cox or the postmistress relative to her resignation.

I can state further that I have not heard of any intimidations or threats made by any citizen of Indianola or Sunflower County against the postmistress. I can state further that the kindest feeling exists between the citizens of Indianola and the postmistress. She being an intelligent negro and not wishing to retain the position of postmistress after this petition asking her to resign, readily consented to tender her resignation to take effect on the 1st of January and deliver the office to a successor. There has not been any rough-and-tumble element, intimidating and threatening Minnie Cox, or Wayne Cox, but on the other hand everything is quiet and peaceable and no excitement whatever in the town of Indianola, and we, the citizens of Indianola, are much surprised and shocked at the reports appearing in the different newspapers, there being no foundation for these reports and there being no facts stated in them as to threats, intimidations, etc.

There were a number of newspaper correspondents here yesterday, and they were much surprised to see the condition of affairs here, nothing except ordinary usual business being seen upon the streets, except the great inconvenience caused by the closing of the post-office. Our town is not composed of the rough element, but, generally speaking, we have one of the best towns in the Delta for quietude, gentility, and conservativeness, and we can not understand how it is that the President and his Cabinet should desire to punish the people of this community by taking our mail service away from us, because we recognize that we have done nothing in violation of the law, and have simply asked for the resignation of an official. I have even heard where petitions were circulated asking for the resignation of a preacher, in this community and in others, yet I can state that the resignation, as asked for by the people of Indianola, of the postmistress was as genteel and as polite as a resignation asking for the vacancy of a pulpit. What I have stated in this letter can be substantiated by affidavit from 50 of the best men in this community; in other words, if the Department should require this affidavit it can be had right here in this town of the representative element of citizens, and of the rough element, if a tough element exists here.

I especially ask that you who have been so kind as to make inquiry into the matter bend every energy to have our post-office opened. It is a great handicap upon us. It affects the business of each and every one here, and it presents to the world a feature that causes criticism to be heaped upon one of the best elements of society in the South.

A number of citizens join with me in asking that you forward a copy of all correspondence sent to Washington, in order that we may see and learn how it was that such reports appeared in the newspapers. If such a thing can be done, we respectfully ask that you secure them for us, as we know that no honorable gentleman would deliberately falsify against his own citizens and neighbors. We feel assured that the reports have been sent from other places than Indianola.

Let me hear from you at your earliest convenience, Hon. Thomas R. Baird being out of the city.

I am, yours, truly, P. C. CHAPMAN.

This was sent to me by a lawyer of standing in the community, as I have just said, by a man who served the county as a representative in the State legislature for four years, and his statements in reference to this matter, I feel sure, are entitled to full credence.

The advice to the President was, and the statement that goes out from his secretary is, that "the resignation was forced by a brutal and lawless element" and "was obtained under terror of threats of physical violence." It will be seen by this letter that instead of its being forced by "a brutal and lawless element" the resignation was given because a meeting of the citizens, peaceable and lawful, had selected three committeemen to obtain signers to a petition to the postmaster to resign; that this petition was circulated and signed; that it never had been presented to the postmaster; but upon her knowledge of the fact, which came to her from rumor, as I suppose, that it was being circulated, she sent, within less than a week, her resignation, to be read to the next meeting, which was to convene just a week later.

So if these threats were made at all the threats were made between these two meetings; and if the threats were made there must have been some threatener or threateners. If so, they ought to be tangible, and it ought to be that they can be pointed out and the threats they uttered can be named, so that the people of Indianola may have an opportunity to meet them. As I have shown by the letter I have just read——

Mr. SPOONER. I wish to suggest to the Senator that in rising to a question of privilege he gives no one any opportunity to reply to him. If the Senator will get this matter in some way before the Senate so that——

Mr. McLAURIN of Mississippi. Mr. President, ever since I have been a member of the Senate I have seen this done, and I was a member of the Senate in 1894. When newspaper charges were made I have seen Senators get up on the floor and make their answers to them. I have seen it done within the last thirteen months in this Chamber, and I have never before heard it questioned. If the Senator from Wisconsin wants to reply, I have no objection to his replying, and if any Senator wants to follow up this indictment and make any charge against these people, I am ready to respond to it. I merely want to say that I am not arraigning anybody; I am not attacking anybody; I do not attack the President or anything he said. I do not attack the Postmaster-General for abolishing the office. I do not think it ought to have been abolished; I do not think that there was ground for it, but that is not a question which has been brought before the Senate—surely not by me. It has not been brought before the Senate, as far as I know, by anybody.

The point I want to get at is that these people have been charged with being lawless and brutal, and have been charged with making threats of violence against the postmaster, and when that charge has gone out with all the force and effect of an utterance of the secretary of the President, I want my constituents to have an opportunity to be heard in their defense, and this is the only

way they can get their case before the country as fully as the charge is made by the secretary. That is all I want. I do not arraign anybody, but I deny that those people are a lawless people. I deny that they are a brutal people. I deny that they have made any threats which have been made tangible, that have been made palpable, that I can find. I have tried to find what threats were made and by whom.

As I said before, in my efforts to obtain the reopening of the post-office I have been treated with the utmost deference and consideration by both the President and by the Postmaster-General, and I think that this comes up from the fact that the President has been misadvised as to the state of affairs there.

There is this further statement in the Washington Post article:

The mayor of the town and the sheriff of the county both told the post-office inspector that if she refused to resign they could not be answerable for her safety, although at the same time not one word was said against her management of the office.

I have the statement, not written to me, but over the signature of the sheriff of the county, from which I quote this in reference to that point. It is under date of the 11th of this month:

No notice of lawlessness has been brought to my attention, and if there had been any I would have been the proper official to communicate with. And in any event, regardless of color or previous condition of servitude, my services have always been at the command of the citizens of this county and State.

I will further state that I was present at the citizens' meeting held in the court-house, and the only thing we stand charged with is that the citizens exercised their rights as American citizens to request a resignation of the postmaster. No threats were made or implied—simply a request. The Constitution gives every citizen his right to express his views on any subject.

In this county the population, according to the last census, is 16,084. These figures are considerably short of the total, but at any rate the negroes represent about 75 per cent of the population, and without making a close canvass of the records in my office, I will say that while they represent the above proportion of the population, they pay about 10 per cent of the taxes—paid to maintain the government. Under the above conditions the taxpayers should at least have the privilege of making a request or offering suggestions as to who should be their public servants.

A. C. COX, *Sheriff and Tax Collector.*

This letter of the sheriff from which I have just read is in the Memphis Morning News of January 12.

Now, then, I have a letter from the county superintendent of education, who is a lawyer, a gentleman of standing. He says:

INDIANOLA, MISS., *January 10, 1903.*

A. J. MCLAURIN,
United States Senate, Washington, D. C.

DEAR SENATOR: I have watched your course in defending the people of Indianola, Miss., with a great deal of pleasure. The interest that you have taken in our behalf, in trying to undo the wrong and injury inflicted on us as a community by the closing of our post-office by order of the President and the Post-Office Department, has endeared you to our people. The people of Indianola feel that the President and Cabinet acted on erroneous information, it matters not from what source it may have come to their knowledge. There is no community in the Union more free from "hoodlumism and lawlessness" than Indianola and its vicinity. Our people recognize in the President a man who has the courage of his convictions, and now that the facts are being printed rather than the inflammatory articles of the daily press, as was the case a few days ago, we feel that he owes it to us, as well as himself, to undo the injury he has done us. The opinion of the people here is that, since Minnie Cox has repeatedly assured the public that under no conditions would she enter the office again, there is but one manly course to be pursued by the authorities, and that is to undo as nearly as lies in their power the wrong and injury inflicted on the people here.

There has been no trouble in reference to Minnie Cox's resignation. She found that the people desired a change in the office and of her own volition placed her resignation in the hands of the Department. Whether or not she entertained any fears for her safety in the event that she reopened the office on January 1, I am unable to say, further than her every statement belies any such state of affairs, or, rather, I should say that she has repeatedly said both in Indianola and Birmingham, if the interviews are to be relied upon, that in no case would she serve as postmistress here again. She remained in Indianola four or five days after the office had been closed and walked the streets with as much freedom as any citizen in the town. She was and is absolutely safe, in my opinion, in returning to Indianola and remaining here as long as she wishes to do so and conducts herself as any citizen should.

There has been absolutely no feeling among the races here. Everything has been perfectly peaceable and quiet here, and but for the daily press no one would have ever noticed anything of an unusual nature. The people have been attending to their usual business as though nothing had occurred, and absolute quiet has prevailed at all times. We of Indianola feel that we have gotten quite a lot of cheap advertisement and notoriety that we did not seek and did not want.

We send our mail twice a day to Heathman, Miss., which is 4 miles west of here. If you can not get the office here reopened, we would appreciate the mail's being put off at Heathman rather than at Greenville. Crawford, the postmaster at Heathman, has two clerks in his store there, and assured me on Thursday of this week that he could handle the mail for Indianola without inconvenience.

The people generally of Indianola join me in thanking you for the tireless energy and interest you have expended in our behalf and for your defense of the good order and civilization of the community.

With every expression of regard, yours, very truly,

D. M. QUINN.
County Superintendent of Education.

Heathman is 4 miles west of Indianola; Greenville is about 30 miles west of Indianola on the same line of railroad; and that is what he means about wanting it put off at Heathman or have it put off at some place rather than put off at Greenville.

Some of these letters contain matter that is irrelevant, but, as was said by the Senator from Missouri [Mr. COCKRELL] the other day, in having an article read as a lawyer it is not proper to withhold any part of a communication from the Senate.

One of the State senators from that district, W. B. Martin, is a man of fine standing there. He is a very reputable physician, and, as I said, is one of the representatives of the district in the State senate, being a man of high character. He says:

INDIANOLA, MISS., *January 9, 1903.*

Senator A. J. MCLAURIN,
Washington, D. C.

MY DEAR SENATOR: On the part of Indianola, and myself especially, I want to thank you for your efforts in our behalf. Yes, you can always hereafter count on us for any cause you espouse. I sincerely hope that you will soon succeed in convincing the authorities that our situation is deplorable, very inconvenient, and injurious from every standpoint. You will see a letter over my own signature that will set us right before the world.

I suppose he refers to some letter that has been published by him in some newspaper which I have not had the opportunity to obtain:

If you think best a deputation from this place can come to Washington and give what testimony or help you need. Thanking you again for your efforts, with my best wishes, subscribe myself,

Always your friend, W. B. MARTIN.

What I intended to show is that this man, who is a bondsman of the postmaster, who is a State official representing the district in the State senate, is ready to say at any time that there is no danger to this postmaster, and that there is no lawless element that has ever interfered with her.

I believe that these are about the only documents I want to read to the Senate now. These people, as I have said before, have had no way of putting themselves properly before the country and before the world in answer to the charge that this woman was forced out by a lawless and brutal element of that county, and that she was compelled to resign by reason of threats of violence. There has never come to my knowledge—and I have tried to investigate the matter impartially—any threat that has ever been made by anybody.

It can be seen from this document that the people feel that they have been misrepresented to the President and to the Post-Office Department, and that they have a right through somebody to present their case, and no one, I suppose, could better do it than one of their representatives, either in the Senate or in the House of Representatives, who could put it in the CONGRESSIONAL RECORD, so that it may go out in answer to the charge that they are a lawless or a brutal element of people, or that they had offered any threats of violence.

I stated to the President this morning that I intended to present these documents here in defense of the people against any charge of lawlessness or brutality, or of forcing the resignation of the postmaster by threat of violence.

I thank the Senate for its attention.

STATEHOOD BILL.

Mr. FAIRBANKS. Mr. President——

Mr. HOAR. With the leave of the Senator from Indiana, I desire to say that I put to the honorable Senator from Ohio [Mr. FORAKER] just now a question which he declined to answer, and that I desired very much when he left the floor to state the proposition on which that question was based, which I did not. I still think it was a pretty important consideration in reference to the argument he was making, and I informed him that when the Senator from Mississippi had concluded I should like to state the proposition, and that I thought he would probably find it one which was worthy his attention, and that of the Senate—

The Senator from Ohio has left the Chamber, and I will not at this late hour in the afternoon undertake to ask the Senate to wait that I may make the statement now; but I shall seek the earliest opportunity, either before the Senator from Ohio proceeds or afterwards, to state that point to the Senate.

REGULATION OF IMMIGRATION.

Mr. FAIRBANKS. Mr. President, I wish to give notice that on Monday morning, after the routine morning business, I shall ask the Senate to take up and consider the bill (H. R. 12199) to regulate the immigration of aliens into the United States. I hope that we may be able to consider it and dispose of it. It is an important measure.

DISTRICT OF SABINE, TEX.

Mr. BAILEY. Mr. President, I ask the unanimous consent of the Senate for the present consideration of a bill which I send to the desk.

The PRESIDENT pro tempore. The Senator from Texas asks unanimous consent for the present consideration of a bill which will be read.

Mr. KEAN. What is the Calendar number?

Mr. BAILEY. It has no Calendar number. It has not been reported.

The SECRETARY. A bill (S. 6039) to create the district of Sabine, in the State of Texas.

The PRESIDENT pro tempore. This bill is not now before the Senate.

Mr. BAILEY. I perfectly understand that.

The PRESIDENT pro tempore. It was referred to the Committee on Commerce.

Mr. BAILEY. And I am asking unanimous consent to bring it before the Senate.

Mr. LODGE. It will be necessary to discharge the committee.

Mr. BAILEY. It will be a mere matter of form as to whether you discharge the committee. It was not my desire to submit that motion. This bill has been before the committee almost a year. It has held four or five meetings to consider it. It is a small matter, proposing to create a district in the State of Texas. The session is now drawing to a close, and I had just as well abandon it unless I can get it before the Senate. My purpose is to ask for the consideration of the bill by the Senate without a report.

The PRESIDENT pro tempore. The Chair is of opinion that that can not be done without discharging the committee from its further consideration.

Mr. BAILEY. I was of the opinion that unanimous consent would suspend any rule. If I am put to that necessity, of course I would have to move to discharge the committee, but I think that any request for unanimous consent can be submitted.

The PRESIDENT pro tempore. The Chair will submit the request for unanimous consent. The Senator from Texas asks unanimous consent for the consideration of the bill (S. 6039) to create the district of Sabine, in the State of Texas. Is there objection?

Mr. HANNA. I object.

The PRESIDENT pro tempore. Objection is made.

EXECUTIVE BUSINESS.

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 five minutes spent in executive session the doors were reopened, and (at 5 o'clock p. m.) the Senate adjourned until Monday, January 19, 1903, at 12 o'clock m.

NOMINATIONS.

Executive nominations received by the Senate January 15, 1903.

COLLECTOR OF CUSTOMS.

Charles H. Marchant, of Massachusetts, to be collector of customs for the district of Edgartown, in the State of Massachusetts. (Reappointment.)

PROMOTION IN THE ARMY.

Col. Edward M. Hayes, Thirteenth Cavalry, to be brigadier-general, January 15, 1903, vice Johnston, resigned.

CONFIRMATIONS.

Executive nominations confirmed by the Senate January 15, 1903.

POSTMASTERS.

ARIZONA.

F. W. Smith, to be postmaster at Williams, in the county of Coconino and Territory of Arizona.

SOUTH CAROLINA.

Jefferson F. Richardson, to be postmaster at Greenville, in the county of Greenville and State of South Carolina.

HOUSE OF REPRESENTATIVES.

THURSDAY, *January 15, 1903.*

The House met at 12 o'clock noon.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

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

The SPEAKER. The correction will be made.

ARMY APPROPRIATION BILL.

Mr. HULL. Mr. Speaker, I move that the House now resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the bill (H. R. 16507) making appropriations for the Army.

The motion was agreed to.

Accordingly the House resolved itself into Committee of the Whole House on the state of the Union, with Mr. BOUTELL in the chair.

Mr. HULL. Mr. Chairman, when we adjourned last night we had under consideration the paragraph relating to the construction and repair of hospitals. I want to move an amendment, to insert after the word "officers," line 19, page 29, a comma.

The CHAIRMAN. The gentleman from Iowa offers an amendment which the Clerk will report.

The Clerk read as follows:

Line 19, page 27, after the word "officers," insert a comma.

The amendment was agreed to.

The Clerk read as follows:

And hereafter purchases of ordnance and ordnance stores and supplies may be made by the Ordnance Department in open market, in the manner common among business men, when the aggregate of the amount required does not exceed $200. And hereafter all funds received as the value of military stores transferred by the several staff departments of the Army to the insular government of the Philippines shall be deposited in the Treasury of the United States and remain available for the procurement of like military stores to replace those so transferred.

Mr. CANNON. Mr. Chairman, I desire to reserve a point of order commencing at the word "and," in line 10, to and including line 15. I reserve it for the reason that Congress is left entirely without knowledge as to the amount of this round-robin appropriation, and I am not speaking of it disrespectfully. I suspect that it is very apt and proper that military stores should be transferred to the insular government in the Philippines, reimbursements coming from the insular revenues, as I understand it.

I only desire to know what amount of such transfers have been made. But to continue my remarks in the shape of a query to the gentleman in charge of the bill, I question very much the other provision in the clause, namely, that the amount received from this transfer shall be deposited in the Treasury of the United States. This is proper and is, as I understand it, the law now, but he adds these words, "and remain available for the procurement of like military stores and supplies thus so transferred."

To illustrate what I mean, suppose a million dollars' worth of stores were transferred to the Philippines. As it is the Philippine revenues would reimburse or pay for that transfer and it would go into the Treasury. Now, this takes this amount and reappropriates it. In other words, the United States weekly, or monthly, or yearly, as the case may be, transfers the stores to the Philippines, being reimbursed therefor from the Philippine revenues, and it goes into the Treasury, and this provision, as I understand it, reappropriates not only for the coming year, but hereafter—makes it a permanent law.

It seems to me we lose all track of it. In one sense it is in the nature of a permanent appropriation. I think all permanent appropriations are vicious and all laws that appropriate money that render it practically certain that that is not the end of it, because in the fullness of time abuses grow up and scandal comes and we lock the door after the horse is stolen. It may be that in this particular instance it is not subject to that particular criticism, but I submit that that would in time probably be the result and therefore I reserve the point of order in time and call the gentleman's attention to it, so that if he can make any statement that makes it necessary I can withdraw it.

Mr. HULL. Mr. Chairman, on page 90 of the hearings before the Military Committee this matter was gone into quite fully. I will say to the gentleman from Illinois that in the Subsistence Department of the Army the same provision applies. They furnish subsistence at cost to the Government, and it is deposited in the Treasury and is always available for the purchase of like supplies, whether of the same amount or not, to replace those sold under authority of law. In the Philippines we are arming the constabulary; we make the provision for the manufacture of arms for the Regular Army and for the purpose of accumulating the surplus of arms for this Government—something every member of Congress cordially approves of. During the last year the amount used in the Philippines was so great that they came to Congress for a deficiency, and on the deficiency bill, enacted under the gentleman's lead, this provision was put in:

All funds received as the value of military stores transferred by the several staff departments of the Army to the insular government of the Philippines shall be deposited in the Treasury of the United States and remain available during the fiscal year 1903, for the procurement of like military stores to replace those transferred.

By that means money that was appropriated could be used for the purpose for which Congress made the appropriation. Some members of the committee were in favor of largely increasing the appropriation for the Ordnance Department, and many of them believed that at the rate at which we are going in the gradual accumulation of reserve supplies it will take too many years for us to accumulate enough improved arms to issue to the National Guard and to the volunteer troops when they are called into action.

Now, it seems to me this is no worse legislation for the Ordnance Department than it is for the Subsistence Department, as to which legislation of this kind has been on the statute book for a long time. And I will say to the gentleman from Illinois that the Committee on Military Affairs has such faith in his good judgment and ability as chairman of the Committee on Appropriations that when we found he had adopted in the deficiency bill substantially the same thing now proposed in this bill, we had no hesitation whatever in making this provision applicable to the Ordnance Department.

Mr. CANNON. Will the gentleman allow me a word just there? As to subsistence, the reappropriation made is quite limited.

Mr. HULL. It amounts sometimes—has amounted within the