[CONGRESSIONAL RECORD, Fifty-seventh Cong., second sess., vol. 36, part 2. January 27, 1903, page 1337.]

Mr. WARNER. Then it increases the salaries of the circuit judges $1,000 and the salaries of the district judges $1,000. That is all, but it takes away from the circuit judges and the district judges any compensation whatever for traveling or other expenses when they are on duty away from their homes. So, as a matter of fact, it does not increase the compensation of the circuit or the district judges.

Mr. RICHARDSON of Alabama. Will the gentleman allow me a question?

Mr. WARNER. Certainly.

Mr. RICHARDSON of Alabama. Did I understand the gentleman to say that under the present bill everything in the way of extra charge, traveling expenses, etc., is taken from them?

Mr. WARNER. All taken from them by this bill.

Mr. RICHARDSON of Alabama. And he is not allowed the ordinary $10 a day?

Mr. WARNER. All extra compensation is taken away and the salary covers everything.

[January 27, 1903, page 1338.]

Mr. MANN. I would ask the gentleman what is the extra compensation that the judges receive to-day? I refer to the judges of the circuit court.

Mr. WARNER. When they serve on the court of appeals, as I remember, they get $10 a day, and a district judge, if he is detailed on the court of appeals outside of his district, as I remember, gets $10 a day extra.

Mr. MANN. Do I understand my colleague to say that under this bill if a district judge holds court outside of his district he will be entitled to no additional compensation?

Mr. WARNER. None whatever. Here is the provision, line 14, page 2: "That after the passage of this act no payment shall be made to any of the judges mentioned in this act for expenses."

I will say that, so far as I am concerned, I am perfectly willing to have that stricken out.

Mr. OVERSTREET. The district judges do not get anything at all now for expenses. The circuit judges do.

Mr. WARNER. Then I stand corrected.

Mr. MANN. What is the gentleman's statement?

Mr. OVERSTREET. The district judges do not get any additional pay for expenses under the present law. The circuit judges are entitled to $10 a day for expenses under the present law.

Mr. MANN. The district judges who hold court outside of their districts do get additional pay?

Mr. OVERSTREET. When they hold court outside of their districts, but not inside of them.

Mr. MANN. Does this propose to prohibit the additional compensation of district judges who hold court outside of their districts? Is it proposed to prohibit them from receiving additional compensation?

Mr. WARNER. If this were submitted to me as a judge, on first blush and without going into the authorities on the subject, I should say that it cut off all compensation other than the salary.

Mr. MANN. Then I would call my colleague's attention to this state of affairs. In our district and in our circuit in the city of Chicago there are constantly from one to three district judges from other districts holding court. It is preposterous to suppose that you will get those district judges to come there and pay their own expenses when they receive no additional compensation.

Mr. WARNER. That is absolutely true, and for that reason I most strongly favor giving the northern district of Illinois an extra circuit judge and an extra district judge.

Mr. MANN. Oh, well, we want three or four district judges.

Mr. WARNER. We will take all they give us.

Mr. MANN. The fact is, we use the district judges from Wisconsin, who, in their districts, do not have a great deal of business. They help us out in the city of Chicago.

Mr. WARNER. You admit that the business is increasing, and that the judges are overworked?

Mr. MANN. On the contray, I am prepared to show my colleague that the Federal business in the circuit and district courts in Chicago is not as great to-day as it was a year ago, was not as great a year ago as it was two years ago, and was not as great two years ago as it was ten years ago.

Mr. WARNER. It would be very interesting reading if you would furnish it.

Mr. MANN. All you need to do is to consult the reports of the Attorney-General of the United States, which I have done.

Mr. WARNER. I know that Chicago and Cook County and northern Illinois are constantly calling and begging for outside help, not only on the Federal bench, but on the State bench. They call in circuit judges from the country all over the State to come and hold court for them in the State courts, and pay them $10 a day extra for doing it.

Mr. MANN. Does my colleague think any of the circuit judges outside of Chicago would come to Chicago and hold court in the State courts for nothing?

[January 27, 1903, page 1340.]

Mr. COOMBS. There is an increase of $1,000; but considering one of the amendments in this bill—that striking out expenses—has the gentleman ever considered the question as to whether this is an actual reduction of salary so far as it pertains to the judges of the circuit courts in California and other districts of the United States?

Mr. CRUMPACKER. I have. I have thought about that aspect of the question, and yet I think it is a wise thing to do.

Mr. COOMBS. A wise thing to reduce the salaries when the bill proposes to increase them?

Mr. CRUMPACKER. I think it a wise provision, because judges are human, and if a judge could go away from home to sit as a member of the court of appeals and get $10 a day extra compensation he may be inclined to be away as much as possible. That is the reason for the amendment, I understand.

[January 27, 1903, page 1342.]

The Clerk read as follows:

"That after the passage of this act no payment shall be made to any of the judges mentioned in this act for expenses."

Mr. OLMSTED. Mr. Speaker, I move to strike out the paragraph just read.

[January 27, 1903, page 1343.]

The question was taken; and on a division (demanded by Mr. SMITH of Kentucky) there were—ayes 80, noes 69.

So the motion was agreed to.

Mr. RANDELL of Texas. Mr. Speaker, I offer the following amendment:

The Clerk read as follows:

"Insert, after line 15, on page 2, the following:

"'That it shall be unlawful for any of the judges on the United States courts to accept or receive any gifts, free transportation, or frank from any corporation or person engaged in operating any railroad, steamboat line, express or telegraph company. Any violation of this provision shall be punished by a fine not less than $100 and not exceeding $5,000.'"

* * * * * * *

The yeas and nays were ordered.

The question was taken; and there were—yeas 87, nays 114, answered present 11, not voting 141.

[January 27, 1903, page 1344.]

Mr. ROBINSON of Indiana. I offer the following amendment, after line 13, page 2.

* * * * * * *

Insert, after line 15, page 2, the following:

"That after the passage of this act no payment shall be made to any judge mentioned in this act for expenses of railroad transportation not incurred by such judge."

* * * * * * *

The question was taken; and the amendment was rejected.

Mr. THURSTON. I now offer in evidence certified statements from the Treasury of the United States showing in detail the number of days in each year from April 1, 1895, down to March 31, 1903, during which the several circuit and district judges of the United States were attending court away from home or out of their districts, and showing the amount of expenses for travel and attendance to which each and all of them certified and received.

I make this offer as tending to show from an analysis of the certificates and accounts the contemporaneous judgment which has been placed upon the statute in question by the action of many of the judges of the courts of the United States, and also by the administrative officers of the Treasury Department.

Mr. Manager OLMSTED. Mr. President——

The PRESIDING OFFICER. One moment. What is the Presiding Officer to understand? How many certificates are there?

Mr. THURSTON. One certificate from each of the nine circuits of the United States. The whole offer covers every day's attendance within the years I have stated of all of the circuit and district judges of the United States, and shows the amounts which each certified to and each received.

Mr. Manager OLMSTED. I call the attention of the honorable counsel to the fact that the statement which he offers here is entitled thus:

Statement showing amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeal away from their residences.

There is nothing here about any certificate by them.

Mr. HIGGINS. It is under the statute that they made the certificate.

Mr. Manager OLMSTED. You are not offering the certificate?

Mr. HIGGINS. No.

Mr. THURSTON. No.

Mr. Manager PERKINS. But they could only be paid under certificates.

Mr. Manager OLMSTED. I desire to ask the honorable counsel in response to what allegation or averment in what article of impeachment this offer is made?

Mr. THURSTON. In answer to the allegations of articles 1, 2, and 3.

Mr. Manager OLMSTED. I call attention to the fact that the averments in those articles contained make no reference whatever to any judge in the United States except the respondent.

Mr. THURSTON. I also call attention to the fact that it makes no reference to the law of the land, but we can use it in this case.

The PRESIDING OFFICER. The Presiding Officer does not yet understand the precise nature of the evidence proposed to be introduced.

Mr. THURSTON. Mr. President, it is an itemized statement from the Treasury of the United States showing the number of days in the year for which the several judges of the United States were paid their travel and attendance expenses when attending court outside of their districts. It shows the payment to each one of them—payments of the same nature and character as those made to Judge Swayne. I do not say it shows that they all charged $10 a day.

The PRESIDING OFFICER. This includes all the circuit and district judges of the United States?

Mr. THURSTON. All.

Mr. Manager OLMSTED. Before I make my objection I de-

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sire that it be noted on the record that what this paper purports to be, as stated in the caption, is this:

Statement showing amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeals away from their residences, and amounts paid to United States district judges as expenses claimed while holding court out of their own said courts, being in the first circuit.

And then there is one for each of the other eight circuits. Is that a correct statement?

Mr. HIGGINS. Yes; that is a correct statement.

Mr. Manager OLMSTED. To that I offer the objection which I will ask the Secretary to read.

The Secretary read as follows:

"First. It is not responsive to any allegation contained in any of the articles of impeachment.

"Second. If the subject-matter of the offer in any way relates to averments contained in the answers of respondent to the first, second, and third articles of impeachment, nevertheless, the said averments are not responsive to any charge contained in the articles of impeachment and present no issue for determination in this cause.

"Third. The offer of respondent is only to show that the judges named did receive for their expenses an amount equal to $10 a day in the aggregate, but does not include an offer to prove that they did not actually expend as much as, or more than, the amount charged by the honorable judges to the Government as their said expenses of travel and attendance in holding court, and the evidence is therefore immaterial and irrelevant.

"Fourth. That it is not averred in the answer nor offered to prove that the respondent, either at the time of or prior to the alleged false certification of his expenses in 1897, had consulted or conferred with or taken the opinion or had knowledge of the action of any of the judges referred to in the offer.

"Fifth. It is not competent for respondent, in his own defense, to prove the usage or practices of other judges in other courts, particularly as it is not offered to show that he had knowledge thereof.

"Sixth. If respondent has been guilty, as charged, of falsely certifying his expenses and collecting upon his own certificate an excessive amount from the Government, it is no justification for him to show that he subsequently ascertained that others had been guilty of the same offense.

"Seventh. The certificates offered from the Treasury Department are not under its seal as required by the statute to make them admissible in evidence.

"Eighth. The statements offered are not copies of any official papers or records remaining in the Treasury Department, but consist of some figures and data purported to have been made up after the consideration of such papers and records. They do not purport to show the amounts of expenses certified by the judges named therein, nor whether they were more or less than $10 a day. They show merely the amounts alleged to have been paid in each instance, without stating whether the said amount was more or less than the amount certified by the judge to have been expended. They do not include the certificate of the judge nor the account of the marshal who paid him. They are partial and incomplete, and not authorized by any statute to be used as evidence.

"Ninth. The offer contains an unwarranted insinuation that other judges have collected from the Government for expenses sums greater than they actually expended, but without showing, or offering to show, what amounts they actually did expend, or certified as having been expended, and if received, will necessitate the calling of all of the said judges, as a matter of justice to them and to all the people of the United States, for the purpose of rebutting the said insinuation contained in the offer."

Mr. Manager OLMSTED. Mr. President, if I may be permitted to speak upon this point, there is nothing in any article of impeachment making any reference whatever to any Federal judge save only this respondent, who is himself charged in the first article with having in 1897 falsely certified to the amount of his expenses and received the money upon his said certificate. In his answer, after admitting that he did make that certificate, but denying in rather a vague way its falsity, he says on page 27 of this record—it is the last paragraph on the page—

respondent says that he is fortified and confirmed in his honest belief that the construction so placed by him, etc., was and is right * * * by the fact that he is informed—

Now, in 1905, nine years after he made that certificate, he is informed—

and verily believes, and as the records of the Treasury Department will show, that many of the circuit judges of the United States and district judges did the same thing.

That, I submit, Mr. President, is new matter, not responsive to anything in the charge and having no proper place in the respondent's answer, and evidence under it is inadmissible upon the ruling of the Presiding Officer and of the Senate made upon the 14th instant upon our offer to prove the inconvenience to suitors and counsel of the absence of the respondent from his district. It was ruled inadmissible. That evidence was responsive to new matter inserted in the answer of the respondent, but the answer itself in that particular was not responsive to any averment in the articles of impeachment.

I want, just at this point, Mr. President, to state that the honorable counsel for the respondent took us to task for making a written offer embracing an admission made by the respondent, to which they objected. He took us to task in terms of great indignation for trying to get before the Senate matter in an improper way. I call your attention to these three exhibits attached to their answer, and ask what words of condemnation are strong enough to apply to the introduction in that manner of what is intended to be evidence in advance of the hearing of the case for the purpose of influencing the court in its decision? Upon the ruling I have already cited, and upon every authority this evidence would have to be rejected for that reason.

But next, Mr. President, the offer is only to show that the judges named in those papers did, in certain instances, receive for their expenses as much, or a sum equal to $10 for each day if divided by the number of days. But it is not offered to show—the statement offered does not even refer to the subject, and respondent makes no offer to show—that those judges, nor any of them, did not actually expend that sum, and this is, I say, a cowardly insinuation against honorable judges—the dragging of their names in the mire without any attempt to prove that they have been guilty of any offense whatever.

Of course, Mr. President, if a judge is holding court in New Orleans, where, as I know from very recent experience, people may reasonably expend a good deal more than $10, or in New York, or in Chicago, or in San Francisco, and if his expenses amounted to $12.50 to $15 a day, he could get not to exceed $10; and so, of course, this statement would show that what he got amounted to $10. That is the maximum fixed by the law, but it is not the slightest evidence that he did not expend the money. They do not offer to introduce the certificates showing what his actual expenses were. So I say, that, lacking that essential element, it is not evidence at all in this case.

It is not pretended that this respondent at the time of making his certificate in 1897 knew the opinion of, or consulted any other judge in the United States.

In regard to the fifth objection, Mr. President, it is not competent for the respondent in his own defense to prove the usage or practice of other courts or other counties. I propose to submit a very high authority. In the celebrated trial of Prescott in Massachusetts, made notable by the eminent array of counsel and managers involved, Judge Prescott, the probate judge, entitled upon one side of the court to take fees, was charged with taking more than the law permitted him.

In one case the excess was a dollar and ninety-eight cents, and in another article some $39 of excessive fees were involved. He was convicted upon both charges. He offered to prove the usage of other courts and other counties throughout the State for the purpose of showing his intent to have been an honest one and in accordance with the practice throughout the State. That offer was made by Mr. Samuel Hoar and supported by himself and Daniel Webster, but they were completely overthrown in their argument by Mr. Manager Shaw—the same Mr. Shaw who afterwards became chief justice of the supreme court of Massachusetts, and, in the opinion of many men, secured a place in the history of the jurisprudence of this country second only to that of Chief Justice Marshall. I ask that the court will hear the offer which was made by Mr. Hoar in that case.

The PRESIDING OFFICER. The Secretary will read.

The Secretary read as follows:

The counsel for the rspondent read the motions when put into writing, as follows, viz:

"1. And now the counsel for the respondent move that, in order to rebut the charge of willful and corrupt misconduct, they may be permitted to prove that at the time of the respondent's appointment to office there did exist, and continually since has existed in the probate offices of the several counties in this Commonwealth, a practice, according to which, in cases of application for administration, certain official papers are prepared and executed, and certain official acts done and performed, which are not particularly enumerated in the statute called the fee bill, and fees paid therefor, and to show the usual amount of such fees.

"2. And now the counsel for the respondent move that, in order to rebut the charge of willful and corrupt misconduct, they may be permitted to prove that at the time of the respondent's appointment to office there did exist, and continually since has existed, in the probate offices of the several counties of this Commonwealth, a practice, according to which, in cases of application for administration, certain official papers are prepared and executed, and certain official acts done and performed, which are not particularly enumerated in the statue of the Commonwealth, commonly called the 'fee bill.'"

Mr. Manager OLMSTED. Mr. President, to make this as brief as possible, that offer having been elaborately argued by those eminent gentlemen, was rejected by a vote of more than 2 to 1. Judge Prescott was convicted and removed from office upon those two articles. If this respondent has been guilty of any offense it is no excuse for him to say that somebody else did the same thing in later years, and in some other court; and in any event his offer does not include anything tending to show improper conduct by any other judge.

But again, that paper is not offered under the seal of any Department. It is not so authenticated as to be admissible in evidence. It does not purport to be a copy of any record in any Department. It is simply a lot of figures made up by somebody purporting to have been abstracted or extracted from certain documents, we know not what. It certainly does not show that any other judge ever certified to $10 of expenses when his actual expenses were less.

Now, when we offered the three certificates showing Judge Swayne's certificates and the action thereon we were required by the honorable counsel for the respondent to put in the whole record, the marshal's account, the action of the Treasury Department—every paper on file. These papers which they offer are not evidence in any proceeding on earth and would not be received in any court in Christendom.

Mr. HIGGINS. Mr. President, I must confess to my surprise at the last objection raised by the learned manager. It is true, I find, that the certificate to these statements is not attested by the seal of the Treasury Department, but it is signed by the Secretary of the Treasury; and the only effect of that objection would be to require us to have the seal put to this paper between this time and the next meeting of this body. I hardly suppose that the learned managers will stand on that. An objection which merely goes to the authentication and which does not dispute its genuineness, it seems to me, is hardly worthy of either this tribunal or this grave proceeding. Nor have I supposed that either side in the prosecution of this case would undertake to put unnecessary tasks upon the other or lengthen the proceedings.

The learned manager said that the counsel for the respondent had compelled the managers to put in evidence certain certificates of the judge when they put in their Treasury statements in support of the articles against Judge Swayne—the first, second, and third. We put no compulsion upon them that I remember. They took their own course, and a very proper course. They rely upon their allegation of the untruthfulness of the certificate, and of course they put in the certificate. It would have been open to us to have loaded up this record with all of these papers from the Treasury Department and to have brought the originals here to the extreme disturbance of the public business. But, as we supposed, contributing to the need of dispatch of the Senate under its present conditions, we have got a succinct statement which gives all the material facts; for, Mr. President, behind the certificate here, as to every item, it is presumable, and there certainly is in the Treasury Department, certain other evidence. The course of proceeding in this case, as shown by the very certificate put in by the managers, is that at the end of a session of court held by a judge away from his home, at the circuit court of appeals or away from his district in the district court, he presents his certificate to the marshal, stating the number of days and the amount of expenses, which he certifies to, and on that the marshal pays to him the amount and takes his receipt, which, under the form prescribed by the Department of Justice, is at the bottom of the certificate. A form of that was presented by my colleague only a few moments ago and admitted without objection.

That certificate is by the statute made the voucher upon which the marshal is reimbursed for his payment to the judge; and, as I shall call attention to, the statute requires that he shall be repaid—that he shall be allowed his account. The marshal then presents such item with the other items going to make up his account, his entire account, under the act of 1875, which we put in evidence here this afternoon, to the United States judge for that court. In the particular cases, we have an object lesson here in the certificate introduced by the managers in condemnation of Judge Swayne, that there the marshal of Texas in two instances presented that account before the local judge, Judge Bryant, who did not sit in two certain trials growing out of the failure of a bank because he was interested in the matter in some way, and Judge Swayne held two long trials, one in one year and the other in another year, and made these certificates.

Now, the marshal presented his account to Judge Bryant, and, under the statute, the United States attorney for that district was at that time required to be present and his presence to be noted upon the record. The marshal's account had to be sworn to. The judge's certificate is prescribed, and the statute prescribes that he shall approve or disapprove of that account, as shall be according to law and as may be just.

So you have now the act of the marshal in paying the judge, and the act of the local judge in approving the account in the presence of the district attorney, who is there when he approves it in order to protect the United States. All that happens in the very district where the expenditures are made and where the judge knows and the district attorney knows and the marshal knows, each of their own knowledge, as to what is the amount of expenses that would be involved in a residence there. The account then goes with the marshal's to the Department of Justice, under the terms of the act which will be printed in the RECORD to-morrow, and is there audited, in the first instance, by the Auditor of the Department of Justice. From there, after the lapse of sixty days, it goes to the Treasury Department and is audited by the Auditor for the State and other Departments. It is then subject to the disallowance of the Comptroller, either of his own motion or upon its being brought before him.

You have, therefore, Mr. President, in this case the act in succession of six executive officers in confirmation or disallowance of such accounts. These certificates show that there has not been a single account disallowed by all of these officers; that from the beginning to the end there has been no objection made under the terms of this statute to the construction placed upon it by Judge Swayne, namely, that the certificate under which the payments were made were those that allowed a certificate of $10 a day irrespective of the fact as to whether that amount was actually expended or not.

Mr. Manager OLMSTED. I do not like to interrupt the honorable counsel, but I certainly object to his stating the contents of this table unless he states it correctly. It does not state any one of the things he has been suggesting. It simply shows the amounts paid to these people and nothing more.

Mr. HIGGINS. Mr. President, I did not expect that objection. I have been stating the acts of Congress and the duty of the officers out of which these statements grow and the scrutiny through which they had to go. No allowance can be made of over $10 a day, and every allowance that is up to $10 a day is an acquiescence in the terms of the statute. There is no disallowance by it. So the learned manager is quite mistaken. I am obliged to him for the interruption, for it makes me put this vital point more clearly, and I hope with complete clearness, to the Senate.

Mr. Manager OLMSTED. Then, before the honorable counsel puts it, will he allow me to oblige him again by the suggestion that, as the act requires the marshal to pay the judge upon his own certificate provided the amount does not exceed $10 per day, all these other officers he has named have nothing to do with it unless he does exceed $10 a day.

Mr. HIGGINS. That, Mr. President, brings me to the point of this case exactly. I am obliged to the learned manager; I meet his challenge, and I ask him to reply to me when it is done. I ask the learned manager if this fraud, which is a fraud before this Senate, was not such a fraud when it was brought before Judge Bryant? If it is a fraud now, it was a fraud then; and was there anything that has been proved by these witnesses that Judge Bryant did not know of his own knowledge? Did he reside in Tyler? I do not care. If he did, he knew it because he lived there. Did he reside elsewhere? Then he had to go away from his home, though in his district, to be sure, when he held court in Tyler, and he knew what it cost him just as much as Judge Swayne knew. Did not the district attorney know it? Did not the marshal know it? And does the learned counsel pretend to say that because of the terms of this certificate, as prescribed by the acts of 1891 and 1896, if that was a crime, it was not the duty of that district attorney to present Judge Swayne to his grand jury and have him indicted; that it was not the duty of Judge Bryant to bring it to the attention of the district attorney; that it was not the duty of the marshal to protest? Is it possible that there is any fraud that can exist within the jurisdiction of the Auditor of the Department of Justice, of the Auditor of the Treasury Department, of the Comptroller of the Treasury that they can not unkennel and uncover, and that it is not their duty to do it?

No, Mr. President, it can not be held in the face of that that any such construction could be put by them upon the act of 1891 and the act of 1896 as to these fees. They did not abandon their duty; they do not stand here as convicted of any such absence or lack of it. What they did do was to say, "We are concluded by the certificate because we can not go behind it; we are concluded by the certificate because the statute intended

to make it an allowance when the judge certified it, irrespective of what the actual expenses were."

The Senate will perceive, Mr. President, therefore, that the admissibility of these certificates rest upon something else than the mere act of the circuit and district judges of the United States in their several and respective actions in the amounts they certified under this statute. It brings up as a ground of admissibility of these certificates the cotemporary construction placed by the executive officers upon the certificates of the judges as made from time to time. The form in which we have presented it is compendious. It is stripped of every unnecessary matter of evidence, which would merely load it up with lumber. It is brought down to the naked skeleton of facts of what is vital; but it puts before the Senate all of the evidence, coupled with the acts of Congress, that is necessary, and is in no sense unfair to the managers, because it apprises them of everything that they might desire to know.

Mr. President, I had hoped that this discussion would be left to the final argument; and for my colleague and myself we are willing that that course should be pursued now. I would stop at once any further discussion of this subject and leave it until the final argument to complete then what I have already said, so as not to take up the time of the Senate; but that offer does not seem to meet with the views of the learned managers, and I am compelled, therefore, to go into the discussion of the case—I say of the case—as made now by this objection to our certificates.

What we contend, Mr. President, is that the proper construction of these acts of Congress of 1891 and 1896 as to judges holding court away from their homes or out of their districts, is the one placed upon it by Judge Swayne; and that is they were authorized to certify their expenses at $10 a day as an allowance or compensation for such services. I shall endeavor to be very brief. The act is:

> That any justice or judge who, in pursuance of the provisions of this act, shall attend the circuit court of appeals held at any place other than where he resides—

And, mutatis mutandis, it is the same in the case of a district judge when he holds court out of his district—

> shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance, not to exceed $10 per day, and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

The prior state of the law was that the Judge for such service was paid his actual expenses upon vouchers filed with his accounts. This will not be disputed, I presume, and I have assumed that there is no doubt as to the state of the law.

The true construction of these statutes is that Congress intended that a judge rendering such service should be paid $10 a day as an allowance for compensation for the service. That such is the true construction of the act will appear from its provisions, as shown by its language, and from the changes wrought thereby.

What is meant by "reasonable expenses" as used in the act? It was changed, Mr. President, from "actual expenses," and, therefore, presumably on its face does not mean "actual expenses."

Mr. Manager OLMSTED. May I interrupt the honorable counsel to suggest whether my understanding of the rule is correct—that upon interlocutory motions of this kind argument is limited to one hour, and that the managers on their motion have the opening and the close. I simply do not want the honorable counsel to cut me out of my reply.

Mr. HIGGINS. How long have I spoken?

Mr. Manager OLMSTED. I suggest that counsel is not discussing the admissibility of evidence, but is making an argument on the case, to which I do not object if it does not take my time.

Mr. HIGGINS. Understand, Mr. President, I am arguing that this evidence is admissible because of the cotemporary construction placed upon the statute by the officers, and that the statute is one which will bear construction, that it is open to construction. If it is not open to construction, if it is so clear, as the managers contend, that there is no doubt about it, in such case as that the authorities would not apply.

I must therefore make a case where it is apparent upon the face of the statute that it is doubtful and is uncertain, and hence I am compelled to go to that task if this question is to be determined on its merits. I regret it very much.

All the expenses must not merely be reasonable. The term "expenses incurred in travel" is easily defined, but it is difficult to place limits upon the term "attendance." Certainly it can reasonably be held to include (1) many expenses, which might not be included under the word "actual" as construed by the accounting officers of the Government; (2) many expenses not incurred in attendance, but caused by attendance, and (3) the expenses are "not to exceed $10 a day."

What light does this provision, taken in connection with the words "for travel and attendance," throw upon the true construction of the words "reasonable expenses?" If a judge spends $13 one day and $7 another, shall he certify $20 for the two days, or only $10 for the one day and $7 for the other, and $17 in all?

Mr. McCUMBER. Mr. President, I rise to a point of order. I understand that by unanimous consent five hours has been given on each side of this question to take up the time of the Senate in a debate on its merits. Now, it seems to me that it is quite outside of that rule to debate a question upon its merits at this time. I am as anxious as anyone at the proper time to hear what the learned counsel is stating, but I submit that the question, as it seems to me, that is now before the Senate, is whether or not the taking of certain fees by other judges is competent evidence to prove in this case or to justify the respondent in this case in receiving the same. That is one question. But as to whether or not that is the legal construction of that law is simply a question upon the merits, and it is not a question that reaches to the admissibility of this evidence. Under this proposition days and weeks could be taken in the discussion of the general question. It seems to me, therefore, Mr. President, that it is not in harmony with the agreement that has been entered into by unanimous consent that the merits should be discussed in the five-hour argument. I make that point of order.

Mr. HIGGINS. Mr. President, may I be allowed a word?

The PRESIDING OFFICER. The Presiding Officer does not feel competent to determine whether the method of argument pursued by counsel in support of his offer to introduce this testimony is in order or not. Rule XX provides:

> XX. All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour on each side, unless the Senate shall, by order, extend the time.

No note has been taken of the time which has been consumed in this argument. The Presiding Officer will submit to the Senate any question that is raised.

Mr. McCUMBER. The point that I make, Mr. President, has no reference whatever to the time. I assume that a discussion upon an interlocutory matter means a discussion that is aimed directly at that matter. The matter here is not the question of the construction of that law, but the question of admissibility of certain evidence to establish another fact which becomes important, and that is the justification of the respondent to give it that construction.

The PRESIDING OFFICER. The Presiding Officer understood counsel to say that one object of introducing the proposed testimony was to show the contemporaneous construction of the statute by the executive officers of the Government—that is to say, that the executive officers of the Government have put upon this statute such a construction as counsel is now claiming for it. The Presiding Officer can not say that counsel is traveling outside of the question.

Mr. HIGGINS. Mr. President, you have aptly stated my contention, and the honorable Senator, I think, has not taken in the breadth of my contention. The course taken by the circuit and district judges, respectively, is one of the objects of offering the evidence.

Mr. DANIEL. Mr. President——

Mr. HIGGINS. I have not finished.

Mr. DANIEL. Very well.

Mr. HIGGINS. The other offer is to show how officers of the Government, one judge and five executive officers of the Government, acted on the certificates of all the judges—what construction was thus put by the executive officers upon it. So that on the one hand it is strictly the cotemporary construction of the executive officers, but upon the other it brings up a new, novel, and interesting question as to how far the action of the whole body of the bench constitute also cotemporaneous construction of this kind. Now I yield.

Mr. DANIEL. I rise to a point of order, Mr. President. The paper offered in evidence is not a proper paper for the purpose of showing any contemporaneous construction of the statute. As I understand it, what a judge claims as his expenses are paid on his certificate, and his certificate is conclusive that he claims that as his expense, and payments are made on that claim. What was paid to a particular judge has no reference whatsoever as to the falsity, integrity, or otherwise of that claim, and is not a construction of what he had a right to claim. It simply passes upon the prima facie case that he himself makes, and the paper offered in evidence does not bear

upon the point in favor of which it is offered. I make that point of order.

The PRESIDING OFFICER. Is there further argument by the managers or by counsel for the respondent?

Mr. Manager OLMSTED. I should like to add one word, briefly.

Mr. MALLORY. As I understand the rule, Mr. President, the respondent has an hour in which to discuss this point. I do not think the Senate can direct the counsel for respondent how he shall discuss it.

The PRESIDING OFFICER. That was the view of the Presiding Officer.

Mr. MALLORY. If he chooses to consume the whole hour it is our business to listen to him, I suppose.

The PRESIDING OFFICER. Counsel for respondent have one hour in which to discuss this matter. The Presiding Officer can not direct how he shall discuss it unless he travels so far out of the question as to make it apparent to everyone that he is outside.

Mr. HIGGINS. Well, Mr. President——

Mr. CULBERSON. Mr. President, I want to state a matter of inquiry if it be in order. Counsel for respondent propose this testimony to show among other things the contemporaneous construction of this statute by the executive authorities. My inquiry is this: Whether this paper shows that a less sum per day was actually expended by any judge, and that with a knowledge of that fact the executive officers paid him $10 a day?

Mr. HIGGINS. What is the last part of that question?

Mr. CULBERSON. Whether or not the fact was brought to the knowledge of the executive officers that the judge in each case had paid less than $10 a day, and with a knowledge of that fact had paid a certificate at $10 a day for such judge. Now, that would be a contemporaneous construction of the statute. What I arose to inquire was whether the certificate anywhere proposes testimony to that effect?

Mr. HIGGINS. Mr. President, my answer to that inquiry is a reference to the argument I have already endeavored to exhibit; that the knowledge of at least three of these officers is one that came to them from their belonging to the environment. The marshal, the district attorney, and the local judge who pass on the accounts are all cognizant of the facts and circumstances out of which the expenses arise, and therefore must be held in all fairness to have knowledge of the facts. That is one answer.

But another is this, Mr. President: I do not care to disclose or to put before the Senate what these papers contain more than is involved in the necessity arising from the questions that are asked; but a comparison of the circuits will show that in I know three circuits the amounts certified are almost entirely under $10, and in the balance they are almost invariably $10. That is, the auditing officers of the Departments—the Department of Justice, the Treasury, and the Comptroller—had this comparison before their eyes all the time as to the construction placed upon this statute by judges in the different circuits, and therefore were put upon notice and inquiry with regard to it.

I had very nearly completed, Mr. President, the argument I was submitting about the fact that contemporary construction applies because the statute itself is one that is loosely drawn. If the words "not to exceed $10 a day" are given a hard and fast interpretation, then it must be held to mean in the case to which I have already referred that it is not to exceed $10 for any one day, and so in this instance supposed the judge would certify $17 and lose $3. That is, if he expended $7 one day and $13 another, he could only certify to the $7 that he spent that day, and only $10 for the day he spent $13; but even the learned managers will not contend that that is the construction. Why? Because it is "for travel and attendance." Oh, they say, going about large districts, you have got to have traveling expenses, and a man will spend $20 or $30 a day sometimes in traveling and all that, but what becomes, then, of your construction that it is $10 from day to day.

But, again, Mr. President, did the word "reasonable" mean an amount not as fixed by the judge's certificate, but as determined by the personal habits of the judge, and, indeed, the state of his health, or the individual limitations of his physical needs? Not all the justices, whether unhappily or not, be it said, come up to the proportions embalmed by Shakespeare in the phrase that will never die.

Some eat much, others little; some drink wine for the stomach's sake; others are total abstainers.

Did the statute contemplate that the judge, if with royal capacity he should eat and drink himself even with the Government up to $10 a day, was a truly good man? But if with less capacity he was unequal to the task he should promptly be impeached as a scamp and a rogue, to be put down and out without benefit of clergy.

But light is shed upon the meaning of the words "reasonable expenses," as used in the act, by its provisions fixing who shall determine what expenses are reasonable.

That takes me to what I have already submitted, namely, a cotemporary construction, in which it is said that the amounts shall be allowed to the marshal in his accounts, and the sum on the certificate shall be paid by the marshal.

I assume, again, in answer to the suggestion of the Senator from Virginia [Mr. DANIEL], that it is by no means clear. On the contrary, I think it is clearly the other way; that under this act the certficate of the judge is conclusive; that is, that it is irrebutable and irreversible, because the statute makes it so. I submit to the Senate, as a most serious matter, that it is not irreversible where there is knowledge that a fraud has been committed; and I can add nothing to what I have already said as to the case where the district attorney, the marshal, and the judge all have knowledge of it.

Mr. President, not detaining the Senate longer on that, I appeal to a case that is higher authority, I sumbit, than the one cited by the learned manager from an impeachment trial in Massachusetts; and that is the case of the United States *v.* Hill, where the doctrine of cotemporary construction was applied to a statute nothing like as ambiguous and loosely drawn and uncertain as the one now under consideration here. That case was where a clerk of the district court of the United States for the district of Massachusetts had not returned in his emoluments his fees for naturalization papers.

After the elapse of twenty-odd years he and his bondsman were sued on his bond for the accumulated amount of fees.

It appeared from the statement on which the court below and the Supreme Court of the United States acted that it had been the practice in that court for the clerk not to return fees for naturalization papers in their emoluments for a period running over some fifty years. Not only so, but the judges passed upon the accounts of the clerk, and the auditors and Comptroller of the Treasury passed upon the accounts of the clerk. They had never been objected to. The Supreme Court held that this long repeated construction justified the clerk in taking those fees and constituted a contemporary construction of that statute by which the Supreme Court was bound.

Mr. President, I ought, in justice to my client and to this case, to ask the attention of the Senate to a scrutiny of the three sections of the act of Congress that were construed by the Supreme Court in that case, but I will not take up the time of the Senate to do it. It is enough to know that the statute was peremptory and without exception that the clerks should return every fee of every kind and every description, in the first section. In the second, that anything he got beyond thirty-five hundred dollars was to be paid into the Treasury, and under that section particular scrutiny was to be paid by the accounting officers whenever the emoluments exceeded thirty-five hundred. To that, in the case that came before the Supreme Court, was the oath of the clerk and the certificate of the judge. There was not one word in the statute which cast any doubt upon its affirmative character of requiring fees and emoluments of every kind to be returned.

But it so happened that the fee bill of 1853, as incorporated in the Revised Statutes—and every lawyer who has practiced in the Federal courts is familiar with the fee bill of 1853—did not include in it any reference whatever to the fees for naturalization, and although the statute which required the clerk to make his returns made no exception of any kind, the Supreme Court incorporated that exception into the statute bcause, as it said, that contemporary construction had been put upon it by the judge when he passed on the accounts and when the executive officers of the Treasury did afterwards.

Further than that, and aptly, in the case of Follett *v.* Fitch (145 New York Rep., Court of Appeals), decided March, 1895, there was in controversy a statute almost identical with this, and the court of appeals of New York put the construction upon it that we are contending for here. That statute was:

> Whenever any justice of the supreme court from any judicial district, other than the first judicial district, shall be designated as one of the justices of the general term in the first judicial department, he shall be paid by the city of New York such sum as shall be certified to be reasonable by the presiding justice of the first judicial department, not exceeding the sum of $5,000 in any one year, as compensation for his expenses and disbursements in the performance of his duties under such designation.

Certain justices of the supreme court from judicial districts other than the first, during January, 1895, sat as justices of the general term in the first department.

> The presiding justice of the first judicial department certified as to each of the relators that the sum of $416.66 was a reasonable sum to

be paid by the city of New York as compensation for his expenses and disbursements in the performance of his duties under such designation.

The court held that the allowance of $416.66 for each of the judges was valid according to the clear and unmistakable language of the statute, and was not "compensation for services," but was compensation for expenses and disbursements.

I will ask to put in the RECORD what the court said, without reading it.

The matter referred to is as follows:

By chapter 104, laws of 1893, in clear and unmistakable language, a scheme is created for reimbursing the expenses and disbursements of the justices of the supreme court designated to come from other judicial districts and sit in the general term of the first judicial department.

The mode prescribed for ascertaining from time to time the amount of these expenses and disbursements is judicious and proper.

Only such sums can be paid, within a named limit, as shall be certified to be reasonable by the presiding justice of the first judicial department.

It is true that this provision is subject to the criticism that the presiding justice is not made, in the technical sense, an auditing officer to pass upon actual items of disbursement, but the obvious answer is that it is competent for the legislature to allow its designated representative to certify such reasonable sum as shall be sufficient to reimburse the expenses and disbursements of the justices required to serve in the general term of the first judicial department.

The act of 1893 is not affected by article 6, section 14, of the constitution of 1846, as amended in 1867, for the reason that it does not assume to deal with compensation for services, nor does it tend in any way to disturb the policy that seeks to maintain uniformity of salary among judicial officers of the same grade.

The fact that a reasonable gross sum instead of items is certified to cover expenses and disbursements does not make it any the less compensation for that purpose, as it is only when these expenses and disbursements have been incurred that the presiding justice will be called upon to act.

We are of the opinion that the act in question is a proper and constitutional exercise of legislative power, and in line with the settled policy of the State and the practical construction given to similar legislation for more than a generation.

The PRESIDING OFFICER. The Presiding Officer thinks counsel for the respondent have occupied an hour.

Mr. HIGGINS. I have just arrived at the end of my time, Mr. President.

Mr. Manager OLMSTED. Mr. President, if it is the desire to continue until 6 o'clock I will add what I have to say in a very few minutes. I might take advantage now to work in a very good argument on the merits of the proposition, but I think it is sufficient to come directly to the question of the admissibility of the evidence.

In the first place, the act itself does not vest any power or discretion in Judge Bryant, or the marshal, or anybody else except the judge who certifies, for it provides:

For reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in settlement of his account with the United States.

Provided the judge certified to a sum not to exceed $10 a day, what marshal had the right to sit on the account? I would not like to be that marshal. He would have been in jail for contempt inside of thirty minutes. What judge had a right to pass upon it? What Treasury official had a right to pass upon it? No one. The judge makes a certificate as to his expenses, and if it does not exceed $10 a day it is paid without question, and must be.

Now, in this offer of evidence there is not a word about the amount expended by any other judge. It is not pretended in there that any judge did not expend every dollar for which he was reimbursed by the Government. There is not anything in there about the construction of any official. We do not know whether their expenses exceeded $10 or not. We only know they did not get more than $10 for any one day.

Now, one word more about the absence of the seal from that paper. Of course, there is no seal on it, and it is not a question of waiting until to-morrow for them to get a seal on it. There can not be a seal on it. The Department can only put the seal on certified copies of papers or documents in the Department, which that is not. The act of Congress provides:

Copies of any books, records, papers, or documents in any of the Executive Departments authenticated under the seals of such Departments, respectively, shall be admitted in evidence equally with the originals thereof.

That is not a copy of any record or any document or any book. It is some figures taken off by somebody, and we do not know who, and it simply shows the amounts paid to the judges therein named. There is no insinuation, except by counsel, that any one of these honorable judges charged or certified to any amount in excess of his actual expenses. There is nothing upon which to base the insinuation that a judge, having expended two or three or five dollars a day, certified that the expenses were $10 and collected the money from the Government.

Mr. President, I do not care to take the time of the Senate longer upon any proposition which seems to me so plain.

Mr. PATTERSON. Mr. President, I should like to ask the attorney for the respondent a question with reference to these statements from the Treasury Department. It is whether or not in nearly every instance wherein a judge has been allowed for a considerable number of attendances at different points and in the large majority of the cases he has been allowed $10 a day, there are not some instances where he has been allowed less than $10 per day. If that is the case, does it not tend to show that the judges discriminated in the presentation of the bills and the Department in the amounts that were paid? I have gone over all these papers that counsel have offered, and I find that is the case in nearly every instance. While a majority of the items of the judges are $10 a day in nearly every case, some items from some judges are far less than $10 a day.

Mr. BACON. Mr. President, I did not desire to interrupt the learned Senator, and I would not now but for the fact that if questions such as the one he has propounded are in order there would be no end to this proceeding. I do not think the Senator can properly propound the inquiry.

The PRESIDING OFFICER. The order passed by the Senate was that there should be no colloquy between the managers and Senators, and the rule provides, the Presiding Officer thinks, that while a matter of this character is under discussion there shall be no debate by Senators.

Mr. BACON. That is in the nature of debate. I think the question of the Senator from Colorado—and it was on that ground that I made the objection—would lead to debate and is in the nature of debate.

The PRESIDING OFFICER. The hour of 6 o'clock has nearly arrived. The Presiding Officer proposes to submit this question to the Senate, either at this time or on the reassembling after recess.

Mr. SPOONER. It will be impossible to submit it in the few minutes that remain before 6 o'clock.

Mr. STEWART. Let us have a viva voce vote.

Mr. BACON. I should like to make an inquiry in order that I may be guided in my vote.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. BACON. I desire to know, in order that I may determine how to vote upon this question, whether it is proposed to follow with other evidence that judges have received less than the maximum amount.

Mr. THURSTON. I will state that we offer this testimony, claiming that by a careful analysis of the figures shown it will be obvious that running all through these accounts are many and many cases where the full amount was charged at places of the same character where Judge Swayne charged $10 per diem, and that there are cases running all through here which by analysis will show that up to the time of the passage of the 1896 statute, when district judges were receiving only their actual expenditures, the same judges, under the same conditions and at the same places, charged various sums——

Mr. NELSON. I make the point of order that we have had an hour's debate on the part of counsel for respondent.

Mr. BACON. I ask unanimous consent that we may take a vote on this matter before we adjourn.

Mr. STEWART. Yes; let us take a vote.

Mr. BACON. I ask unanimous consent that the time be extended.

The PRESIDING OFFICER. The Senator from Georgia asks unanimous consent that a vote may be taken as to the admission of this evidence before the recess commences.

Mr. SPOONER. I ask unanimous consent that the unanimous-consent agreement which was made, that we take a recess at 6 o'clock, be observed.

The PRESIDING OFFICER. The hour of 6 o'clock having arrived, the Senate sitting for the impeachment trial will take a recess until 8 o'clock, when it will resume its session in the impeachment trial, and continue the same until 10 o'clock, unless otherwise ordered.

The managers on the part of the House and the respondent and his counsel thereupon retired from the Chamber.

The PRESIDENT pro tempore resumed the chair.

HOUR OF MEETING TO-MORROW.

Mr. ALLISON. I move that when the Senate adjourn to-day it be to meet at 11 o'clock to-morrow morning.

The motion was agreed to.

ARMY APPROPRIATION BILL.

The PRESIDENT pro tempore laid before the Senate the action of the House of Representatives receding from its disagreement to amendment No. 1 of the Senate to the bill (H. R. 17473) making appropriations for the support of the Army for the fiscal year ending June 30, 1906, and further insisting upon its disagreement to the residue of the amendments of the Senate,

and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. PROCTOR. I move that the Senate insist upon its amendments, and agree to the request for a conference.

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. PROCTOR, Mr. ALGER, and Mr. COCKRELL were appointed.

COURTS OF LOUISIANA.

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

Mr. FOSTER of Louisiana. Will the Senator from Massachusetts withhold the motion for a moment, in order that I may call up a brief bill?

Mr. LODGE. I withdraw the motion for this purpose. But I can not yield any further.

Mr. FOSTER of Louisiana. I ask unanimous consent for the present consideration of the bill (H. R. 17579) to create a new division of the western judicial district of Louisiana, and to provide for terms of court at Lake Charles, La., and for other purposes.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill had been reported from the Committee on the Judiciary with amendments.

The first amendment of the Committee on the Judiciary was, in section 3, page 2, after line 7, to insert:

And provided further, That all crimes and misdemeanors which shall have been committed prior to the passage of this act in the parishes hereby constituted a division of the western judicial circuit of Louisiana shall be commenced and tried in all respects as if this act had not been passed.

The amendment was agreed to.

The next amendment was, on page 2, section 4, after the words "United States," to strike out—

until such time as a Federal building shall be erected in said city of Lake Charles.

So as to read:

SEC. 4. That the clerks of the circuit and district courts of said district shall maintain an office in charge of themselves or deputy at the said city of Lake Charles, which shall be kept open at all times for the transaction of the business of said division: *Provided, however,* That suitable rooms and accommodations are furnished for holding said courts free of expense to the Government of the United States.

The amendment was agreed to.

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

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

The bill was read the third time, and passed.

EXECUTIVE SESSION.

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

The PRESIDING OFFICER (Mr. KEAN in the chair). The Senator from Massachusetts moves 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 eight minutes spent in executive session the doors were reopened, and (at 6 o'clock and 15 minutes p. m.), on motion of Mr. PLATT of Connecticut, the Senate took a recess until 7 o'clock and 55 minutes p. m.

EVENING SESSION.

The Senate reassembled at 7 o'clock and 55 minutes p. m.

The PRESIDING OFFICER (Mr. KEAN) called the Senate to order. At 8 o'clock p. m. the Presiding Officer said: The hour of 8 o'clock having arrived the Presiding Officer for the trial of the impeachment case will take the chair.

IMPEACHMENT OF JUDGE CHARLES SWAYNE.

Mr. PLATT of Connecticut assumed the chair.

The PRESIDING OFFICER (Mr. PLATT of Connecticut). The hour of 8 o'clock having arrived, the Senate resumes its session sitting for the trial of the impeachment of Charles Swayne.

The managers on the part of the House (with the exception of Mr. CLAYTON and Mr. SMITH) entered the Chamber and took the seats assigned them.

Mr. Higgins and Mr. Thurston, the counsel for the respondent, entered the Chamber and took the seats assigned them.

Mr. ALLISON. Mr. President, I ask for a call of the Senate.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and, after some delay—

Mr. NELSON said: Mr. President, I would inquire if the Sergeant-at-Arms has been directed to send for the absentees?

The PRESIDING OFFICER. He has not.

Mr. NELSON. I move that the Sergeant-at-Arms be instructed to send for absentees. We have a right to have a quorum here.

The PRESIDING OFFICER. The result of the roll call will be announced.

The Secretary announced that the following Senators had answered to their names:

Alger	Cockrell	Gibson	Nelson
Allee	Crane	Heyburn	Overman
Allison	Culberson	Kean	Perkins
Bailey	Daniel	Kearns	Pettus
Ball	Dillingham	Latimer	Platt, Conn.
Bard	Dolliver	Long	Spooner
Bate	Fairbanks	McCumber	Stone
Burnham	Foraker	McEnery	Taliaferro
Burrows	Foster, Wash.	McLaurin	Teller
Carmack	Gallinger	Mallory	
Clay	Gamble	Martin	

The PRESIDING OFFICER. Upon the call of the Senate, forty-two Senators have answered to their names. A quorum of the Senate sitting in the impeachment trial is not present.

Mr. NELSON. Now, Mr. President, I renew my motion that the Sergeant-at-Arms be directed to send for the absentees.

The PRESIDING OFFICER. The Senator from Minnesota moves that the Sergeant-at-Arms be directed to request the attendance of absent Senators. The question is on that motion.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant-at-Arms will send for the absent Senators, and the Secretary will call the roll of absentees.

The Secretary called the names of Messrs. ANKENY, BACON, BERRY, BEVERIDGE, BLACKBURN, CLAPP, CLARK of Montana, CLARK of Wyoming, CLARKE of Arkansas, CULLOM, DEPEW, DICK, DIETRICH, DRYDEN, DUBOIS, ELKINS, FOSTER of Louisiana, FRYE, FULTON, GORMAN, HALE, HANSBROUGH, HOPKINS, KITTREDGE, KNOX, LODGE, MCCOMAS, MCCREARY, MILLARD, MONEY, MORGAN, NEWLANDS, PATTERSON, PENROSE, PLATT of New York, PROCTOR, QUARLES, SCOTT, SIMMONS, SMOOT, STEWART, WARREN, and WETMORE.

At 8 o'clock and 30 minutes p. m. Mr. FOSTER of Louisiana entered the Chamber, and answered to his name.

The PRESIDING OFFICER. A quorum of Senators who have been sworn in the impeachment trial is present—forty-three Senators.

Mr. GALLINGER. Mr. President, I move that further proceedings under the call be dispensed with.

The PRESIDING OFFICER. The Senator from New Hampshire moves that further proceedings under the call be dispensed with. The question is on that motion.

The motion was agreed to.

The PRESIDING OFFICER. At the conclusion of the session of the Senate sitting in the impeachment trial of Charles Swayne before the recess, the Presiding Officer was about to submit to the Senate the question regarding the admissibility of certain evidence. He will now submit that question to the Senate.

Counsel for the respondent offer to introduce a statement, certified by the Secretary of the Treasury as being a correct statement, from the books of the Treasury, not, however, under seal. The statement is said to show amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeals away from their residences and amounts paid to United States district judges as expenses claimed while holding court out of their own districts, or while attending circuit courts of appeals away from their residences. The question is, Shall this statement be admitted as evidence?

Mr. Manager OLMSTED. Mr. President, is it permissible to ask that as some Senators are now present who were not here when the objections were made that the objections be read at this time?

The PRESIDING OFFICER. The Presiding Officer has no means of knowing whether Senators are present now who were not present when the objections were made. The Presiding Officer will now put the question to the Senate, Shall the statement offered in evidence be admitted?

Mr. MALLORY. I ask for the yeas and nays on that, Mr. President.

The yeas and nays were ordered; and being taken, resulted—yeas 10, nays 34, as follows:

YEAS—10.

Alger	Gallinger	Long	Wetmore
Ball	Heyburn	McEnery	
Dolliver	Kearns	Perkins	

NAYS—34.

Allee	Cockrell	Gamble	Overman
Allison	Crane	Gibson	Pettus
Bailey	Culberson	Kean	Platt, Conn.
Bard	Daniel	Latimer	Spooner
Bate	Dillingham	McCumber	Stone
Burnham	Fairbanks	McLaurin	Taliaferro
Burrows	Foraker	Mallory	Teller
Carmack	Foster, La.	Martin	
Clay	Foster, Wash.	Nelson	

NOT VOTING—41.

Ankeny	Dick	Kittredge	Platt, N. Y.
Bacon	Dietrich	Knox	Proctor
Berry	Dryden	Lodge	Quarles
Beveridge	Dubois	McComas	Scott
Blackburn	Elkins	McCreary	Simmons
Clapp	Frye	Millard	Smoot
Clark, Mont.	Fulton	Money	Stewart
Clark, Wyo.	Gorman	Morgan	Warren
Clarke, Ark.	Hale	Newlands	
Cullom	Hansbrough	Patterson	
Depew	Hopkins	Penrose	

The PRESIDING OFFICER. The evidence is not admitted.

Mr. TELLER. Do forty-four Senators make a quorum, Mr. President?

Mr. COCKRELL. A quorum of the court of impeachment.

The PRESIDING OFFICER. Forty-three Senators make a quorum of the Senators who have been sworn in the impeachment trial.

Mr. THURSTON. Mr. President, we offer and ask to have incorporated in the record the opinion of the three circuit judges of one circuit, construing the law under which articles 1, 2, and 3 are framed. To be perfectly fair, I will state that this is in the shape of a letter, and has been written recently. On the question of offering it I do not care to state to whom it is addressed or what judges sign it, but I offer it as an opinion of those judges on this question. The date of it is February 6, 1905.

Mr. Manager PALMER. We object to this paper, first, because it does not prove any such thing as it is offered for, and, second, because it is not an instrument of evidence at any rate.

The PRESIDING OFFICER. The Presiding Officer thinks it is not admissible.

Mr. THURSTON. We offer, in addition thereto, similar opinions contained in letters of about the same date, signed by fifteen members of the Federal judiciary. They are all the same.

Mr. Manager PALMER. If they are similar——

The PRESIDING OFFICER. For what purpose?

Mr. THURSTON. For the same purpose that I offered the single letter.

The PRESIDING OFFICER. For what purpose?

Mr. THURSTON. For the purpose of showing the construction placed by these judges on the statute under which articles 1, 2, and 3 are framed.

Mr. SPOONER. I should like, through the Chair, to ask counsel to restate his offer.

Mr. THURSTON. Mr. President, I offered one letter signed by the three circuit judges of one circuit, and I now make the further offer of fifteen other letters, written by fifteen of the members of the Federal judiciary, which I claim contain opinions favorable to our contention in the matter of the construction of the law under which articles 1, 2, and 3 are drawn.

The PRESIDING OFFICER. The Presiding Officer does not see how a letter or letters written by judges to some party unknown are evidence to be considered in construing the law.

Mr. TELLER. Mr. President, I have been under the impression for a good many years that a majority of this body—in this instance forty-six Senators—made a quorum. I was somewhat surprised to find that a majority of the Senators sworn are held to be a quorum. I am not aware myself of any provision of the Constitution that allows this body to do business with less than a majority. You could not pass here a ten-dollar pension bill without a majority. Is it possible that less than a quorum can exercise the most important function that has been placed on the Senate by the Constitution? In my judgment, there is no court here present to-night. I raise that question.

The PRESIDING OFFICER. The Presiding Officer is of opinion that the point of order is well taken. He will state in this connection, however, that it has not been observed in proceedings of the Senate hitherto.

Mr. TELLER. I was not aware of that fact. I supposed there was always a quorum here. I presume we may, unless the record shows the contrary, assume that there has been a quorum present, but it is obvious here that there is not a quorum, both from the vote and the announcement of the Chair.

I do not make this point to delay or hinder. This is a vital question, and if there is not a quorum here we are absolutely without jurisdiction to proceed even in those things that are informal in their character. That must be the rule. If you can take the rule suggested, twenty-five men might be sworn, and then thirteen would be a quorum. It can not be possible. There is nothing in the Constitution that will justify it. There is no power in this body to make less than a majority of the Senate a quorum at any time, and certainly if we can not legislate on unimportant matters without a quorum, we can not proceed in a case of this nature, where, whatever this case may be or whatever some other case might be, the rule might be applied to the President of the United States, who can be impeached by the House and tried by the Senate. In my judgment there must be a full quorum here, and however inconvenient it may be for us to wait for a quorum, I think we must wait for it.

Mr. NELSON. Mr. President, the last roll call disclosed that there was no quorum present, according to the decision of the Chair. I think we now have a quorum, three Senators having since come in. In order to test it, I move that the Sergeant-at-Arms be directed to send for the absentees. That will necessitate a roll call, which, I think, will disclose a quorum. I move that the Sergeant-at-Arms be directed to send for the absentees.

Mr. KEAN. Let the list of absentees be called.

Mr. GALLINGER. Mr. President, I make the point of no quorum.

The PRESIDING OFFICER. The Senator from New Hampshire suggests the point of no quorum. The Secretary will call the roll.

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

Alger	Culberson	Heyburn	Nelson
Allee	Daniel	Kean	Overman
Allison	Dillingham	Kearns	Perkins
Bailey	Dolliver	Kittredge	Pettus
Ball	Fairbanks	Latimer	Platt, Conn.
Bate	Foraker	Long	Spooner
Beveridge	Foster, La.	McComas	Stone
Burnham	Foster, Wash.	McCumber	Taliaferro
Carmack	Frye	McEnery	Teller
Clay	Gallinger	McLaurin	Wetmore
Cockrell	Gamble	Mallory	
Crane	Gibson	Martin	

The PRESIDING OFFICER. On the call of the Senate forty-six Senators have answered to their names. A quorum is present.

The Presiding Officer thinks it becomes the duty of the Presiding Officer again to submit to the Senate the question with regard to the admission of evidence offered by counsel for respondent, which was submitted when a quorum of the Senate was not present, but when a quorum of the Senators sworn in the impeachment trial was present.

Counsel for the respondent offer in evidence certain statements of the Secretary of the Treasury, not under seal, purporting to show amounts paid to United States circuit judges as expenses claimed while attending circuit courts of appeals away from their residences, and amounts paid to United States district judges as expenses claimed while holding court out of their own districts or while attending circuit courts of appeals away from their residences.

The question is, Shall the statement referred to be admitted in evidence? [Putting the question.] The "noes" appear to have it. The "noes" have it, and the statement is not admissible.

Mr. THURSTON. Mr. President, I should like to have the Reporter read my two previous offers, which I desire to remake in the same terms I did before, and let the ruling be had upon them.

The PRESIDING OFFICER. The Reporter will read as requested.

The Reporter read as follows:

Mr. THURSTON. Mr. President, we offer and ask to have incorporated in the record the opinion of the three circuit judges of one circuit, construing the law under which articles 1, 2, and 3 are framed. To be perfectly fair, I will state that this is in the shape of a letter, and has been written recently. On the question of offering it, I do not care to state to whom it is addressed or what judges sign it, but I offer it as an opinion of those judges on this question. The date of it is February 6, 1905.

The PRESIDING OFFICER. The Presiding Officer will exclude that paper.

Mr. THURSTON. I ask to have my second offer read.

The Reporter read as follows:

Mr. THURSTON. We offer in addition thereto similar opinions contained in letters of about the same date, signed by fifteen members of the Federal judiciary. They are all the same.

Mr. Manager PALMER. If they are similar——

The PRESIDING OFFICER. For what purpose?

Mr. THURSTON. For the same purpose that I offered the single letter.

The PRESIDING OFFICER. For what purpose?

Mr. THURSTON. For the purpose of showing the construction placed by these judges on the statute under which articles 1, 2, and 3 are framed.

The PRESIDING OFFICER. The Presiding Officer will exclude those papers.

Mr. THURSTON. Mr. President, that closes the case on behalf of the respondent.

The PRESIDING OFFICER. Are there any witnesses in rebuttal?

Mr. Manager PALMER. There will be very little rebutting testimony; one or two questions only of one or two witnesses. Call Mr. Davis.

E. T. Davis recalled.

By Mr. Manager DE ARMOND:

Question. Mr. Davis, state whether or not during the week in November ending with Saturday, the 9th, you were in consultation with Mr. Paquet about the getting of witnesses, and whether or not you would be prepared for the trial of the Florida McGuire case at any time when Mr. Blount was present, and talked with Paquet also about the same matter?

Answer. I was not.

Q. State whether or not you had any consultation with Paquet about the time of that case coming to trial or concerning any other matter about the case?

A. None whatever.

Q. State what, if anything, you had to do about the matter of taxing or retaxing costs in the case which you had dismissed as a matter of accommodation to Paquet and Belden.

A. Some time afterwards, after the contempt proceeding and the discontinuance of the case, I received a letter from Mr. Belden. As well as I remember, he stated that Mr. Pryor had received some notice of a demand for the costs in the case, and he asked me to go over it, as there were some of the costs which he thought ought to be corrected. I prepared the application to correct the costs in the case and submitted it to Judge Swayne.

Q. That was the amount of your connection with that matter?

A. Yes, sir.

Q. And the occasion of it?

A. Yes, sir.

Q. State whether or not while Mr. Paquet, on Saturday evening, was arguing or urging the postponement of the Florida McGuire case until the succeeding Thursday you said anything to Mr. Marsh about you or about the attorneys or about the party plaintiff in the Florida McGuire case being unable to get their witnesses and to be ready for trial Monday morning.

A. I said nothing to him whatever.

Q. State whether you had any conversation with Mr. Marsh upon the subject.

A. I did not.

Q. State whether Mr. Marsh made a statement to you that evening to the effect that he would remain in his office as long as you desired, and would get out summonses for such witnesses as you might want.

A. He did not.

Q. And did you say to him that you would see about it?

A. I did not.

Q. Did you then go and consult, or appear to consult, Mr. Paquet about the matter and have this conversation with him?

A. I did not.

Mr. Manager DE ARMOND. That is all.

Cross-examined by Mr. HIGGINS:

Q. Mr. Davis, did you say that you got this instruction about paying the cost tax from Mr. Paquet?

A. No, sir; it was from Mr. Belden; I think it was.

Q. This was in the case that you had moved for its discontinuance?

A. Yes, sir.

Q. You had your name entered of record?

A. That is true.

Q. Were you not acting as counsel of record at the time you had the costs taxed?

A. No further than——

Q. Answer my question.

A. No further than my previous connection with the case, that the discontinuance of that case was a matter of favor to Mr. Paquet and Mr. Belden, and in this it was a matter of favor to General Belden as he lived in New Orleans.

Q. I will ask you again if you were not acting as counsel of record?

A. Not in the way that you ask it, I do not think. I think I have stated.

Q. You were counsel of record?

A. Yes, sir.

Q. And you did apply to have the costs taxed?

A. Yes, sir; I did that.

Q. (Producing paper.) Will you look on this paper and say whether or not it was signed by you?

A. (Examining.) Yes, sir; that is true.

Q. Whose handwriting is that?

A. It is mine.

Q. Whose handwriting is the name Simeon Belden?

A. That is my handwriting.

Q. Both?

A. Yes, sir.

Q. Who prepared this paper?

A. I think that I prepared it.

Q. Then it did not come from New Orleans?

A. No, sir; I prepared the papers in the case so far as Paquet.

Q. (Producing paper.) Look at that paper and see whether it is in your handwriting?

A. (Examining.) Yes, sir; that is my handwriting.

Q. These papers speak for themselves, though?

A. Yes, sir.

Mr. Manager PALMER. They are about retaxing costs?

Mr. HIGGINS. Yes, sir.

Mr. Manager PALMER. All right; offer them in evidence.

Mr. HIGGINS. Mr. President, we offer in evidence a paper which I will ask the Secretary to read.

The PRESIDING OFFICER. The Secretary will read it if there be no objection.

The Secretary read as follows:

United States circuit court, northern district of Florida. Florida McGuire *v.* Pensacola City Company et al.

On motion of Simeon Belden and E. T. Davis, attorneys of Florida McGuire, plaintiff in the above-entitled suit, and on suggesting that on Monday, the 23d of December, 1901, the clerk of said court, F. W. Marsh, after due notice to said attorneys, and who were present, taxed costs against plaintiff in said suit and her sureties for costs as shown by accompanying bill of costs, made part of this motion. And on further suggesting that they believe that there is error to the prejudice of said plaintiff, in charging and entering costs in favor of R. L. Scarlett, who was not summoned as a witness and did not testify in said case, and that said costs are not due him. And further that there is an overcharge in the item charged as due said clerk of $30 for final record of said case, for the reason that there are not 200 folios in said final record—being as erroneously charged 20,000 words at folios of 100 words—and second, because the 20,000 words recorded embrace papers and documents not required to be recorded as final records of the suit. For these reasons said attorneys move for an appeal to the presiding judge of said circuit court for review of said findings and entry of said costs above stated, that the said findings and entry may be reviewed and corrected.

SIMEON BELDEN,
and E. T. DAVIS,
Plaintiff's Attorneys.

(Indorsement: Florida McGuire *v.* Pensacola City Company. Appeal from taxation of costs. Filed at — o'clock a. m., December 26, 1901. F. W. Marsh, clerk.)

Q. (By Mr. HIGGINS.) Mr. Davis, was that appeal argued?

A. Yes, sir.

Q. By whom on behalf of the plaintiff?

A. By myself and Mr. Blount.

Q. So you took the appeal and you argued it?

A. Yes, sir.

Mr. HIGGINS. That will do, sir.

Mr. Manager PALMER. There is another witness. I call Mr. Pryor.

Mr. HIGGINS. There is another paper here, the substance of the other, and I will not offer it.

The PRESIDING OFFICER. Does the Presiding Officer understand that counsel for the respondent has another question to ask this witness?

Mr. HIGGINS. Not any.

George W. Pryor sworn and examined.

By Mr. Manager DE ARMOND:

Question. Where do you live?

Answer. Pensacola, Fla.

Q. Do you know Mr. Paquet?

A. Yes, sir.

Q. Do you know Mr. Davis and Mr. Belden?

A. Yes, sir.

Q. Do you know the editor of the Press?

A. Well, yes, sir.

Q. State whether or not you took a paper to that office Saturday night, the 9th of November, 1901.

A. I did, sir.

Q. Who gave that paper to you?

A. Judge Paquet.

Q. About what time?

A. It was right about 10 o'clock at night.

Q. What did you do with the paper?

A. I handed it to Mr. Barker.

Q. Did you know the contents of the paper?

A. I did not, sir.

Q. Do you know whether Mr. Belden or Mr. Davis had anything to do with it or knew anything about it?

A. I do not think they did.

Mr. HIGGINS. We object to what he thinks. The witness should speak of his own knowledge and what he knows.

Mr. Manager DE ARMOND. I ask the Reporter to read the last question to the witness.

The Reporter read as follows:

Q. Do you know whether Mr. Belden or Mr. Davis had anything to do with it or knew anything about it?

A. I do not.

Q. (By Mr. Manager DE ARMOND.) Do you know of their knowing anything about it or having anything to do with it?

A. I do not, sir.

Q. Do you know how Mr. Davis came to appear for the plaintiffs in the Florida McGuire case in the retaxing of costs?

A. Well, I did not know; no, sir.

Q. Did you have any communication with Mr. Belden about the matter?

A. No, sir.

Q. When was Mr. Davis employed in the Florida McGuire case?

A. It was along about March, 1902.

Q. Along in the spring of 1902?

A. Yes, sir.

Q. Was he employed in that case before that time?

A. No, sir; he was not.

Q. Was it at your store that some of these gentlemen met the night when suit was brought against Judge Swayne?

A. Yes, sir; they met there; that is, Mr. Davis was sent for by Judge Paquet.

Q. You were concerned for the plaintiffs in that suit?

A. Yes, sir.

Q. That is the reason why you knew about the employment of the attorney?

A. Yes, sir.

Q. You paid the costs to the clerk, Mr. Marsh?

A. Yes, sir.

Mr. Manager PALMER. That is all. That is our case.

Mr. THURSTON. That is all.

Mr. Manager PALMER. Excuse me a moment. I have another witness.

Mr. Manager OLMSTED. Mr. President, I desire to offer the following extract from the CONGRESSIONAL RECORD of April 24, 1896, being debates upon the bill providing for the expenses of salaries, and I will ask to have it read. It is not long.

The PRESIDING OFFICER. It bears upon the same question as to which evidence was admitted in behalf of the respondent?

Mr. Manager OLMSTED. The same question and the same bill.

The PRESIDING OFFICER. It will be read.

The Secretary read as follows:

Mr. ALLEN. This bill provides: "That no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges."

There is a maximum fixed. There may be days when $10 would be required to cover the expenses of the judge, and it would be perfectly proper for him to draw that sum and certify to it; but I submit that it is improper and in violation of the spirit, if not of the language, of the statute that the judge, simply because he has the power to certify, will be enabled to take from the Treasury of the United States $10 for every day to cover his expenses when his actual expenses do not exceed four or five dollars a day.

It may be a small item; probably it is a small item; but it is not small in so far as it develops a disposition upon the part of high judicial officers of the country to violate the spirit of a law which they themselves are engaged in enforcing against criminals and other violators of the law.

Mr. CHANDLER. Will the Senator from Nebraska allow me to interrupt him?

Mr. ALLEN. Certainly.

Mr. CHANDLER. The provision is that the judge shall be paid his reasonable expenses for travel and attendance, not to exceed $10 a day. The judge of a United States court has to certify that that is an expense; that that is what he has paid out. Does the Senator mean to say that there is a judge anywhere in the United States holding court in that way who, if his expenses were $7 or $8 or $5 a day, would certify that they were $10 in order to get the additional money?

* * * * * * *

Mr. ALLISON. The Senator from Nebraska will observe that the only object of this provision is to place the district judges upon an equality with circuit judges as respects their expenses.

Mr. ALLEN. Yes, sir; I observe that they are put upon an equality. What I am contending for, and what I hope the honorable Senator from Iowa will remedy, is that these men shall not be permitted to violate the law themselves.

Mr. ALLISON. Does the Senator believe that any district judge or circuit judge is likely to violate the law by making a false certificate? The Senator must remember that this includes all traveling expenses as well as expenses while at the place of holding court.

Mr. ALLEN. I hope the Senator from Iowa will not put me in the attitude of making the charge that all Federal judges violate the law, for I do not make it.

Mr. ALLISON. I certainly would not put the Senator in any such attitude.

Mr. ALLEN. I say some of them do, according to my information. A judge is a human being. He is no more of a man after he becomes a judge than he was at the time he became a judge. If he had frailties at that time, he carries them to the bench with him.

The proposed statute fixed the maximum in these words:

"Of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges."

That carries the implication, which is as clear as language can make it, that he shall not receive $10 a day unless his actual expenses amount to $10 a day.

Mr. GRAY. His reasonable expenses.

Mr. ALLEN. His reasonable expenses. Reasonable expenses include hotel bill and railroad fare. I do not suppose it includes the purchase of a new suit of clothes or a box of cigars, but the reasonable, ordinary expenses of travel, including hotel bills.

Mr. Manager OLMSTED. I offer from the CONGRESSIONAL RECORD of January 27, 1903, the same date, I think, as that which formed the subject of what the honorable counsel for the respondent offered.

The PRESIDING OFFICER. Relating to the same subject?

Mr. Manager OLMSTED. Relating to the same subject, and being a part of the RECORD which the honorable counsel for the respondent offered to-day. This debate occurred upon the passage of the bill fixing the salaries of Federal judges, the bill which increased their salaries and which is the law to-day. I will read myself a line or two. This is in the RECORD:

The Clerk read as follows:

"That from and after the passage of this act no payment shall be made to any of the judges mentioned in this act for expenses."

Now, I offer this extract showing what followed.

Mr. HIGGINS. Of the same date?

Mr. Manager OLMSTED. The same date following immediately after what I have read.

The Secretary read as follows:

Mr. OLMSTED. Mr. Speaker, I move to strike out the paragraph just read. * * * No judge would feel like going out of his own district to hold court at his own expense. The law does not give him extra pay for that extra service, but he ought to be reimbursed for his actual and reasonable expenses.

The salaries paid are not large enough to warrant Federal judges in going out of their own districts at their own expense. * * * My amendment, however, does not deal with salaries, but with expenses, and I hope that it may be adopted.

The SPEAKER. The question is on the motion of the gentleman from Pennsylvania.

The question was taken; and on a division (demanded by Mr. SMITH of Kentucky) there were—ayes 80, noes 69.

So the motion was agreed to.

Mr. Manager OLMSTED. Now, Mr. President, I offer the entire CONGRESSIONAL RECORD of that session simply for the purpose of showing that there was no other debate whatever in either Chamber upon that amendment and upon that provision.

The PRESIDING OFFICER. Is that agreed to by counsel for the respondent?

Mr. HIGGINS. To print the whole RECORD?

The PRESIDING OFFICER. No; that there was no other debate.

Mr. THURSTON. We have no objection, Mr. President, that counsel upon the other side may make their statements that there was no other debate, and unless in an examination we find that statement to be incorrect by some omission of theirs it can go as the fact.

Mr. Manager OLMSTED. That is entirely satisfactory; and, Mr. President, I make the statement as the result of a very careful examination, that that is absolutely the last utterance upon that subject in either branch of Congress.

The PRESIDING OFFICER. That makes it unnecessary to offer the whole RECORD.

Mr. Manager OLMSTED. Yes, sir.

Mr. Manager PALMER. We rest our case, Mr. President, and I submit a brief of authorities——

The PRESIDING OFFICER. One moment. A short time ago the Presiding Officer stated that he thought in this trial there had been a call of the Senate and that business had been conducted when there was less than a quorum of the Senate. He finds upon examination that he was mistaken, and that on the two occasions when the roll call was had to determine the existence of a quorum there was on each occasion a quorum of the Senate present.

Mr. Manager PALMER. Mr. President, I submit a brief of authorities on the law of impeachment in answer to the brief that has been already filed, and ask that it be printed under the permission given this morning.

Mr. FORAKER. I rise to inquire how it comes that a reference showing the debates in regard to these amendments in the House has been put in evidence. Is it without objection?

Unless it be without objection, I do not understand how it is competent under the rule made by the Senate when counsel for the respondent offered to place it in testimony.

The PRESIDING OFFICER. Extracts from the CONGRESSIONAL RECORD were offered in evidence by counsel for the respondent; the question was submitted to the Senate, and a vote taken by which they were admitted. I believe that is so.

Mr. FORAKER. I was under a misapprehension.

The PRESIDING OFFICER. Then the managers offered similar extracts from the CONGRESSIONAL RECORD, which were admitted without the question being submitted to the Senate.

Mr. Manager PALMER. I offer the brief of authorities on the law of impeachment. I submit it to be printed in the RECORD under the permission which was given this day. I wish to state, in connection therewith, that it has been hastily prepared, as we only saw the brief of the respondent's counsel yesterday. The brief which I submit has been largely borrowed from other briefs that have been used in other impeachment trials, but I do not think that fact will detract any from its value.

The PRESIDING OFFICER. The manager offers for printing in the RECORD a brief in reply to the brief furnished by counsel for the respondent relating to the law of impeachments, and asks that it may be printed in the RECORD as the brief of counsel for the respondent was printed. Is there objection? The Chair hears none, and the brief will be printed in the RECORD.

The brief referred to is as follows:

A BRIEF OF AUTHORITIES ON THE LAWS OF IMPEACHMENT.

The purpose of this brief is to show—

First. That the framers of the Constitution intended that the House of Representatives should have the right to impeach and the Senate the power to try a judicial officer for any misbehavior that showed disqualification to hold and exercise the office, whether moral, intellectual, or physical.

The provisions of the Constitution relating to the subject of impeachment are as follows:

The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment. (Art. I, sec. 2.)

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law. (Art. II, sec. 1.)

The President * * * shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Art. II, sec. 2.)

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, and other high crimes and misdemeanors. (Art. II, sec. 4.)

The trial of all crimes, except in cases of impeachment, shall be by jury. (Art. 3, sec. 2.)

The convention that framed the Constitution did not define words, but used them in the sense in which they were understood at that time.

The convention did not invent the remedy by impeachment, but adopted a well-known and frequently used method of getting rid of objectionable public officers, modifying it to suit the conditions of a new country.

In England all the King's subjects were liable to impeachment for any offense against the sovereign or the law. Floyd was impeached for speaking lightly of the Elector Palatine and sentenced to ride on horseback for two successive days through certain public streets with his face to the horse's tail, with the tail in his hands; to stand each day two hours in pillory; to be pelted by the mob, then to be branded with the letter "K" and be imprisoned for life in the Tower. The character and extent of the punishment was in the discretion of the House of Lords.

The Constitution modified the remedy by confining it to the President, Vice-President, and all civil officers, and the punishment to removal from office and disqualification to hold office in future.

That it was not intended as a punishment of crime clearly appears when we read that a party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

Said Mr. Bayard, in Blount's trial:

Impeachment is a proceeding of a purely political nature. It is not so much designed to punish the offender as to secure the State. It touches neither his person nor his property, but simply divests him of his political capacity. (Wharton's State Trials, 263.)

Subject to these modifications and adopting the recognized rule, the Constitution should be construed so as to be equal to every occasion which might call for its exercise and adequate to accomplish the purposes of its framers. Impeachment remains here as it was recognized in England at and prior to the adoption of the Constitution.

These limitations were imposed in view of the abuses of the power of impeachment in English history.

These abuses were not guarded against in our Constitution by limiting, defining, or reducing impeachable crimes, since the same necessity existed here as in England for the remedy of impeachment, but by other safeguards thrown around it in that instrument. It will be observed that the sole power of impeachment is conferred on the House and the sole power of trial on the Senate by Article I, sections 2 and 3. These are the only jurisdictional clauses, and they do not limit impeachment to crimes and misdemeanors. Nor is it elsewhere so limited. Section 4 of Article II makes it imperative when the President, Vice-President, and all civil officers are convicted of treason, bribery, or other high crimes and misdemeanors that they shall be removed from office. There may be cases appropriate for the exercise of the power of impeachment where no crime or misdemeanor has been committed.

Whatever crimes and misdemeanors were the subjects of impeachment in England prior to the adoption of our Constitution, and as understood by its framers, are, therefore, subjects of impeachment before the Senate of the United States, subject only to the limitations of the Constitution.

"The framers of our Constitution, looking to the impeachment trials in England, and to the writers on parliamentary and common law, and to the constitutions and usages of our own States, saw that no act of Parliament or of any State legislature ever undertook to define an impeachable crime. They saw that the whole system of crimes, as defined in acts of Parliament and as recognized at common law, was prescribed for and adapted to the ordinary courts." (2 Hale, Pl. Crown, ch. 20, p. 150; 6 Howell State Trials, 313 note.)

They saw that the high court of impeachment took jurisdiction of cases where no indictable crime had been committed, in many instances, and there was then, as there yet are, two parallel modes of reaching some, but not all offenders—one by impeachment, the other by indictment.

With these landmarks to guide them, our fathers adopted a Constitution under which official malfeasance and nonfeasance, and, in some cases, misfeasance, may be the subject of impeachment, although not made criminal by act of Congress, or so recognized by the common law of England, or of any State of the Union. They adopted impeachment as a means of removing men from office whose misconduct imperils the public safety and renders them unfit to occupy official position. All American text writers support this view.

[Story on the Constitution, p. 583.]

Congress have unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct; and the rules of proceeding and the rules of evidence, as well as the principles of decision, have been uniformly regulated by the known doctrines of the common law and parliamentary usage. In the few cases of impeachment which have hitherto been tried no one of the charges has rested upon any statutable misdemeanors. It seems, then, to be the settled doctrine of the high court of impeachment that, though the common law can not be a foundation of a jurisdiction not given by the Constitution or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law, and that what are and what are not high crimes and misdemeanors is to be ascertained by a recurrence to that great basis of American jurisprudence. The reasoning by which the power of the House of Representatives to punish for contempts (which are breaches of privileges and offenses not defined by any positive laws) has been upheld by the Supreme Court stands upon similar grounds; for if the House had no jurisdiction to punish for contempts until the acts had been previously defined and ascertained by positive law it is clear that the process of arrest would be illegal.

In examining the parliamentary history of impeachments it will be found that many offenses, not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy. Thus lord chancellors, and judges, and other magistrates have not only been impeached for bribery and acting grossly contrary to the duties of their offices, but for misleading their sovereign by unconstitutional opinions, and for attempts to subvert the fundamental laws and introduce arbitrary power. So where a lord chancellor has been thought to have put the great seal to an ignominious treaty, a lord admiral to have neglected the safeguard of the sea, an ambassador to have betrayed his trust, a privy councilor to have propounded or supported pernicious and dishonorable measures, or a confidential adviser of his sovereign to have obtained exorbitant grants or incompatible employments—these have been all deemed impeachable offenses. Some of these offenses, indeed, for which persons were impeached in the early ages of British jurisprudence would now seem harsh and severe; but perhaps they were rendered necessary by existing corruptions, and the importance of suppressing a spirit of favoritism and court intrigue.

Thus persons have been impeached for giving bad counsel to the King, advising a prejudicial peace, enticing the King to act against the advice of Parliament, purchasing offices, giving medicine to the King without advice of physicians, preventing other persons from giving counsel to the King except in their presence, and procuring exorbitant personal grants from the King. But others, again, were founded in the most salutary public justice, such as impeachments for malversations and neglects in office, for encouraging pirates, for official oppression, extortions, and deceits, and especially for putting good magistrates out of office and advancing bad. One can not but be struck, in this slight enumeration, with the utter unfitness of the common tribunals of justice to take cognizance of such offenses, and with the entire propriety of confiding the jurisdiction over them to a tribunal capable of understanding and re-

forming and scrutinizing the policy of the state, and of sufficient dignity to maintain the independence and reputation of worthy public officers.

[Page 587.]

The other point is one of more difficulty. In the argument upon Blount's impeachment it was pressed with great earnestness, while there is not a syllable in the Constitution which confines impeachments to official acts, and it is against the plainest dictates of common sense that such restraint should be imposed upon it. Suppose a judge should countenance or aid insurgents in a meditated conspiracy or insurrection against the Government. This is not a judicial act, and yet it ought certainly to be impeachable. He may be called upon to try the very persons whom he has aided. Suppose a judge or other officer to receive a bribe not connected with his judicial office, could he be entitled to any public confidence? Would not these reasons for his removal be just as strong as if it were a case of an official bribe? The argument on the other side was that the power of impeachment was strictly confined to civil officers of the United States, and this necessarily implied that it must be limited to malconduct in office.

[American and English Encyclopædia of Law, Vol. XV, p. 1066.]

In the United States.—The Constitution of the United States provides that the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. If impeachment in England be regarded merely as a mode of trial for the punishment of common-law or statutory crimes, and if the Constitution has adopted it only as a mode of procedure, leaving the crimes to which it is to be applied to be settled by the general rules of criminal law, then, as it is well settled that in regard to the National Government there are no common-law crimes, it would seem necessarily to follow that impeachment can be instituted only for crimes specifically named in the Constitution or for offenses declared to be crimes by Federal statute. This view has been maintained by very eminent authority. But the cases of impeachment that have been brought under the Constitution would seem to give to the remedy a much wider scope than the above rule would indicate.

In each of the only two cases of impeachment tried by the Senate in which a conviction resulted the defendant was found guilty of offenses not indictable either at common law or under any Federal statute, and in almost every case brought offenses were charged in the articles of impeachment which were not indictable under any Federal statute, and in several cases they were such as constituted neither a statutory nor a common-law crime. The impeachability of the offenses charged in the articles was, in most of the cases, not denied. In one case, however, counsel for the defendant insisted that impeachment would not lie for any but an indictable offense, but after exhaustive argument on both sides this defense was practically abandoned. The cases, then, seem to establish that impeachment is not a mere mode of procedure for the punishment of indictable crimes; that the phrase "high crimes and misdemeanors" is to be taken, not in its common-law, but in its broader parliamentary sense, and is to be interpreted in the light of parliamentary usage; that in this sense it includes not only crimes for which an indictment may be brought, but grave political offenses, corruptions, maladministration, or neglect of duty involving moral turpitude, arbitrary and oppressive conduct, and even gross improprieties, by judges and high officers of state, although such offenses be not of a character to render the offender liable to an indictment either at common law or under any statute. Additional weight is added to this interpretation of the Constitution by the opinions of eminent writers on constitutional and parliamentary law and by the fact that some of the most distinguished members of the convention that framed it have thus interpreted it.

[Rawle on the Constitution, p. 210.]

Impeachments are thus introduced as a known definite term, and we must have recourse to the common law of England for the definition of them.

In England the practice of impeachments by the House of Commons before the House of Lords has existed from very ancient times. Its foundation is that a subject intrusted with the administration of public affairs may sometimes infringe the rights of the people and be guilty of such crimes as the ordinary magistrates either dare not or can not punish. Of these, the representatives of the people, or House of Commons, can not judge, because they and their constituents are the persons injured, and can therefore only accuse. But the ordinary tribunals would naturally be swayed by the authority of so powerful an accuser. That branch of the legislature which represents the people, therefore, brings the charge before the other branch, which consists of the nobility, who are said not to have the same interests or the same passions as the popular assembly.

The delegation of important trusts, affecting the higher interests of society, is always from various causes liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice, the seductions of foreign states, or the basest appetite for illegitimate emoluments, are sometimes productive of what are not inaptly termed political offenses, which it would be difficult to take cognizance of in the ordinary course of judicial proceedings.

[Cushing's Law and Practice of Legislative Assemblies, p. 980, par. 2539.]

The purpose of impeachment, in modern times, is the prosecution and punishment of high crimes and misdemeanors, chiefly of an official or political character, which are either beyond the reach of the law, or which no other authority in the State but the supreme legislative power is competent to prosecute; and, by the law of Parliament, all persons, whether peers or commoners, may be impeached for any crimes or offenses whatever.

[Trial of Judge Peck, p. 427. Mr. Buchanan's argument.]

What is an impeachable offense? This is a preliminary question which demands attention. It must be decided before the court can rightly understand what it is they have to try. The Constitution of the United States declares the tenure of the judicial office to be "during good behavior." Official misbehavior, therefore, in a judge is a forfeiture of his office. But when we say this we have advanced only a small distance. Another question meets us. What is misbehavior in office? In answer to this question, and without pretending to furnish a definition, I freely admit we are bound to prove that the respondent has violated the Constitution or some known law of the land. This, I think, was the principle fairly to be deduced from all the arguments on the trial of Judge Chase, and from the votes of the Senate in the articles of impeachment against him, in opposition to the principle for which his counsel in the first instance strenuously contended, that in order to render an offense impeachable it must be indictable. But this violation of law may consist in the abuse as well as in the usurpation of authority.

The abuse of a power which has been given may be as criminal as the usurpation of a power which has not been granted. Can there be any doubt of this? Suppose a man to be indicted for an assault and battery. He is tried and found guilty, and the judge, without any circumstances of peculiar aggravation having been shown, fines him a thousand dollars and commits him to prison for one year. Now, although the judge may possess the power to fine and imprison for this offense, at his discretion, would not this punishment be such an abuse of judicial discretion and afford such evidence of the tyrannical and arbitrary exercises of power as would justify the House of Representatives in voting an impeachment? But why need I fancy cases? Can fancy imagine a stronger case than is now, in point of fact, before us? A member of the bar is brought before a court of the United States guilty, if you please, of having published a libel on the judge—a libel, however, perfectly decorous in its terms and imputing no criminal intention, and so difficult of construction that though the counsel of the respondent have labored for hours to prove it to be a libel still that question remains doubtful. If in this case the judge has degraded the author by imprisonment and deprived him of the means of earning bread for himself and his family by suspending him from the practice of his profession for eighteen months, would not this be a cruel and oppressive abuse of authority, even admitting the power to punish in such a case to be possessed by the judge?

A gross abuse of granted power and an usurpation of power not granted are offenses equally worthy of and liable to impeachment. If, therefore, the gentleman could establish, on the firmest foundation, that the power to punish libels as contempts may be legally exercised by all the courts of the United States, still he would not have proceeded far toward the acquittal of his client.

It has been contended that even supposing the judge to have transcended his power and violated the law, yet he can not be convicted unless the Senate should believe he did the act with a criminal intention. It has been said that crime consists in two things, a fact and an intention; and in support of this proposition the legal maxim has been quoted that "actus non fit reum, nisi mens rea." This may be true as a general proposition, and yet it may have but a slight bearing upon the present case.

I admit that if the charge against a judge be merely an illegal decision on a question of property in a civil cause, his error ought to be gross and palpable, indeed, to justify the interference of a criminal intention and to convict him upon an impeachment. And yet one case of this character has occurred in our history. Judge Pickering was tried and condemned upon all the four articles exhibited against him, although the three first contained no other charge than that of making decisions contrary to law in a cause involving a mere question of property, and then refusing to grant the party injured an appeal from his decision, to which he was entitled.

And yet am I to be told that if a judge shall do an act which is in itself criminal; if he shall, in an arbitrary and oppressive manner and without the authority of law, imprison a citizen of this country, and thus consign him to infamy, you are not to infer his intention from the act?

[Judge Spencer's argument, p. 290.]

It is necessary to a right understanding of the impeachment to ascertain and define what offenses constitute judicial misdemeanors. A judicial misdemeanor consists, in my opinion, in doing an illegal act colore officii with bad motives, or in doing an act within the competency of the court or judge in some cases, but unwarranted in a particular case from the facts existing in that case, with bad motives. To illustrate the last proposition: The eighth article of the amendments of the Constitution forbids the requirement of excessive bail, the imposition of excessive fines, or the infliction of cruel or unusual punishment. If a judge should disregard these provisions, and from bad motives violate them, his offense would consist, not in the want of power, but in the manner of his executing an authority intrusted to him and for exceeding a just and lawful discretion.

[Mr. Wickliffe's argument, p. 308.]

By the third article of the Constitution of the United States it is declared that the judges of the supreme and inferior courts shall hold their office during good behavior.

I maintain the proposition that any official act committed or omitted by the judge, which is a violation of the condition upon which he holds his office, is an impeachable offense under the Constitution.

The word misdemeanor, used in its parliamentary sense as applied to offenses, means maladministration, misconduct not necessarily indictable, not only in England, but in the United States.

"In the Senate, July 8, 1797, it was resolved that William Blount, esq., one of the Senators of the United States, having been guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator, be, and he hereby is, expelled from the Senate of the United States. (Whatton's State Trials, 202.)

He was not guilty of an indictable crime. (Story on the Constitution, sec. 799, note.)

The offense charged, Judge Story remarks, was not defined by any statute of the United States. It was an attempt to seduce a United States Indian interpreter from his duty, and to alienate the affections and conduct of the Indians from the public officers residing among them.

Blackstone says: The fourth species of offense more immediately against the King and Government are entitled "misprisions and contempts." Misprisions are, in the acceptance of our law, generally understood to be all such high offenses as are under the degree of capital, but nearly bordering thereon. * * * Misprisions which are merely positive are generally denominated contempts or high misdemeanors, of which the first and principal is maladministration of such high offices as are in public trust and employment. This is usually punished by the method of parliamentary impeachment. (Vol. 4, p. 121. See Prescott's trial, Mass., 1821, pp. 79–80, 109, 117–120, 172–180, 191.)

On Chase's trial the defense conceded that to misbehave or to misdemean is precisely the same. (2 Chase's Trial, 145.)

The Constitution declares that judges, both of the Supreme

and inferior courts, shall hold their commissions during good behavior. This tenure of office was introduced into the English law to enable a removal to be made for misbehavior. (Chase's Trial, 357.)

At common law, an ordinary violation of a public statute, even by one not an officer, though the statute in terms provides no punishment, is an indictable misdemeanor. (Bishop, Constitutional Law, 3d ed., 187, 535.)

The term "misdemeanor" covers every act of misbehavior in a popular sense. Misdemeanor in office and misbehavior in office mean the same things. (7 Dane Abgt., 365.) Misbehavior, therefore, which is a mere negative of good behavior, is an express limitation of the office of a judge.

We may therefore conclude that the House has the right to impeach and the Senate the power to try a judicial officer for any misbehavior or misconduct which evidences his unfitness for the bench, without reference to its indictable quality. All history, all precedent, and all text writers agree upon this proposition. The direful consequences attendant upon any other theory are manifest.

For the first time in impeachment trials in this or any other country the claim is made that a judge can be impeached only for acts done in his official capacity.

If that position is well taken a judge might be a common drunkard, an open frequenter of disreputable resorts; he might be a common thief, an embezzler of trust funds, a gambler, even a murderer. If he could manage to keep out of jail and attend to his judicial duties the remedy by impeachment would not reach him. To state the proposition is to argue it.

Removal of a judge for misbehavior or lack of good behavior is impossible unless it can be done through the impeaching power. Otherwise the people are powerless to rid themselves of the most unworthy, disgraceful, and unfit official.

But the exigencies of this case do not demand even a discussion of the proposition that a judge can be impeached only for acts done in his official capacity.

The claim is in the nature of a demurrer to the first seven articles. It admits the truth of the averments contained in them. It admits that the respondent, as judge of the district court he held at Waco, Tex., that as judge he knowingly made a false certificate; that as judge he receipted for and received money to which he was not entitled as reimbursement for expenses incurred as judge which he never did incur. All these acts were done in his official capacity. If he had not been a judge he could not have held the court, incurred any expense, or receipted for or received any money. The stamp of his official character is on every act. His official position enabled him to do what he did do; without it he could not have violated the law.

In the case of the use of the property of the bankrupt corporation, which was in his hands for preservation, it was because he was judge that he had the opportunity to use the property. It was to bring him to hold court that the car was sent. An officer of his court sent it. He had the right and it was his duty to approve the account covering the expenses of the trip. If he had not been a judge he could not have used the property of the railroad company. The article charges that Charles Swayne, judge, appropriated the property to his own use without making compensation under a claim of right, viz, that what he did was done in his official capacity.

The articles that charge him with violating the residence law assert that he did it while exercising his office of judge. The act is directed against judges; a private person can not violate it. The act commands a judge to reside in his district—that is, the official must live there; it is to be his official residence, so that he will be where he is wanted to perform his official duty. The violation of the law is the violation of an official duty which the law imposes on him in his official character. All this the demurrer confesses, and yet the argument is made that for a violation of the act a judge is not impeachable, because it is not an official act.

But the proposition is seriously advanced that no act of Congress can create an impeachable offense or make a crime or misdemeanor the subject of impeachment for which impeachment would not lie in England before the adoption of the Constitution.

Impeachable offenses were not defined in the English law by act of Parliament or otherwise; any offense was impeachable that Parliament chose to so consider. Therefore, when Congress makes that a crime or misdemeanor which was not so denominated at the time of the adoption of the Constitution it does not follow that the acts made crimes were not the subject of impeachment before the adoption of the Constitution.

For example, suppose no English law condemned the making of false certificates by a judge for the purpose of obtaining money from the Treasury. Can it be said that if an English judge had been guilty of such an offense that he would not have been subject to impeachment? If so, then neither can it be said that Congress created new impeachable offenses when the act was passed pertaining to false certificates.

The power to impeach for misbehavior of civil officials is vested in the House and the power to try in the Senate as fully as it was exercised by the English Parliament before 1787. That power covered every offense from high treason to slander against a ruler. Subject only to the limitation that the remedy by impeachment is confined to civil officers—for high crimes and misdemeanors—the power was conferred and may be exercised as fully now as then.

We have seen that, according to the law of Parliament, misdemeanor and misbehavior of public officers are synonymous terms. Another proposition advanced by counsel for respondent is that no judge was ever impeached in England for a misbehavior not committed in the discharge of his judicial functions. This is believed to be an error; judges were impeached for giving extrajudicial opinions. But suppose the fact to be as stated, the conclusion would not follow that because no English judge ever misbehaved himself outside of his official duties as to make him a subject of impeachment that therefore he could not have been impeached if he had so misbehaved.

But however interesting discussion of such question may be, it is quite unimportant in this case. All the charges against this respondent grow out of his official acts. Nothing that he did of which complaint is made could have been done by a private person, or by anyone who did not hold a judicial office. Because the respondent was a judge he had the right to make a certificate upon which to draw money from the Treasury; because he was a judge a private car was sent to bring him from Guyencourt to hold court at Jacksonville; because he was a judge the law imposed upon him the duty of living in a certain district; because he violated the law in all these cases in his official capacity he is charged.

The conclusion is, therefore, not to be resisted that even if the contention of the respondent's counsel is correct a judge can be impeached for nothing but official misconduct, these offenses are within the rule, and of them this court has jurisdiction.

Mr. THURSTON. Mr. President, counsel for the respondent are keenly alive to the situation in the Senate, upon which the country depends for legislation that is essential to carry on the Government until another Congress can sit; and, profoundly solicitous for the welfare of our client, desiring to do what is right by him and also by the country, we now offer in his behalf to submit this case to the vote of the Senate without argument, if that is agreeable to the managers on the part of the House.

Mr. Manager PALMER. Mr. President, that suggestion is not agreeable to the managers. In at least one case—the O'Neal case—testimony was put in without any comments and without being read on the suggestion that it should be explained when it came to the argument. This case can not be understood; it can not be properly disposed of without explanation. While we share with the respondent's counsel in his solicitude for the welfare of the people of the United States, we are of the opinion that there is no public business before the Senate now that is of any more consequence than this. Therefore we decline to submit this case without argument.

The PRESIDING OFFICER. Proceed with the argument.

Mr. Manager OLMSTED. Mr. President and Senators: "Justice is the great interest of man on earth." Such is the motto inscribed upon the corporate seal of the bar association of the great Commonwealth from which I come, and should be the actuating, moving, guiding sentiment inscribed upon the heart and conscience of every official charged with the administration of justice.

From the day when the first judge in Israel received from the Ruler of the Universe the command, "Thou shalt not respect the person of the poor nor honor the person of the mighty, but in righteousness shalt thou judge thy neighbor," down to the present moment of time there has not been, nor can there ever be, within the power of man to confer upon man any office holding more of human interest than the office of judge. It represents the wisdom, the beneficence, the protection, the dignity, the awful majesty, and the vast power of the law. It touches, or may touch, us in almost every relation of life—in our rights, our properties, our reputations, and, as the evidence in this case shows, our liberties, or even our lives.

So vast and varied are the responsibilities, so delicate and important the duties, of this high office, and so great the necessity of removing the judge—who, after all, is but a human being—from the local, political, partisan, and other influences which so often sway human conduct, and imperceptibly, perhaps, influence human judgment, that the Constitution does not

permit Federal judges to be elected by the people; nor appointed for a definite term of years; nor removed by the power which appoints them, nor by any other power or tribunal on earth save only the Senate of the United States by a two-thirds vote. And even the Senate can not act, except upon articles of impeachment presented by the House of Representatives, which can only impeach, and may not itself try or convict. Thus guarded and protected from outside influence and interference, the Federal judge need neither trim his sails to the changing winds of popular approval nor change his course with the shifting currents of the times. He is left, as nearly as possible, free and untrammeled in the performance of the functions of his office so long as he complies with the terms of his appointment—performs his part of the solemn contract between himself and the people of the United States.

Now, what are those terms and what is that contract?

The judges, both of the Supreme Court and of inferior courts, shall hold their offices during good behavior.

So reads the Constitution. (Art. III, sec. 1.)

Know ye, * * * I have nominated and by the advice and consent of the Senate do appoint for United States district judge for the northern district of Florida * * * to have and to hold the said office, with all the powers, privileges, and emoluments to the same with right pertaining to him, the said Charles Swayne, during good behavior.

Thus reads the commission granted by the President of the United States to the respondent. That is his term of office fixed by the Constitution and specified in his commission. That is the condition upon which he holds. In what way and by what tribunal may that term be declared at an end for violation of that condition? The Constitution has not left that question to be determined by any other judge or judges, who might be influenced, either by the fellowship of kindred office or the envies and jealousies that sometimes obtain among those in like position, nor by a jury which might be influenced by local prejudice or popular excitement.

Here in this Senate, composed of two members chosen from each State in the Union—chosen from among their fellows by the legislatures of those States because of their eminent qualifications and fitness to represent their respective Commonwealths—here, and here only, is the power of removal vested. Here, and here alone, may the people be relieved of a judge whose behavior is not good. There is no method of enforcing the constitutional provision that judges shall hold office only "during good behavior" except in the manner pointed out, also in the Constitution, "that the House of Representatives * * * shall have the sole power of impeachment" (Art. I, sec. 2), and that "the Senate shall have the sole power to try all impeachments" (Art. I, sec. 3).

That these powers of impeachment and trial were intended for just such cases as this is made clear from the further declaration that "judgment in cases of impeachment shall not extend further than the removal from office and disqualification to hold and enjoy any office of honor, trust, and profit under the United States." (Art. I, sec. 3.) For offenses against the laws of the land the party impeached and convicted is by the express terms of the Constitution left "liable and subject to indictment, trial, judgment, and punishment, according to law." All that this tribunal can do is to remove him from and disqualify him to hold office. As I shall presently show, the Senate is not bound to extend its judgment to disqualification, but in another provision we find the distinct command that "the President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors." (Art. II, sec. 4.)

Although it is plain from the preceding article that the Senate may extend its judgment to permanent disqualification to hold any office, this express command applies only to removal. Under a substantially similar provision the senate of my own State, in 1803, having convicted Judge Addison, removed him from office but limited his disqualification to the holding of "the office of judge of any court of law in the Commonwealth of Pennsylvania." One year later, this Senate having convicted John Pickering, Federal judge in a New Hampshire district, upon a charge of drunkenness, and also upon an article charging another offense, he was removed, but the judgment did not include disqualification.

WHAT ARE IMPEACHABLE OFFENSES?

Although it would seem that the question must now be considered settled, nevertheless in nearly every impeachment trial the question is raised as to the character of offenses for which impeachment will lie. In times past men of great learning and authority have contended that no officer can be impeached except for indictable offenses, and that as there are no common-law offenses against the United States it follows that there can be no impeachment except for an offense expressly declared and made indictable by act of Congress. This view of the matter fades away in the bright light of reason and of precedent.

Such a construction would render the constitutional provision practically a nullity. Congress has defined and made indictable by statute, comparatively few offenses. It would be impossible in any statute to define or describe all the various ways in which a judge or other civil officer might so notably and conspicuously misbehave himself as to justify and require his removal. Even murder is not defined in any act of Congress. When it so appears, reference to some other source must be had to ascertain the meaning of the term. Murder is not made indictable by any act of Congress, nor has any Federal court jurisdiction of that crime unless committed upon the high seas.

Suppose a judge to commit murder upon the dry land within the confines of a State. That would not be a high crime or misdemeanor within the provision of any act of Congress. Could it successfully be maintained that it was not a high crime and misdemeanor within the meaning of Article II, section 4, of the Constitution, or that it was not such a breach of good behavior as would justify removal from office? If that be the proper construction, then it is possible to imagine that as the respondent transacted official business at and dated his communications from "United States district court, northern district of Florida, judge's chambers, Guyencourt, Del.," so a more violent and vicious man might conduct business at "Judge's chambers, State penitentiary," and still be free from all danger of impeachment or removal from the judicial office.

I have shown, Mr. President, that men have formerly argued that only indictable offenses are subjects for impeachment; that as there were no common-law offenses against the United States there can be no impeachment except for crimes declared and defined by act of Congress. But now, in the 48-page brief served upon us last evening bearing the names of the honorable counsel for respondent, but the authorship of which they distinctly disavowed—and I now know the reason why—we find the astounding doctrine that no man can be impeached for any offense declared by Congress, and that therefore no officer can be impeached, no matter what he does, unless we can find that in England some judge had been impeached for the same specific offense prior to the adoption of our Constitution, which borrowed something from the mother country in this matter.

Now, we admit, Mr. President, that the term "impeachment" is imported from the English law, and so is the constitutional phrase "high crimes and misdemeanors" used in relation thereto. They are both without definition, either in the Constitution or in any act of Congress. Where, then, shall their definition and construction be found? Our Supreme Court has declared that—

Where English statutes—such, for instance, as the statute of frauds and the statute of limitations—have been adopted into our legislation, the known and settled construction of those statutes by courts of law has been considered as silently incorporated into the acts or has been received with all the weight of authority. (Pennock *v.* Dialogue, 2 Peters, 2-18.)

That was an unanimous decision in which Chief Justice John Marshall participated and concurred, and the opinion was written by Mr. Justice Story.

To the same effect is the case of United States *v.* Jones (3 Wash. C. C. R., 209), and many other authorities that might be cited.

We may therefore look to the law of England for the meaning of the term "impeachment" and of the phrase "high crimes and misdemeanors," as used in connection therewith—not so much to the statute law, nor to the common law, as generally understood, but to the common parliamentary law of England, as found in the precedents and reports of impeachment cases.

The Senate has always been governed in impeachment cases by the *lex et consuetudo parliamenti.* It requires but a brief investigation to show that according to the English parliamentary practice in vogue at and prior to the adoption of the Constitution, the greatest possible variety of offenses, not indictable, were nevertheless held proper causes for impeachment.

In II Wooddeson's Law Lectures, an acknowledged authority, the learned author, in his lecture upon "Parliamentary Impeachments," says (p. 596):

It is certain that magistrates and officers intrusted with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community and at the same time in a manner not properly cognizable before the ordinary tribunals. The influence of such delinquents and the nature of such offenses may not unsuitably engage the authority of the highest court and the wisdom of the sagest assembly. The Commons, therefore, as the grand inquest of the nation, become suitors for penal justice, and they can not consistently, either with their own dignity or with safety to the accused, sue elsewhere but to those who share with them in the legislature.

On this policy is founded the origin of impeachments, which began soon after the constitution assumed its present form.

And again (p. 601):

Such kinds of misdeeds, however, as peculiarly injure the Commonwealth by the abuse of high offices of trust, are most proper, and have been the most usual grounds for this kind of prosecution. Thus, if a lord chancellor be guilty of bribery, or of acting grossly contrary to the duty of his office; if the judges mislead their sovereign by unconstitutional opinions; if any other magistrate attempt to subvert the fundamental laws or introduce arbitrary power, these have been deemed cases adapted to parliamentary inquiry and decision. So where a lord chancellor has been thought to have put the seal to an ignominious treaty, a lord admiral to neglect the safeguard of the sea, an ambassador to betray his trust, a privy counselor to propound or support pernicious and dishonorable measures, or a confidential adviser of his sovereign to obtain exorbitant grants or incompatible employments, these imputations have properly occasioned impeachments, because it is apparent how little the ordinary tribunals are calculated to take cognizance of such offenses or to investigate and reform the general polity of the state.

In several cases English judges were impeached for giving extrajudicial opinions and misinterpreting the law. (4 Hatsell, 76.)

Such is the undoubted Parliamentary law of England, from which our process and practice of impeachment and the very term itself are derived. That it has been adopted and followed here is equally certain.

Judge Curtis, in his History of the Constitution (pp. 260–261), says:

The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. * * * Such a cause may be found in the fact that either in the discharge of his office or aside from its functions he has violated a law or committed what is technically denominated a crime, but a cause for removal from office may exist where no offense against positive law is committed, as where the individual has from immorality, imbecility, or maladministration become unfit to exercise the office.

And Judge Story says, in section 799 of his work on the Constitution:

Congress has unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct. * * * In the few cases of impeachment which have hitherto been tried no one of the charges has rested upon any statutable misdemeanor. (1 Story on Con., sec. 799.)

Such writers as Cooley and Wharton and Rawle maintain the same position and support it not only by reason, but by authority and precedent. For a very able discussion of this subject I refer to the brief of Mr. Lawrence, adopted by the managers and published among the proceedings in the impeachment of Andrew Johnson and also in 6 American Law Register, new series, page 641.

Every impeachment case ever presented to the United States Senate has been founded upon articles, some or all of which charged offenses not indictable; and Judge West, of Tennessee, as well as Judge Pickering, was convicted and removed for offenses not subject to indictment under either State or Federal laws.

We agree with respondent's brief, the authorship of which his counsel disavow, that the general character of offenses impeachable may be studied to advantage by a consideration of the English precedent, but I can never agree that in order to convict an American judge we must first show that some English judge has been convicted of the same specific offense.

No English judge has been impeached for murder, or perjury, or forgery, or larceny; and yet they were undoubtedly impeachable offenses in England as they are here to-day. They, or any of them, would certainly constitute a breach of that "good behavior" during which Federal judges hold their commissions. Surely an offense which would have been impeachable without a statute is none the less so because Congress has declared it a misdemeanor. Taking money out of the Treasury on a false certificate would have been impeachable in England before our Constitution. It is none the less so here, statute or no statute.

JURISDICTION OF FIRST SEVEN ARTICLES.

Respondent denies that the offenses charged in the first seven articles are proper subjects of impeachment on the ground, as we understand it, that they were committed by him in his private and not in his official capacity; or, in other words, that the articles do not charge misbehaviors or misdemeanors in office. We labor under the impression that the respondent is "in office," and that any misdemeanor committed by him, either in his private or official capacity, since he accepted the President's commission was a misdemeanor "in office." He may have been out of his court room and out of his district, but he has never been out of office.

The Constitution as well as his commission defines his term as "during good behavior," and provides for his removal from office for "treason, bribery, and other high crimes and misdemeanors," meaning thereby misbehavior, for misbehavior is misdemeanor, and misdemeanor is misbehavior. There is no limitation to offenses actually committed upon the bench, nor to those committed while in the performance of any judicial or official function, or in any way under color of office.

The Century Dictionary gives this definition:

During good behavior: As long as one remains blameless in the discharge of one's duties or the conduct of one's life; as, an office held during good behavior.

Judge Curtis, in his History of the Constitution (p. 260–261), says:

The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. * * * Such a cause may be found in the fact that either in the discharge of his office or aside from its functions he has violated a law or committed what is technically denominated a crime, but a cause for removal from office may exist where no offense against positive law is committed, as where the individual has from immorality, imbecility, or maladministration become unfit to exercise the office.

Such is manifestly the intention of the Constitution. That instrument says "during good behavior." It does not, as some of the State constitutions do, add the words "in office." It says "high crimes and misdemeanors," but it does not add "in office." In the brief of respondent's honorable counsel the authorship of which they disavow, they tell us, and it is entirely true, that at one stage of its formation the provision read "misdemeanors against the State." But as the words "against the State" were stricken out they argue that it must be construed as if they had been left in.

JUDGE HUMPHREY'S CASE.

Mr. President, there are plenty of authorities, both English and American, that in order to be the subject of impeachment it is not necessary that an offense shall be committed even under color of office, and just here I take issue in the most emphatic manner with the statements of that 48-page brief as to the causes for which convictions have been had in impeachment. It is full of historical inaccuracies. It declares, for instance, that Judge West H. Humphreys, of Tennessee, was convicted only for offenses committed in his judicial capacity.

I say that he was convicted upon each one of seven articles, only one of which—the fifth—had any relation at all to his duties as a Federal judge. The very first article charged him with advocating secession. Where? Upon the bench? No. In the court room? No. In a written opinion? No. In a public speech in the city of Nashville. Five other of those counts were of the same character. How could a judge commit that offense upon the bench? He did not speak as a judge, but as a citizen at a public meeting.

Mr. President, Andrew Johnson came within one vote of being impeached upon the eleventh article in his case, a portion of which I will read:

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, and in disregard of the Constitution and laws of the United States, did, heretofore, to wit, on the 18th day of August, A. D. 1866, at the city of Washington and the District of Columbia, by public speech, declare and affirm, in substance, that the Thirty-ninth Congress of the United States was not a Congress of the United States.

Upon that article the vote against him was 35 to 19. A change of one vote would have expelled him from the Presidency.

Treason, removal for which is made compulsory, is specifically defined by the Constitution in these words:

Treason against the United States shall consist only of levying war against them or adhering to their enemies, giving them aid and comfort.

It would hardly be possible for a judge, sitting upon the bench, or in any other way except entirely aside from any function of his office, to be guilty of this offense. But suppose that, disassociating himself as far as possible from his judicial position, he should in his individual capacity participate in "levying war against them or in adhering to their enemies, giving them aid and comfort."

That would surely be treason, as constitutionally defined, and yet, upon the argument of the honorable counsel for respondent, he could not be impeached and removed from office for that offense. Think of that. A traitor to his country, sitting securely upon the bench, secure from removal by any power on earth, for in no way can he be removed except by the Senate, upon impeachment by the House of Representatives. A Federal judge, upon that reasoning, might commit murder upon the public highway, or be convicted of housebreaking, or forgery, or perjury, or in any other way bring into contempt his high office, and yet we are told that if the offense be not committed upon the bench, nor in the court room, nor in any way relating to his judicial duties, he can not be impeached and removed.

It is hardly necessary to prolong this branch of the discussion, in view of the fact that the question has already been determined by the Senate itself.

BLOUNT'S CASE.

In 1797 William Blount was expelled from the Senate for attempting to seduce a United States Indian interpreter from his duty and to alienate the affections and conduct of the Indians from the public officers residing among them. That was not a statutory offense, nor committed in the Senate Chamber, nor in the exercise or omission of any Senatorial function, nor under color of office; but the Senate, nevertheless, resolved that he "having been guilty of a high misdemeanor entirely inconsistent with his public trust and duty as a Senator be, and he is hereby, expelled from the United States Senate."

That was not upon an impeachment proceeding, but the principle involved was precisely the same, and later it was sustained in the impeachment case of Judge Humphreys, as I have shown.

THE ARTICLES DO CHARGE OFFENSES HAVING STRICT RELATION TO HIS OFFICIAL OFFICE.

It is difficult in any event to see any force in respondent's plea to the jurisdiction. The offenses charged in the first seven as well as in all the other articles do relate entirely to his judicial office and not to his private conduct. The first article, for instance, charges that the respondent "did then and there as said judge make * * * a false claim against the Government of the United States in the sum of $230." The certificate referred to is recited at length in the article found on page 7 of the proceedings. It reads that—

> I, Charles Swayne, district judge for the northern district of Florida, do hereby certify—

and then sets forth that he was directed to and did hold court at Waco, Tex., in 1897, and "that my reasonable expenses for travel and attendance amounted to the sum of $230, which sum is justly due me for such travel and attendance." It is signed "Chas. Swayne, judge." The answer to that article, signed by the respondent, you will find commencing on page 26 of the proceedings, wherein he says:

> He admits that on the 20th day of April, 1897, at Waco, in the State of Texas, acting as United States judge in and for the northern district of Florida, he made and presented to R. N. Love, the United States marshal in and for the northern district of Texas, the certificate in writing as set forth in the said first article, and did then and there receive from the said R. N. Love, United States marshal as aforesaid, the sum of $230 in full payment of the account certified to as aforesaid.

Turning then to page 87 of the proceedings, we find another instance in which he declares that—

> I, Charles Swayne, district judge of the United States for the northern district of Florida, do hereby certify that I was directed to and held court at the city of Tyler, in the eastern district of Texas, * * * and that my reasonable expenses for travel and attendance amounted to the sum of $310.

This also is signed "Charles Swayne, judge." Just below it is a receipt for the money signed "Charles Swayne, judge."

And turning back to the thirty-first item of the marshal's account on the preceding page we find the entry: "Chas. Swayne, expenses, judge, special term, Tyler, $310." And so all through you will find the certificates made by and the money paid to not the individual, but to the judge. He admits in his answer that he made the certificate and received the money "acting as United States judge."

It is a well-known principle of law that anything proceeding from the mouth or the pen of a man may be used against him; and the respondent having made the express admission, as I have shown, that he made the certificates and received the money "acting as United States judge," that would seem to be the end of the matter.

But had he denied, instead of admitting, he could not have changed the situation. Congress has never made any appropriation for the payment of money to him as a private citizen. A trip to Waco or Tyler in any capacity other than that of judge would not have entitled him to draw a cent from the Treasury in reimbursement of expenses or for any other purpose.

The statute appropriates for payment "of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts," and provides that it shall be paid by the marshal "on written certificates of the judges." Reimbursement for expenses can be made only to a judge upon the certificate of a judge, and the payment is to reimburse him for holding court as a judge. The whole matter relates to, and is inseparably connected with, the office of the judge.

The respondent can not divide himself into two separate and distinct legal entities so as to be a judge when holding court, certifying to his expenses and drawing money from the Treasury, and then resolve himself into a private citizen eo instanti his good behavior is questioned. Everything he did in this connection was under color of his office and inseparably related thereto.

ARTICLES 4 AND 5.

The fourth article charges that he, "while in the exercise of his office of judge * * * did unlawfully appropriate to his own use" certain property belonging to a railroad company in the possession of a receiver appointed by him "judge, as aforesaid, on the petition of creditors," that "the expenses of the trip were paid by the said receiver * * * and the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure," and that—and to this I call particular attention—"the said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner, and under a claim of right, for the reason that the same was in the hands of a receiver appointed by him."

The fifth article is of like import. The receiver was an officer of the court, appointed by the respondent and responsible to him as judge. In the capacity of judge it became his duty to pass upon the receiver's accounts. The charge is that he made use of the property under a claim of right, on the ground that the same was in the custody of the court, acting through the agency of the receiver who was his appointee. All this relates strictly to his behavior in office as judge. These charges can not be disassociated from his official position, and this Senate certainly has jurisdiction to determine whether or not they have been proved.

ARTICLES 6 AND 7.

The sixth and seventh articles relate only to the matter of residence under an act of Congress, which specifically requires that—

> Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

This is directed not to private citizens, but to all who are judges. It is difficult to see how the judge of the northern district of Florida could reside in his district unless the respondent were individually there also; nor how the respondent could in his individual capacity reside at Guyencourt, Del., without taking the judge with him. If the Senate shall find that these articles have been sustained and that the judge, whose duty it is to faithfully administer and enforce the laws, has himself openly, notoriously, continuously, and persistently violated an act of Congress, passed for the express purpose of regulating, in the matter of residence, his conduct as a judge, it is absurd to contend that such violation of law was not the opposite of good behavior, or that it was not what Congress has solemnly declared it to be, a high misdemeanor. I therefore conclude this branch of the argument, submitting with entire confidence the two propositions:

First, that any civil officer of the United States may be impeached and removed for high crimes and misdemeanors either in the performance or entirely aside from the functions of his office; and, second, that the first seven, as well as the remaining articles, charge respondent with notable misbehavior, gross violations of law, and abuses of power—high crimes and misdemeanors in matters relating strictly to his judicial office, and in which it would have been beyond his power to offend had he not been a judge.

LAW GOVERNING EXPENSES OF JUDGES.

The first three articles charge that in at least that many instances the respondent obtained money from the Treasury upon false statements of his expenses. The act of 1896, found in 29 Statutes at Large, at page 451, provides for the payment—

> Of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges, and such payment shall be allowed the marshal in the settlement of his accounts with the United States, * * * and a compensation for jury commissioners, $5 per day, not exceeding three days for any one term of court.

Upon the respondent's theory a jury commissioner attending court only one day would be entitled to $15.

The offense charged in the first article occurred very shortly after the passage of this act. The respondent says in his answer that it became his duty to construe the act, and that he reached the conclusion and judgment that it entitled him to be paid "at the rate of $10 per day as a liquidated sum." He does not claim that he consulted or knew the construction or opinion or practice of any other judge or any other court. He declares that he himself placed that construction upon the act.

His actions show, as I shall presently demonstrate, that as a matter of fact he did reach a very different conclusion and proceed upon a very different theory. But for the present let us consider him as sitting in the privacy of his own room for the construction of this statute. He had before him the case of Swayne *v.* The United States Treasury. He himself was plaintiff, counsel for plaintiff, and judge. The Treasury was

not represented. Now, the language of that statute—"reasonable expenses for travel and attendance * * * not to exceed $10 per day"—is plain, simple, and entirely free from ambiguity. A learned judge, desiring to act impartially, would at once recall the great principle declared by Chief Justice Marshall, speaking for the Supreme Court in the case of United States *v.* Fisher, found in 2 Cranch, at page 358, that "where the intention is plain nothing is left to construction."

If he wanted earlier authority he would have found it in the language of Lord Tenterden, in the case of The King *v.* Inhabitants of Great Bentley (10 Barn. & Cres., 520), that—

> We think it much the safer course to adhere to the words of the statute construed in their ordinary import than to enter into inquiry as to the supposed intention of the persons who framed it.

If he wanted later rulings he would have found them cited by the hundred by Sedgwick, Endlich, Sutherland, and every other writer on statutory construction.

If the learned respondent was not, as every judge ought to be, familiar with that principle and with those authorities, he might at least have recalled the equally applicable principle laid down by Sutherland, and supported by abundant citation of authorities, that—

> Acts relating to the fees and compensation of public officers are strictly construed, and such officers are only entitled to what is clearly given by law.

Had there been any room for construction at all in so plain a provision of law he ought to have considered the very well known and invariable rule of construction that every word and phrase in a statute must be given effect if possible. In reaching the construction that it authorized him to receive $10 per day as a liquidated sum when in fact he had only expended $3, what effect did he give to the phrase "not to exceed?" He must have eliminated that entirely.

As he says in his answer that he was at the time familiar with the act of 1881, which is printed in the Compiled Statutes immediately in connection with section 587 of the Revised Statutes, relating to the expenses of judges sitting in the southern district of New York, and the terms of which are practically those of the act of 1896, which he says he was construing, he must have been familiar with that provision also. Had he cared to know the ruling of the Treasury Department upon the subject he could readily have found it, as I have done, in the second volume of the Comptroller's Decisions, at page 286, from which I read as follows:

> The act of March 5, 1872 (17 Stat., 36), provided that whenever "a district judge from another district shall hold a district or circuit court in the southern district of New York, his expenses, not exceeding $10 per day, certified by him, shall be paid by the marshal of said district, as a part of the expenses of the court, and be allowed in his accounts."
>
> By this act a district judge holding court in the southern district of New York was put upon a different footing from district judges holding court elsewhere, and payment was authorized to such judges, not of a per diem of $10, but of their expenses not exceeding $10 per day, and which expenses should be evidenced by the certificate of the judge.

He would have found from a careful reading of that published decision that the Department placed precisely the same construction upon a similar provision in the act of 1891, providing for the expenses of judges sitting in the circuit court of appeals, holding that it did not fix a liquidated sum, but merely provided for the "reimbursement" of judges for their reasonable expenses, naming $10 as the maximum. Then, too, had he cared to know, he might have found in the still later opinion by Comptroller Tracewell, in volume 4 of the published reports, at page 432, the ruling thus stated in the syllabus:

> A special agent of rural free delivery authorized by his appointment to be paid "at the rate of $5 per day and his expenses, limited to $4 per day," is not entitled to a per diem of $4 per day in lieu of expenses, but only to reimbursement for expenses actually and necessarily incurred in the performance of his duty, not to exceed $4 per day.

The present Comptroller, Mr. Tracewell, in disallowing a claim for thirty-one days, at $4 per day, amounting to $124, used, as reported on page 436, the language which I will ask the Secretary to read.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

> But I do not understand from the language of his appointment, as set out in the letter of the Postmaster-General designating him to this agency that the $4 per day therein mentioned was used in the same sense of compensation in the way of pay or salary or in lieu of expenses as an additional salary, but was used in its ordinary sense of reimbursing Mr. Bach up to the amount of $4 per day for money paid out by him on account of his personal expenses while engaged in the service of the Government.

Mr. Manager OLMSTED. The case bearing most nearly upon the subject is Penwell *v.* Board of County Commissioners, reported in 59 Pacific Reporter, at page 167. The statute before the court in that case provided that—

> The maximum annual compensation allowed to any deputy or any assistant is as follows: * * * under sheriff, not to exceed $1,800; each deputy sheriff, not to exceed $1,200; * * * chief deputy county attorney, $1,800.

There was some room for construction there, as the words "not to exceed" did not immediately precede the words "chief deputy county attorney." He denied the right of the commissioners to fix his compensation at any less amount than $1,800, but the court unanimously determined that the limitation was intended to apply to all the officers named in the statute, and said:

> In our opinion, therefore, there was no evident intention on the part of the legislature, by the omission therein referred to, to fix the compensation of the deputy county attorney at a certain sum, or to take away the right to put it at a sum less than the maximum named.

The court held that the maximum named in the statute, following the words "not to exceed," was not to be treated as a liquidated sum. Had the respondent found it necessary to refer to the history of the times for the construction of the perfectly unambiguous act of 1896, which admitted of no construction, he would have found in the consideration of the acts of 1881 and 1891 and the decision of the Comptroller of the Treasury already referred to, the reason for the act of 1896 and the limitation therein contained. Prior to that time district judges were permitted to be reimbursed for their actual expenses, whether reasonable or unreasonable.

They were frequently made to run above $10 per day, and in one case we are told exceeded $40, but they were required to be itemized and supported by vouchers. On the other hand, circuit court judges and district judges when sitting in the circuit court of appeals were limited to reimbursement for their actual expenses to an amount not exceeding $10 per day. They were not required, however, to itemize their expenses nor support their bills by vouchers; but the marshal was required to reimburse each judge upon his own certificate of expenses without itemization or supporting vouchers. Thus, a district judge, holding a district court outside of his own district, was governed by one provision, and by another and different one if sitting in the circuit court of appeals.

It was to provide uniformity among the judges and at the same time to protect the Government against unreasonable expenses that the act of 1896 was passed fixing $10 as a maximum and permitting the judge to be reimbursed upon his own certificate of expenses, provided they did not exceed the maximum named in the law. There can not by any process of reasoning or known rule of construction be evolved from the language of the act of 1896 an intention to enable a judge whose expenses were less than $10 to collect the excess and put it in his own pocket. No such intention lurks in that act nor in any other act that Congress ever passed upon this subject. The manifest intention was to limit, not to increase, the amount to be paid by the Government.

Take the provision with regard to jury commissioners, found in the same statute and in the same paragraph, that they be paid "$5 a day, not exceeding three days for any one term of court." Would anybody hold that a jury commissioner in attendance but one day would be entitled to the liquidated sum of $15? Surely not. How, then, are you going to give effect to the phrase "not exceeding" in one part of the paragraph and ignore the words "not to exceed" found in the same paragraph? No intelligent judge nor head of a Department ever has, or ever will, put his name to an opinion holding that the act of 1896, or any other act upon the subject, authorizes a judge to receive $10 per day as a liquidated sum for reasonable expenses which were actually very much less.

CONGRESSIONAL DEBATES.

Respondent in his answer refers to the construction of the act appearing "from the proceedings and debates in Congress," apparently forgetful of the decision of the Supreme Court in the case of United States *v.* Freight Association (166 U. S., 290), where, as stated in paragraph 5 of the syllabus, it was held that:

> Debates in Congress are not appropriate sources of information, from which to discover the meaning of the language of a statute passed by that body.

Mr. Justice Peckham, who delivered the opinion of the court, said (p. 318):

> All that can be determined from the debates and reports is that various members had various views, and we are left to determine the meaning of this act, as we determine the meaning of other acts, from the language used therein.
>
> There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. (United States *v.* Union Pacific R. R. Co., 91 U. S., 72; Aldridge *v.*

Williams, 3 How., 9, Tancy, Chief Justice; Mitchell *v.* Great Works Milling and Manufacturing Co., 2 Story, 648; Queen *v.* Hertford College, 3 Q. B. D., 693.)

The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did, and those who spoke might differ from each other, the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it passed.

The language and decision of Chief Justice Taney, thus cited and approved, was that—

In expounding this law the judgment of the court can not, in any degree, be influenced by the construction placed upon it by individual Members of Congress in the debate which took place upon its passage, nor by the reasons or motives assigned by them for supporting or opposing amendments that were offered. The law as it passed is the will of the majority of both Houses, and the only mode in which that will is spoken is in the act itself; and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject and looking, if necessary, to the public history of the times in which it was passed.

If, however, the learned respondent, disregarding these high authorities, did refer to the Congressional debates, he found that in the passage of the act of 1896 through the House there was not a single word said concerning that paragraph. He would find in the CONGRESSIONAL RECORD of April 24, 1896, that there were in the Senate some gentlemen who did not agree with his construction. He would find, for instance, the following:

Mr. ALLEN. * * * This bill provides "that no such person shall be employed during vacation; of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges."

There is a maximum fixed. There may be days when $10 would be required to cover the expenses of the judge, and it would be perfectly proper for him to draw that sum and certify to it; but I submit that it is improper and in violation of the spirit, if not of the language, of the statute that the judge, simply because he has the power to certify, will be enabled to take from the Treasury of the United States $10 for every day to cover his expenses when his actual expenses do not exceed four or five dollars a day.

It may be a small item; probably it is a small item; but it is not small in so far as it develops a disposition upon the part of high judicial officers of the country to violate the spirit of a law which they themselves are engaged in enforcing against criminals and other violators of the law.

Mr. CHANDLER. Will the Senator from Nebraska allow me to interrupt him

Mr. ALLEN. Certainly.

Mr. CHANDLER. The provision is that the judge shall be paid his reasonable expenses for traval and attendance, not to exceed $10 a day. The judge of a United States court has to certify that that is an expense; that that is what he has paid out. Does the Senator mean to say that there is a judge anywhere in the United States holding court in that way who, if his expenses were $7 or $8 or $5 a day, would certify that they were $10 in order to get the additional money?

Then if he had read a little further upon the same page he would have found this observation from the senior Senator from Iowa:

Mr. ALLISON. The Senator from Nebraska will observe that the only object of this provision is to place the district judges upon an equality with circuit judges as respects their expenses.

Mr. ALLEN. Yes, sir; I observe that they are put upon an equality. What I am contending for, and what I hope the honorable Senator from Iowa will remedy, is that these men shall not be permitted to violate the law themselves.

Mr. ALLISON. Does the Senator believe that any district judge or circuit judge is likely to violate the law by making a false certificate? The Senator must remember that this includes all traveling expenses as well as expenses while at the place of holding court.

Mr. ALLEN. I hope the Senator from Iowa will not put me in the attitude of making the charge that all Federal judges violate the law, for I do not make it.

Mr. ALLISON. I certainly would not put the Senator in any such attitude.

Mr. ALLEN. I say some of them do, according to my information. A judge is a human being. He is no more of a man after he becomes a judge than he was at the time he became a judge. If he had frailties at that time, he carries them to the bench with him.

The proposed statute fixed the maximum in these words:

"Of reasonable expenses for travel and attendance of district judges directed to hold court outside of their districts, not to exceed $10 per day each, to be paid on written certificates of the judges."

That carries the implication, which is as clear as language can make it, that he shall not receive $10 a day unless his actual expenses amount to $10 a day.

Mr. GRAY. His reasonable expenses.

Mr. ALLEN. His reasonable expenses. Reasonable expenses include hotel bill and railroad fare. I do not suppose it includes the purchase of a new suit of clothes or a box of cigars, but the reasonable, ordinary expenses of travel, including hotel bills.

He has put in evidence some disjointed expressions of Members who either did not have the statute before them or, speaking in haste, sometimes said "ten dollars" without adding every time that that was the maximum—without always stopping to use the rather awkward phrase "not to exceed $10." This occurred chiefly in 1898, two years after the passage of the act of 1896. We did not think these debates admissible, but the Senate having, by a majority of one, admitted them, we have put in the balance.

If in the attempted construction, or rather perversion, of a statutory provision, so perfectly plain that no room for construction was possible, he had turned to the CONGRESSIONAL RECORD of January 27, 1903, he would have found that the act passed in that year, increasing the salaries of United States judges, contained, as it passed the Senate and was reported favorably by the Judiciary Committee of the House, an express provision—

that after the passage of this act no payment shall be made to any of the judges mentioned in this act for expenses.

And he would also find that after the said provision had been read the following occurred:

Mr. OLMSTED. Mr. Speaker, I move to strike out the paragraph just read. * * * No judge would feel like going out of his own district to hold court at his own expense. The law does not give him extra pay for that extra service, but he ought to be reimbursed for his actual and reasonable expenses.

The salaries paid are not large enough to warrant Federal judges in going out of their own districts at their own expense. * * *. My amendment, however, does not deal with salaries, but with expenses, and I hope that it may be adopted.

The SPEAKER. The question is on the motion of the gentleman from Pennsylvania.

The question was taken; and on a division (demanded by Mr. SMITH of Kentucky) there were—ayes 80, noes 69.

So the motion was agreed to.

There was not another word of discussion, but upon my statement to the House that the existing law provided only for the actual expenses of the judges the paragraph prohibiting the payment was stricken from the bill by the narrow majority of eleven. It is because of that amendment that the Federal judges are to-day permitted to be reimbursed for their "reasonable expenses, not to exceed $10 per day."

Had it been supposed that, by any possible construction, a judge might be permitted to receive $10 where he had actually expended only $2 or $3 my amendment would not have received ten votes in the House, and the judges to-day would be compelled to pay their own expenses. There was no other debate on that occasion, and there never has been any since, in either branch of Congress.

If, after resorting to all these aids, to determine the meaning of a perfectly plain and simple provision, the learned respondent had still been in doubt, he should have given heed to that great divine commandment, "Thou shalt not wrest judgment," rather than the Shakespearian injunction, "Put money in thy purse."

NOT A CASE WHERE A WRONGFUL DECISION MAY BE EXCUSED.

But it is argued that for a mistake in judgment, or in the construction of a law, a judge may not be held responsible. Doubtless there is much force in the argument as applied to controversies between other parties coming before him for adjudication. This is a different proposition. It was a case in which the judge was directly interested. Had there been any doubt about the law he ought to have recused himself.

He did not write any opinion, or make any ruling, or enter any judgment from which an appeal could be taken. As a matter of fact, he must have had, both before and after consideration, precisely the same view of the words "reasonable expenses not to exceed $10 per day" that any other intelligent person would have, after a single reading. He knew that it did not give him a liquidated sum, and he did not proceed upon that theory. On the other hand, his effort was to so avail himself of the privilege given him by the statute, of certifying to his own expenses, his own certificate to be taken upon honor and the amount paid by the marshal, if not exceeding the limit of $10 per day. The offense charged in the articles of impeachment is not the misconstruction of the act, but the making of a false certificate as to the amount of his expenses.

Mr. FAIRBANKS. Mr. President, I should like to ask, through the Presiding Officer, how much time the honorable manager will require to conclude his argument this evening?

Mr. Manager OLMSTED. Perhaps thirty-five minutes.

Mr. FAIRBANKS. I ask unanimous consent that the order limiting to-day's session to 10 o'clock this evening be modified, so that the learned manager may conclude his remarks.

The PRESIDING OFFICER. The Senator from Indiana asks unanimous consent that the present session of the Senate sitting in the impeachment trial may continue until half past 10. Is there objection? The Chair hears none.

OBTAINING MONEY UPON FALSE CERTIFICATES.

Mr. Manager OLMSTED. Respondent did not rely nor proceed upon any such construction. Had he done so he would have presented a bill for a certain number of days at $10 per day and made no certificate whatever as to what his expenses had been. He never presented a bill in that way in his life. He knew that if he did it would be treated just as Comptroller Tracewell treated the rural free-delivery man to whom I have referred. He knew that if he simply certified the number of

days, and nothing more, his bill would not be paid. He knew that if he failed to certify also to the amount of his expenses he would never be paid a cent. He knew also that under the law whatever amount he certified as having been his expenses would be paid, provided they did not exceed the fixed maximum. He knew that if he certified, no voucher would be required. He was upon his honor.

He had, of course, to set forth the number of days so that the marshal and, after him, the Comptroller could determine whether or not the expenses certified by him did exceed the legal maximum. What then did he do? Send in a bill for so many days at $10 per day? Not at all. Look at page 87 of the report of these proceedings and you will find a specimen of his certificates. You will note that it is really in two branches. He first sets forth that he held court twenty-four days at Tyler, and that including the journey to and from that place the time was thirty-one days. He did not stop there. He knew very well that such a certificate would not comply with the law nor enable him to draw a cent from the Treasury, so he adds to his certificate this: "And that my reasonable expenses for travel and attendance amounted to the sum of $310." As the amount thus certified did not exceed the maximum, and the law required the judge's certificate to be taken as verity, no room was left for construction by either the marshal or the Treasury Department, but respondent received his money upon his own certificate. The statute commanded the marshal to pay upon the judge's certificate if within the maximum. The other certificates which are in evidence are in the same form.

Each of the first three articles charges the offense, indictable under section 5438, of making a false claim against the Government and obtaining thereon money not justly due, and can it be truthfully and justly said these offenses are not proved?

In the first article, printed on page 7, he had certified that "my reasonable expenses for travel and attendance were $230." He was at Waco seventeen days and paid Mrs. Downes for board and lodging at the rate of $1.50 a day, or, say, $25.50. If in going to Waco he took a Pullman car the whole way, we will allow him a whole section, the price of which would be $12 each way, or $24 for the round trip. The journey usually takes twenty-eight to thirty hours. Allowing for meals, tips to porters, etc., the liberal allowance of $20, and we have a total of $69.50. The usual railroad fare is $22.65, but he did not pay it; he rode free, at least as far as New Orleans, and presumably all the way. To be liberal and fair and cover any possible extras, give him credit for full fare, say $45.30 (although he did not pay it), and we have a grand total of $114.80, which undoubtedly exceeds his actual expenses.

The second article relates to a term of court at Tyler, Tex., in December, 1900. His hotel bill, including board, lodging, laundry, and drugs, was precisely $58.35. Add again the price of an entire Pullman section both ways, $24, and again allow $20 for meals, and to be more than fair include the transportation, which he did not pay, $18.90 each way, or $37.80, and we have $130.15, a sum beyond which his expenses did not extend. He certified that they were $310, and upon his certificate was paid the money.

The third article covers a still more conspicuous instance. At a term of court at Tyler in 1903 his board and lodging for thirty-five days, at $1.25 per day, amounted to $43.75. Allow him again for the Pullman section, $24, meals en route $20, and $37.60 for the railroad fare, which he did not pay, and we reach $125.35. He certified that his expenses were $410, and upon that certificate drew the money from the Treasury.

As an additional act of liberality to himself it may be noted that while he might readily have gone from Pensacola to either Waco or Tyler and back again in less than three days, he allowed himself on one occasion seven and on each of the others six days for the trip. We have made allowance for meals for that many days. If he stayed over night anywhere he did not use the Pullman sleeper, for which we have allowed $24.

We have, of course, been proving a negative, which is always difficult; but we have endeavored to be extremely fair and liberal and allow the utmost that he could have incurred as reasonable expenses on these trips. We have certainly shown enough to put the burden of proof upon him to show, as we verily believe he can not show, that he did expend greater amounts than I have indicated.

In these three cases alone he certified and drew from the Treasury, as expenses, between $500 and $600 more than he had expended. He was making similar excursions out of his district every year. We have attempted to prove his expenses in three instances only, but undoubtedly his other trips have had the same result of putting money in his pocket.

DEFENSE THAT "THERE ARE OTHERS" NOT PROVED.

The respondent, in his answer, sets up the improper and cowardly defense that others have been guilty of the same offense. Not that he knew of or was influenced by that fact at the time that he made collections, but that he is now informed, and verily believes, and that the records of the Treasury Department will show, that certain other judges have done the same thing.

Even the averments of his answer are not directly to the effect that any other judge falsely certified to the amount of his expenses or claimed from the Government more than he had actually expended, and there is not a particle of evidence to that effect concerning any judge in the United States. In his answer he has with the utmost impropriety, for the manifest purpose of influencing the court in advance of and without introducing testimony, included Exhibits A, B, and C, commencing on page 11 of the printed proceedings. You have decided that this is a criminal proceeding in a court. Suppose a private citizen, charged in his court with the commission of a high crime or misdemeanor, should in his own plea attempt to introduce evidence not under the seal of any department, not under oath, not in any event admissible, and which he never afterwards tried to prove—suppose that private citizen had caused that matter to get before the jury in an improper manner, what would this respondent have done to him?

How shall the Judge himself, when accused, be justified in such improper conduct in presenting to the Senate, sitting as both judge and jury—to determine the facts as well as the law—matter intended to have the effect of evidence, accompanied by the insinuation, if not the direct charge, that it involves the honorable judges named in the said exhibits in the offense of falsely certifying, as we have proved that he himself did. I say that it is a cowardly dragging in the mire of honorable names, and does not tend to show the fitness of the respondent to hold judicial office.

Respondent's honorable counsel offered in evidence tables covering all the nine circuits, showing the "amounts paid" to all judges in reimbursement of expenses, accompanied by the insinuation of counsel that there was something wrong about them. But the tables did not show and respondent did not even offer to prove that any single judge in the whole United States, other than himself, had certified to more expenses than he had actually incurred; for that and other good and sufficient reasons the tables were, upon our objection, excluded, as having no bearing on this case whatever. But the exhibits improperly attached to respondent's answer are in the record of this case, and it is proper for me to refer to them.

EVIDENCE AS TO OTHER JUDGES FALLS SHORT.

But the exhibits commencing on page 29, even if regarded as evidence, prove nothing. They show simply the number of days involved and the total amount paid each judge, which in several cases is equal to $10 for each day of holding court; but it contains no information whatever as to the amounts which the judges actually did expend nor as to the amounts they certified as having been expended. In the cases where the charges amounted to as much as $10 per day courts were held in large cities, most of them in New Orleans, where, as I know, from recent experience, $10 a day can reasonably be expended, and in Chicago and San Francisco, in any one of which, as everybody knows, a judge could very reasonably expend more than $10 per day. If they spent more, they could, under the law, be reimbursed only to the extent of $10. Consequently the amounts actually paid them would be $10.

There is not the slightest evidence in this case nor anywhere to be found that any judge who had not expended more than $2 or $3 was paid $10, nor is there any evidence in this case, and it is not the fact, that any judge anywhere in the United States ever rendered a bill simply setting forth the number of days at the rate of $10 per day. Had he rested at that he never would have been paid anything under the Treasury rulings I have already cited. This respondent has utterly failed to show, and I do not believe that he can show, that any other judge ever falsely certified the amount of his expenses and collected from the Government an amount in excess thereof. I know that no Federal judge in Pennsylvania ever did such a thing nor placed any such absurd construction on the law. His tables, if they show anything, show that the judges in the particular cases cited expended more than $10, but were cut down to the maximum prescribed by law.

Where they went into the smaller towns his own tables, improperly introduced for effect as evidence, show that where expenses were less, they neither certified, charged, nor were paid as much as $10 per day. Table A shows that the respondent, for holding court for forty-one days at Tyler, Tex., received $410, while the very next item shows that an honorable judge holding court for three days at Paris, Tex., was paid not $30 but $20, which included his railroad fare. In the last item a judge, for holding court seven days at Fort Worth, Tex., was paid for his expenses only $35. Even in the larger cities when

court was held for a considerable number of days successively, the amounts paid for expenses were frequently less than $10.

Thus the third item in Exhibit C (p. 12) shows that for seventeen days' court at Tacoma the judge, instead of receiving $170, charged and received $124. In another instance for eleven days in the same city, $77.75. And even in San Francisco, where the court lasted sixty-two days, the amount paid was not $620, but only $434. The inference to be drawn from these very tables is that where amounts paid were equal to $10 per day the actual expenses were more than that, but payment was limited to the statutory maximum. Not a single instance has been shown where any judge has ever construed the law as this respondent says that he did, or ever collected or received as expenses a greater sum than he actually expended.

But if it is wrong to make a false certificate and recover from the United States Treasury as expenses sums of money in excess of the amount actually expended, what justification is it to show that the respondent now learns that somebody else has done the same thing? Suppose that in his court a clerk had been arraigned for tapping his employer's till, would this respondent have charged the jury that it was an ample defense to show that since the commission of the offense the clerk had learned that others were helping themselves whenever they got a chance?

A MASSACHUSETTS PRECEDENT.

This very defense was set up and overruled nearly one hundred years ago in the impeachment of Judge Prescott in Massachusetts, an exceedingly notable case, always relied upon as a valuable precedent, partly because of the splendid learning and ability of the world-renowned lawyers who participated upon either side. Judge Prescott was a probate judge, entitled in certain cases on the ministerial side of his office to receive fees. It was claimed there, as here, that he had not willfully violated the law and that the amounts charged by him were in harmony with the usage of other judges in other counties throughout the Commonwealth.

For the purpose of rebutting the charge of willful misconduct, as well as upon the point of construction of law, his counsel, Mr. Hoar, submitted in writing an offer, or, rather, two offers, to show that what he had charged was in accordance with the usage in other courts throughout the State. The competency of this evidence was valiantly and with splendid oratory contended for by Mr. Hoar and by no less a lawyer than Daniel Webster, but their arguments were completely overthrown by Mr. Shaw, one of the managers—that same Mr. Shaw who afterwards became chief justice of the supreme court of Massachusetts and achieved a position in the history of the jurisprudence of this country considered by many to be second only to that of Chief Justice Marshall. After elaborate argument the offer was rejected, and Judge Prescott was convicted and removed from office.

SMALLNESS OF AMOUNT.

It is urged here that the amounts involved in these three charges are small; that the excess certified and collected amounted to but a few hundred dollars. In Judge Prescott's case he was convicted upon one article in support of which the evidence showed that he had collected $5.58, whereas he had been entitled only to $3.60, an excess of $1.98, and on another article in which the total amount involved was less than $40. It was not charged nor proved what excess fees he had collected in any other case. It is not charged and proved here, and nobody knows what amounts this respondent may have falsely certified and collected in other cases. It is not a question of amount. It is a question of violation of the statute, and of the condition that he shall hold office only "during good behavior." Was it good behavior or was it a misdemeanor, for him, acting as judge, to falsely certify as judge, and receive as judge, for his expenses in holding court as judge, an amount in excess of the said expenses? To that inquiry we confidently submit there can be but one answer and that not favorable to the respondent.

OTHER CHARGES.

Nine other articles of impeachment are involved. Other honorable managers will discuss them more at length. In order that we may not travel over the same ground I shall refer to them but briefly.

The acceptance from the receiver and use under a claim of right of property of a bankrupt railroad company—the receiver appointed by himself, being his own arm or the arm of his own court, for the protection of that property for the benefit of creditors and stockholders—was that, although involving in dollars and cents a comparatively small amount, good behaviors, or was it not?

NONRESIDENCE.

Was it good behavior or was it a misdemeanor to violate, as the evidence in this case conclusively shows that he notoriously and persistently did, the plain, unmistakable, emphatic command of an act of Congress that he shall, while district judge, reside in the district for which he was appointed, and declaring it to be a misdemeanor for him to do otherwise?

In 1873 proceedings were commenced in the House of Representatives looking to the impeachment of Judge Busteed, a Federal judge in Alabama, upon a similar charge. The investigating committee reported that he had in that State only "a carpet, a music box, and a double-barreled gun."

Upon that showing Judge Busteed had the grace to resign and the proceedings were stopped. This respondent had for many years not even a carpet in his district, but hastening away the very evening of, or morning after, each ten days' or two weeks' session of court, did not leave behind him, as one of the witnesses has testified, so much as his bag of that material. He has not voted for fourteen years, and never in the district where the law commands him to reside.

ILLEGAL SENTENCES FOR CONTEMPT.

And what shall you say of his unlawful, willful, and malicious violations of an act of Congress and of all the rules of fair and honorable judicial conduct in the commitment to jail of honorable attorneys and prominent business men substantially for no offense whatever, but in gratification of his own revengeful feelings?

He sentenced two attorneys to fine and imprisonment and two years' disbarment for no offense committed, and certainly none proved before him, partly because they had commenced a suit against him in a State court, but more because of his offense at an article published in a newspaper with which they had nothing whatever to do, and so stated. In the face of their denials he sentenced the two attorneys to both fine and imprisonment, and to disbarment for two years. The disbarment, after a moment's thought, he determined was beyond his authority in that proceeding and withdrew that part of the sentence, showing that before sentencing them he did not bestow the slighest attention to his lawful authority in the premises.

Upon habeas corpus proceedings to the circuit court of appeals Judge Pardee caused the respondent to take another thought and learn that in no event had he the right to both fine and imprison. Already they had served a part of their time in jail with common criminals. One of them afterwards paid his fine to escape the remainder of jail service, so that he suffered both fine and imprisonment, in direct violation of law. The other, feeling that he had committed no offense, declining to submit voluntarily to any portion of the sentence, refused to pay the fine and manfully in his enfeebled condition endured the terrors of a prison cell, from which he was too ill to be moved when the ten days had expired.

The evidence shows that the respondent did not even look at the act of Congress fixing his power in the matter, until after he had been reversed by the circuit court of appeals.

What shall you say of his abusive and improper language and angry, unjudicial manner when he denounced as "crooked" and "ignorant" two honorable practitioners, whose conduct in bringing a suit against him he declared was "a stench in the nostrils of the people?"

What shall you say of his treatment of that grand, heroic character, Gen. Simeon Belden, who during the sad and bloody days of civil strife wore manacles for services to Union soldiers in a seceded State, and who has at all times and in all places had the courage to publicly avow his adherence to the party in whose principles he believed, even though there were times when such avowal involved sacrifice as well as courage? That old man, with three score and ten years of honorable life and nearly fifty years of professional career behind him, in the whole course of which he had never occasion to apologize to man or woman for ungentlemanly or unprofessional conduct, was too manly and too brave to apologize to this respondent for offenses he had not committed, and with one of which—the newspaper article—he had not even been formally charged.

And so with one side of his face distorted and one eye closed by paralysis, sick and suffering, he was blackguarded from the bench and hurried away to a prison cell even before a commitment could be made out. And the O'Neal case is even worse.

I shall not stop to refer to those other charges. They will be fully covered by others who will follow me.

We have no feeling against this respondent. Most of us never saw him until he appeared at this bar. We should be glad if we could believe that the evidence in this case shows him worthy to wear the breastplate of judgment upon his heart, but feeling as we do, viewing the case as we do, we ask you, in the name of all the people of the United States, in whose behalf we appear and who are paying more attention to this case than many may imagine, to render such judgment that those

who hereafter may observe the course of judicial conduct in the northern district of Florida or study these proceedings and consider the precedent you are about to establish may never have occasion to exclaim in the sad and pathetic language of Isaiah, the prophet, that "judgment is turned away backward; and justice standeth afar off."

Mr. FAIRBANKS. Mr. President, I move that the Senate sitting in the trial of the impeachment adjourn to meet at 12 o'clock to-morrow.

The PRESIDING OFFICER. The Senator from Indiana moves that the Senate sitting in the trial of the impeachment of Charles Swayne now adjourn to meet at 12 o'clock to-morrow.

The motion was agreed to; and (at 10 o'clock and 15 minutes p. m.) the Senate sitting for the trial of the impeachment adjourned until to-morrow, February 24, at 12 o'clock m.

The managers on the part of the House and the counsel for the respondent retired from the Chamber.

The PRESIDING OFFICER. The Senator from New Jersey [Mr. KEAN] will resume the chair in legislative session.

Mr. KEAN resumed the chair.

Mr. ALLISON. I move that the Senate adjourn.

The motion was agreed to; and (at 10 o'clock and 16 minutes p. m.) the Senate adjourned until to-morrow, Friday, February 24, 1905, at 11 o'clock a. m.

NOMINATIONS.

Executive nominations received by the Senate February 23, 1905.

COLLECTOR OF CUSTOMS.

Lewis McK. Bell, of Virginia, to be collector of customs for the district of Alexandria, in the State of Virginia, to succeed Marshall L. King, resigned.

COLLECTOR OF INTERNAL REVENUE.

Archibald C. Smith, of Iowa, to be collector of internal revenue for the third district of Iowa, to succeed James U. Sammis, resigned.

PROMOTIONS IN THE NAVY.

Surg. Eugene J. Grow, to be a surgeon in the Navy, from the 3d day of March, 1903, vice P. A. Surg. Charles M. De Valin, promoted from January 31, 1903.

Surg. Alfred G. Grunwell to be a surgeon in the Navy, from the 3d day of March, 1903, vice P. A. Surg. Joseph A. Guthrie, who failed to qualify for promotion and was suspended from promotion for one year.

Surg. Cary D. Langhorne to be a surgeon in the Navy, from the 3d day of March, 1903, vice P. A. Surg. Daniel H. Morgan, who retired before qualifying for promotion.

Lieut. Commander Burns T. Walling to be a commander in the Navy, from the 28th day of December, 1904, vice Commander Arthur P. Nazro, promoted.

Lieut. (Junior Grade) Samuel I. M. Major to be a lieutenant in the Navy, from the 1st day of January, 1905, vice Lieut. Joseph W. Oman, promoted.

Lieut. (Junior Grade) Walter M. Hunt to be a lieutenant in the Navy, from the 12th day of January, 1905, vice Lieut. Edward T. Witherspoon, promoted.

Lieut. (Junior Grade) Alfred W. Johnson to be a lieutenant in the Navy, from the 12th day of January, 1905, vice Lieut. George F. Cooper, promoted.

Warrant Machinist Edward H. Campbell to be an ensign in the Navy, from the 30th day of July, 1904, in accordance with the provisions of an act of Congress approved March 3, 1901, as amended by the acts of March 3, 1903, and April 27, 1904.

Lieut. (Junior Grade) John E. Lewis to be a lieutenant in the Navy, from the 1st day of January, 1905, vice Lieut. William H. G. Bullard, promoted.

POSTMASTERS.

ALABAMA.

Dora Crook to be postmaster at Jacksonville, in the county of Calhoun and State of Alabama, in place of Dora Crook. Incumbent's commission expired December 20, 1904.

CALIFORNIA.

John M. Cheney to be postmaster at Sonoma, in the county of Sonoma and State of California, in place of John M. Cheney. Incumbent's commission expires March 2, 1905.

John J. West to be postmaster at Willow, in the county of Glenn and State of California, in place of John J. West. Incumbent's commission expired January 16, 1905.

KENTUCKY.

Isaac N. Bryant to be postmaster at Corbin, in the county of Whitley and State of Kentucky. Office became Presidential April 1, 1904.

LOUISIANA.

James S. Thomson to be postmaster at Lake Charles, in the parish of Calcasieu and State of Louisiana, in place of James S. Thomson. Incumbent's commission expired February 4, 1905.

MASSACHUSETTS.

Henry J. Dunn to be postmaster at Medfield, in the county of Norfolk and State of Massachusetts, in place of Henry J. Dunn. Incumbent's commission expired February 11, 1905.

Henry W. Dolliver to be postmaster at Whitinsville, in the county of Worcester and State of Massachusetts, in place of Davis P. Gray, deceased.

Lawrence Gibney to be postmaster at Blackstone, in the county of Worcester and State of Massachusetts. Office became Presidential January 1, 1905.

MINNESOTA.

Mary J. Dillingham to be postmaster at Granite Falls, in the county of Yellow Medicine and State of Minnesota, in place of Frank Dillingham, deceased.

MONTANA.

Eugene R. Clingan to be postmaster at Belt, in the county of Cascade and State of Montana, in place of William R. Glasscock. Incumbent's commission expired February 11, 1905.

NEBRASKA.

Frank C. Evans to be postmaster at Wisner, in the county of Cuming and State of Nebraska, in place of Jasper L. Rewey, deceased.

OHIO.

Charles H. Ellis to be postmaster at Yellow Springs, in the county of Greene and State of Ohio, in place of John M. Birch. Incumbent's commission expired May 28, 1904.

Francis M. McKay to be postmaster at Logan, in the county of Hocking and State of Ohio, in place of Francis M. McKay. Incumbent's commission expired February 22, 1905.

Minor T. Vandervort to be postmaster at Loveland, in the county of Clermont and State of Ohio. Office became Presidential January 1, 1904.

OREGON.

B. P. Cornelius to be postmaster at Hillsboro, in the county of Washington and State of Oregon, in place of Rufus Waggener. Incumbent's commission expired December 20, 1904.

VIRGINIA.

E. A. de Bordenave to be postmaster at Franklin, in the county of Southampton and State of Virginia, in place of E. A. de Bordenave. Incumbent's commission expired February 22, 1905.

WISCONSIN.

William W. Clarke to be postmaster at Milton, in the county of Rock and State of Wisconsin, in place of William W. Clarke. Incumbent's commission expired December 14, 1903.

John B. Maloney to be postmaster at Kenosha, in the county of Kenosha and State of Wisconsin, in place of Charles Frantz. Incumbent's commission expired Janaury 23, 1904.

CONFIRMATIONS.

Executive nominations confirmed by the Senate February 23, 1905.

MARSHAL.

George G. Perry, of Alaska, to be United States marshal for the district of Alaska, Division No. 3.

RECEIVER OF PUBLIC MONEYS.

A. C. McLaughlin, of Yuba City, Cal., to be receiver of public moneys at Marysville, Cal.

DISTRICT JUDGES.

Francis C. Lowell, of Massachusetts, now serving as United States district judge for the district of Massachusetts, to be United States circuit judge for the first circuit, under the provisions of the act approved January 21, 1905, entitled "An act for an additional circuit judge in the first judicial circuit."

Frederic Dodge, of Massachusetts, to be United States district judge for the district of Massachusetts.

UNITED STATES ATTORNEY.

William G. Whipple, of Arkansas, to be United States attorney for the eastern district of Arkansas.

POSTMASTERS.

ALABAMA.

Lewis J. Lawson to be postmaster at Greensboro, in the county of Hale and State of Alabama.

COLORADO.

Frank E. Sheridan to be postmaster at Meeker, in the county of Rio Blanco and State of Colorado.

FLORIDA.

Daniel T. Carlton to be postmaster at Arcadia, in the county of De Soto and State of Florida.

HAWAII.

Joseph G. Pratt to be postmaster at Honolulu, in the island of Oahu and Territory of Hawaii.

ILLINOIS.

Eugene A. Foster to be postmaster at Bradford, in the county of Stark and State of Illinois.

William M. Goudy to be postmaster at Fairfield, in the county of Wayne and State of Illinois.

Nehemiah J. Knipple to be postmaster at Buda, in the county of Bureau and State of Illinois.

Thomas J. Wimmer to be postmaster at Cerro Gordo, in the county of Piatt and State of Illinois.

INDIANA.

John C. Bartindale to be postmaster at Otterbein, in the county of Benton and State of Indiana.

Burr M. Harris to be postmaster at Gas City, in the county of Grant and State of Indiana.

Albert E. Martz to be postmaster at Arcadia, in the county of Hamilton and State of Indiana.

KENTUCKY.

Rezin B. Boulden to be postmaster at Millersburg, in the county of Bourbon and State of Kentucky.

John H. Rowland to be postmaster at Cloverport, in the county of Breckinridge and State of Kentucky.

LOUISIANA.

Lavinia Insley to be postmaster at Delhi, in the parish of Richland and State of Louisiana.

Henry E. Sweet to be postmaster at De Ridder, in the parish of Calcasieu and State of Louisiana.

MARYLAND.

Thomas O. Jefferson to be postmaster at Federalsburg, in the county of Caroline and State of Maryland.

MASSACHUSETTS.

Charles W. Bemis to be postmaster at Foxboro, in the county of Norfolk and State of Massachusetts.

Horace I. Pinkham to be postmaster at Haverhill, in the county of Essex and State of Massachusetts.

MICHIGAN.

Robert C. Faucett to be postmaster at Laurium, in the county of Houghton and State of Michigan.

Ebenezer A. Litchfield to be postmaster at Elsie, in the county of Clinton and State of Michigan.

Charles H. Stevens to be postmaster at Perry, in the county of Shiawassee and State of Michigan.

MINNESOTA.

R. F. Bergerson to be postmaster at Lake Park, in the county of Becker and State of Minnesota.

Charles M. Nelson to be postmaster at Elbow Lake, in the county of Grant and State of Minnesota.

David J. Price to be postmaster at Lake Crystal, in the county of Blue Earth and State of Minnesota.

Peter J. Schwarg to be postmaster at Dodge Center, in the county of Dodge and State of Minnesota.

Nettie J. Van Inwegen to be postmater at Ortonville, in the county of Bigstone and State of Minnesota.

MISSISSIPPI.

Allison S. Pitts to be postmaster at Hattiesburg, in the county of Perry and State of Mississippi.

MISSOURI.

Otis M. Gary to be postmaster at Doniphan, in the county of Ripley and State of Missouri.

Benjamin F. Guthrie to be postmaster at Milan, in the county of Sullivan and State of Missouri.

NEW JERSEY.

Edward M. Sutton to be postmaster at Ocean City, in the county of Cape May and State of New Jersey.

NEW YORK.

George W. Armstrong to be postmaster at Manlius, in the county of Onondaga and State of New York.

OHIO.

Gomer C. Davis to be postmaster at Shawnee, in the county of Perry and State of Ohio.

OREGON.

B. P. Cornelius to be postmaster at Hillsboro, in the county of Washington and State of Oregon.

PENNSYLVANIA.

Alfred R. Houck to be postmaster at Lebanon, in the county of Lebanon and State of Pennsylvania.

TEXAS.

G. W. Crossman to be postmaster at Garland, in the county of Dallas and State of Texas.

Thomas H. Danforth to be postmaster at Goliad, in the county of Goliad and State of Texas.

Thomas J. Epperson to be postmaster at Livingston, in the county of Polk and State of Texas.

John N. Johnson to be postmaster at Rockwall, in the county of Rockwall and State of Texas.

William S. Strain to be postmaster at Lancaster, in the county of Dallas and State of Texas.

VIRGINIA.

Warner J. Kenderdine to be postmaster at Radford, in the county of Montgomery and State of Virginia.

Thomas G. Peachy to be postmaster at Williamsburg, in the county of James City and State of Virginia.

WISCONSIN.

Robert A. Etter to be postmaster at Monroe, in the county of Green and State of Wisconsin.

George B. Parkhill to be postmaster at Thorp, in the county of Clark and State of Wisconsin.

HOUSE OF REPRESENTATIVES.

THURSDAY, *February 23, 1905.*

The House met at 12 o'clock noon.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

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

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. PARKINSON, its reading clerk, announced that the Senate had passed bill of the following title; in which the concurrence of the House of Representatives was requested:

S. 7049. An act providing for an additional circuit judge in the seventh judicial circuit, and for the appointment of an additional judge for the northern district of Illinois, and for creating an additional district in the State of Illinois, to be known as the eastern district of Illinois, and for the appointment of a judge and other officers of said district, and for changing the boundaries of the districts in Illinois, and for establishing places for holding court in the several districts thus created.

The message also announced that the Senate had passed without amendment bill and joint resolution of the following titles:

H. R. 18751. An act to extend the time for the construction of a bridge across Rainy River by the International Bridge and Terminal Company; and

H. J. Res. 217. Joint resolution to return to the proper authorities certain Union and Confederate battle flags.

SENATE BILL REFERRED.

Under clause 2, Rule XXIV, Senate bill of the following title was taken from the Speaker's table and referred to its appropriate committee as indicated below:

S. 7049. A bill providing for an additional circuit judge in the seventh judicial circuit, and for the appointment of an additional judge for the northern district of Illinois, and for creating an additional district in the State of Illinois, to be known as the eastern district of Illinois, and for the appointment of a judge and other officers of said district, and for changing the boundaries of the districts in Illinois, and for establishing places for holding court in the several districts thus created—to the Committee on the Judiciary.

SECTARIAN INDIAN SCHOOLS.

Mr. SHERMAN. Mr. Speaker, I desire to present a privileged resolution—a resolution of inquiry.

The SPEAKER. The gentleman from New York [Mr. SHERMAN] reports from the Committee on Indian Affairs the following privileged resolution.

The Clerk read as follows:

Resolved, That the Secretary of the Interior be, and is hereby, directed to inform the House of Representatives whether any portion of the funds appropriated by the acts of Congress during the fiscal years 1904 and 1905, providing for "the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes, and for other purposes," has been expended for support of any sectarian Indian school or for rations for children attending any such school, or whether any rations, subsistence, or supplies authorized to be purchased by said acts have been expended by transfer or other manner of expenditure for support of any such children or such school or schools, and, if so expended, state the number of children provided for at each school, the amount of such funds, together with the value of such subsistence or supplies, and the authority of law for making the expenditure.

The following committee amendment was read:

After the word "supplies," in line 16, strike out the words "and the authority of law for making the expenditures."

The amendment was agreed to.

The resolution as amended was agreed to.

OSAGE INDIAN LANDS, OKLAHOMA.

Mr. SHERMAN. Mr. Speaker, from the same committee I report another resolution of inquiry.

The SPEAKER. The gentleman presents another resolution of inquiry from the Committee on Indian Affairs, which will be reported by the Clerk.

The Clerk read as follows:

Your committee, having had under consideration House resolution 526, report favorably upon the same, and recommend that it do pass as amended.

The amendment is as follows: Strike out all of said resolution beginning with line 1 and insert in lieu thereof:

"*Resolved*, That the Secretary of the Interior be, and he is hereby, requested to furnish the House of Representatives, with all convenient speed, a copy of the lease made between James Bigheart, principal chief of the Osage tribe of Indians, and Edwin B. Foster, on the 16th of March, 1896, and a copy of the departmental approval thereof; also, copies (one of each) of all forms of subleases granted under said lease; also, a list of all subleases which have been submitted to the Interior Department and approved, and a list of all subleases which have been submitted to the Department which have not been approved, and all documents and all correspondence pertaining thereto."

The SPEAKER. The question is on agreeing to the amendment.

The amendment was agreed to.

The resolution as amended was agreed to.

MILITARY ACADEMY APPROPRIATION BILL.

Mr. HULL. Mr. Speaker, the Military Academy bill, with Senate amendments, is on the Speaker's table. I ask unanimous consent that it may be taken up with the idea of putting it into conference.

I wish to say to the House that there is one amendment that I should like to have the House pass upon before sending the bill to conference. I ask unanimous consent that it may be considered at this time.

The SPEAKER. The gentleman asks unanimous consent to take from the Speaker's table the Military Academy appropriation bill with the Senate amendments. Is there objection?

Mr. WILLIAMS of Mississippi. Mr. Speaker, reserving the right to object, I should like to have a statement from the gentleman on behalf of the committee.

Mr. HULL. The amendments to the bill are in the ordinary line of business, with the exception of one amendment. There is a changing of amounts back and forth in the bill. But one amendment was put on in the Senate that, of course, if it had been offered in the House would have been subject to a point of order. It has never been considered in the House. It authorizes the President to place General Hawley on the retired list with the rank of a brigadier-general, and I want the House to pass upon that question before going into conference.

Mr. WILLIAMS of Mississippi. Mr. Speaker, I merely interposed for the purpose of seeing that the minority members of the committee made a statement to this side. That is all.

The SPEAKER. Is there objection?

There was no objection.

Mr. HULL. Mr. Speaker, I ask that the amendment referring to General Hawley be read to the House.

The SPEAKER. Does the gentleman desire to dispose of the other amendments?

Mr. HULL. I move to nonconcur in all the other amendments and to ask for a conference.

The SPEAKER. The gentleman moves that the House disagree to all the amendments of the Senate save the one that he specifies. The question is on the gentleman's motion.

The motion was agreed to.

The SPEAKER. The Clerk will report the amendment.

The Clerk read the Senate amendment, as follows:

Provided further, That the President of the United States be, and he is hereby, authorized in his discretion to nominate and, by and with the advice and consent of the Senate, to appoint upon the retired list of the Army, with the rank of brigadier-general, Joseph R. Hawley, formerly a brigadier-general and brevet major-general of volunteers during the civil war.

Mr. HULL. Mr. Speaker, I would like to make a few comments on this. The Committee on Military Affairs has uniformly refused to report any bills taking a man from civil life and placing him on the retired list. There are a few cases where the committee has taken a man who was mustered out wrongfully, as they believed, and reported in his favor. The Senate, however, in this case, claims that they are simply carrying out a precedent established by the House in the case of one of its own Members, Mr. Boutelle, of Maine, who broke down in health, and the House unanimously passed a bill placing him on the retired list with the rank of captain in the Navy, which is equal to that of a colonel in the Army. The gentleman from Maine never held as high rank as that in the Navy. General Hawley did hold the rank of brigadier-general and major-general by brevet during the civil war. It seems to me that if we agree to this amendment, there is one man in the United States who ought to be coupled with it, Gen. Peter Josef Osterhaus. [Applause.] In my judgment, General Osterhaus performed as great service to the Union as any man who wore the blue. As a private citizen he threw himself into the conflict in Missouri when that State was trembling in the balance, and he and Frank Blair did more than any other twenty men to save the State to the Union in that great conflict. He reached the grade of major-general in the active service. He participated in as many battles as any officer in the Union Army, and from first to last he won the commendation of all of his superior officers, and he won the confidence of his countrymen. He was a great soldier, trained first in the German army, and gave to the Republic the benefit of all of his military training and genius, and therefore I move to concur in the Senate amendment, with the following amendment.

The SPEAKER. The gentleman from Iowa moves to concur in the Senate amendment, with an amendment which the Clerk will report.

The Clerk read as follows:

Provided further, That the President of the United States be, and he is hereby, authorized in his discretion to nominate and, by and with the consent of the Senate, to appoint upon the retired list of the Army, with the rank of brigadier-general, Peter Josef Osterhaus, formerly a major-general of volunteers during the civil war.

Mr. HULL. Mr. Speaker, I yield three minutes to the gentleman from New York [Mr. SULZER].

Mr. SULZER. Mr. Speaker, it is proper, I think, for me to say just a few words. I heartily concur in what the gentleman from Iowa has said regarding General Hawley and General Osterhaus. As a member of the Committee on Military Affairs, I think it is only just and right and proper that these grand old men—General Hawley and General Osterhaus—who have rendered such signal and important services to their country, both in civil and military life—who have practically devoted their entire lives to the people, and are to-day old and in destitute circumstances—should receive this reward, this recognition of their country's gratitude—and gratitude is the fairest flower that sheds its perfume in the human heart. [Applause.]

I am in favor, Mr. Speaker, of the adoption of both these amendments, and hope they will both be adopted by this House. Both of these distinguished generals and citizens, now in the sere and yellow leaf, should be placed on the retired list as brigadier-generals. They deserve it; they are entitled to this recognition for their heroic services to their country. Let us be just. Let us show to-day the country's gratitude, and make the remaining days of the lives of these grand old warriors serene and peaceful and happy. I trust that both of these amendments will be adopted by this House. [Applause.]

Mr. BARTLETT. Had not the gentleman from Iowa better put everybody else into this amendment who ought to go on the bill?

Mr. HULL. This is hardly a precedent, and the Committee on Military Affairs did not report either one of these bills; but General Osterhaus is the last corps commander of the civil war, who is not already in the Army, who can or will ever ask for this recognition.

Mr. PARKER. Except General Dodge.

Mr. HULL. He does not want it.

Mr. TAWNEY. Where does General Osterhaus live?

Mr. BARTHOLDT. In St. Louis.

Mr. BARTLETT. I would like to ask the gentleman from Iowa if these two officers are the only ones whom he thinks it is probable in the near future we shall be called upon to do this extraordinary thing for?

Mr. HULL. I think they are the only ones that ever could come in this class. General Dodge was a corps commander. He lives in New York, but he asks nothing for himself and urges this provision.

Mr. BARTLETT. Why have we not given these men a pension?

Mr. HULL. I suppose they have pensions.

Mr. HILL of Connecticut. General Hawley has no pension, and never applied for one.

Mr. SULZER. I think neither of them gets a pension.

Mr. HULL. Well, that has nothing to do with it any way.

Mr. BARTLETT. Does not the gentleman from Iowa think that this is improvident legislation, having such a provision on an appropriation bill?

Mr. HULL. I said in the beginning that it had no place on this bill, and so I wanted to bring it to the House for its decision. But I want to say that when the House sets the example by taking one of its own Members, simply because he lost his health and was breaking down, and made him a retired officer

with the grade of colonel, that this House set the example, and does not stand in a position to criticise the action of the Senate in this case.

Mr. BARTLETT. But they did not put it on an appropriation bill.

Mr. HULL. No; it was by a separate bill.

Mr. BARTLETT. How muuch of a pension does General Hawley and General Osterhaus get?

Mr. HILL of Connecticut. General Hawley gets no pension.

Mr. BARTHOLDT. General Osterhaus gets a pension of $50 a month, by a special act passed at the last session of Congress.

Mr. HULL. It seems to me, if the gentleman from Georgia will bear with me, that it would be hardly right to select General Hawley and put him on the retired list and leave General Osterhaus off, when his friends have been clamoring for a special act, showing his great services before the committee, and when the only reason that he was not reported was because the committee did not desire to report any of these bills.

Mr. BARTLETT. I think that the committee acted wisely in the matter, and I do not think the action of the committee ought to be overruled in this way.

Mr. HULL. I would hardly call it an overruling of the committee.

Mr. BARTLETT. We never set an example of putting such a provision as this on an appropriation bill.

Mr. HENRY of Connecticut. Mr. Speaker, a short time ago Senator PLATT of Connecticut introduced a bill in the Senate providing for placing Senator JOSEPH R. HAWLEY upon the retired list of the Army of the United States as a brigadier-general, the rank he formerly held. It was my privilege to introduce a corresponding bill in the House, but because of the near approach to final adjournment and the manifest difficulty in securing legislation during the few remaining days of the present Congress, the Senate has attached an amendment to the Military Academy appropriation bill in terms substantially the same as in the bills introduced.

It will be remembered that a few years ago the House established a precedent for legislation of this character, in placing Representative Charles A. Boutelle, of Maine, for many years a distinguished member of this body, upon the retired list of the Navy as a captain, the rank he formerly held. It can be said that a similarity exists between these two cases in more than one respect.

I hold in my hands a copy of a resolution recently unanimously adopted by both branches of the Connecticut general assembly, requesting the Connecticut delegation in Congress to support legislation in behalf of Senator and General HAWLEY.

With the permission of the House I will include the resolution in my remarks and also insert in the RECORD a sketch of General Hawley's career in the Army.

State of Connecticut, office of the secretary. General assembly, January session, A. D. 1905. Senate joint resolution No. 26. Resolution concerning the retirement of Gen. Joseph R. Hawley.

Resolved by this assembly, That our Senators and Representatives in Congress be, and they are hereby, requested to use their best endeavors to have Hon. Joseph R. Hawley retired as an officer in the Regular Army, with such rank and emoluments as his distinguished service entitles him to.

Passed senate January 19, 1905.

Passed house January 23, 1905.

STATE OF CONNECTICUT, *Office of the Secretary, ss:*

I, Theodore Bodenwein, secretary of the State of Connecticut, and keeper of the seal thereof, and of the original record of the acts and resolutions of the general assembly of said State, do hereby certify that I have compared the annexed copy of the resolution concerning the retirement of Gen. Joseph R. Hawley with the original record of the same now remaining in this office, and have found the said copy to be a correct and complete transcript thereof.

And I further certify that the said original record is a public record of the said State of Connecticut now remaining in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said State, at Hartford, this 24th day of January, 1905.

[SEAL.] THEODORE BODENWEIN, *Secretary.*

Statement of the military service of Bvt. Maj. Gen. Joseph R. Hawley, late captain, First Connecticut Infantry, colonel Seventh Connecticut Infantry, and brigadier-general of United States Volunteers.

Joseph R. Hawley was mustered into service at New Haven, Conn., April 22, 1861, as captain Company A, First Connecticut Infantry Volunteers, to serve three months, and was mustered out of service as captain, with his company, July 13, 1861. Captain Hawley is not reported absent from his command during this service. The regiment was attached to the First Brigade, First Division, Army of Northeastern Virginia.

He was again mustered into service at New Haven, Conn., September 17, 1861, as lieutenant-colonel Seventh Connecticut Infantry Volunteers, to serve three years, and as colonel same regiment, to date June 20, 1862. Under the provisions of the act of Congress approved June 3, 1884, and the acts amendatory thereof, he is considered by this Department as commissioned to the grade of colonel Seventh Connecticut Volunteers, to take effect May 19, 1862, vice Alfred H. Terry, promoted.

This regiment left New Haven for Washington in September, 1861, and was assigned to, and formed a part of, the expeditionary corps under Brig. Gen. T. W. Sherman, which sailed from Annapolis, Md., in the latter part of October, 1861, arriving at Port Royal, S. C., November 4, 1861.

Colonel Hawley appears to have been present with his command until July 29, 1862, when he was ordered north on recruiting service. He returned and resumed command of his regiment at Hilton Head, S. C., September 5, 1862, and remained in command of it until September 13, 1863, being for a portion of the time (namely, from May 12, 1863, to about August 18, 1863) also in command of the post at St. Augustine, Fla., where a part of the regiment was stationed. On September 13, 1863, he was assigned to the command of the Third Brigade, United States forces, at Morris Island, South Carolina, and remained in command of that brigade until October 14, 1863, when his regiment was ordered to St. Helena Island, South Carolina. From October 14, 1863, to February 4, 1864, he was in command of the "post and United States forces" at St. Helena Island. On February 4, 1864, he was assigned to the command of the brigade known as "Hawley's Brigade," attached to the Florida expeditionary forces commanded by Brig. Gen. T. Seymour, and thereafter, until September, 1864, held brigade commands (with rank of colonel) as follows:

February 4 to 26, 1864, Hawley's Brigade; February 26 to April, 1864, Second Brigade, Ames's Division, Tenth Army Corps (this brigade was transferred to Virginia about April 17, 1864); April 23 to May 7, 1864, Third Brigade, First Division, Tenth Army Corps; May 8 to September, 1864, Second Brigade, First Division, Tenth Army Corps. On September 12, 1864, at the request of Gen. A. H. Terry, commanding the division, he was ordered to Connecticut on recruiting service and in charge of enlisted men.

On September 13, 1864, he was appointed brigadier-general of volunteers, to rank from the same date, and accepted the appointment on September 17, 1864. On October 12, 1864, he returned from recruiting service and resumed command of the Second Brigade, First Division, Tenth Army Corps, and continued in command of that brigade until November 1, 1864, except from October 20 to 28, 1864, when he was temporarily in command of the Third Division, Tenth Army Corps. On November 1, 1864, General Hawley was placed in command of a provisional division which was ordered to New York City during the Presidential election of November 8, 1864, reembarking November 14 and 15, 1864, and arriving at their former station near Deep Bottom, Virginia, November 17, 1864.

General Hawley's subsequent commands were as follows:

November 17 to December 2, 1864, Second Brigade, First Division, Tenth Army Corps; December 3, 1864, to January 1, 1865, Second Brigade, First Division, Twenty-fourth Army Corps; January 1 to February 1, 1865, First Division, Twenty-fourth Army Corps; February 17 to March 1, 1865, chief of staff, United States forces at Fort Fisher, N. C.; March 1, 1865, to June 23, 1865, district of Wilmington, N. C.; July 5, 1865, to October 28, 1865, chief of staff, Department of Virginia.

In General Orders, No. 135, from the War Department, Adjutant-General's Office, dated August 24, 1865, it was announced that, by direction of the President, Brig. Gen. Joseph R. Hawley was thereby honorably mustered out of the service of the United States, his services being no longer required. In Special Orders, No. 468, from the War Department, Adjutant-General's Office, dated August 30, 1865, it was announced that so much of General Orders, No. 135, from the War Department, Adjutant-General's Office, dated August 24, 1865, as mustered Brigadier-General Hawley out of the service was thereby revoked.

On October 28, 1865, he was relieved from duty as chief of staff, Department of Virginia, and ordered to his home, thence to report by letter, and was mustered out and honorably discharged the service as brigadier-general of volunteers, to date from January 15, 1866, in General Orders, No. 168, War Department, Adjutant-General's Office, dated December 28, 1865.

He was brevetted major-general, United States Volunteers, to date from September 28, 1865, "for gallant and meritorious services during the war."

During his service General Hawley participated in battles and actions as follows:

As captain, First Connecticut Infantry (three months) Volunteers: Battle of Bullrun, Va., July 21, 1861.

As lieutenant-colonel and colonel Seventh Connecticut Infantry Volunteers: Action at Fort Pulaski, Ga., April 10 and 11, 1862; battle of Secessionville, on James Island, South Carolina, June 16, 1862; action at St. John's Bluff, Florida, October 2, 1862; and action at Coosawhatchie, on the Pocotaligo River, South Carolina, October 22, 1863.

As colonel Seventh Connecticut Infantry, in command of a brigade: Battle of Olustee, Fla., February 20, 1864; and in actions at Chester Station, Va., May 10, 1864; south side of the James, May 14, 1864; Palmers Creek, near Drewrys Bluff, Virginia, May 13 to 16, 1864; Bermuda Hundred, Va., May 27 and June 2, 1864; in front of Petersburg, Va., June 9, 1864; and Deep Bottom (or Deep Run), Virginia, August 14, 15, 16, and 18, 1864.

As brigadier-general of volunteers: Actions at Derbytown Road, Virginia, October 13, 27, and 28, 1864.

General Hawley's conduct at the battle of Bullrun, Va., July 21, 1861 (when he was serving as captain, First Connecticut Infantry), was favorably commented upon by Col. E. D. Keyes, Eleventh Infantry, who commanded in that battle the First Brigade, First Division, of the Army of Northeastern Virginia. In his report, dated July 25, 1861, Colonel Keyes says: "I observed the activity of Captains Hawley and * * * on the field."

General Hawley is also favorably mentioned in the report, dated March 25, 1864, of Brig. Gen. T. Seymour, commanding the Florida expeditionary forces, of the action at Olustee, Fla., February 20, 1864.

General Seymour says: "Colonel Hawley and * * * also commanding brigades, conducted their troops with great personal intelligence and valor."

Following are copies of and extracts from letters and indorsements, found on file, in which the promotion of Colonel Hawley to the grade of brigadier-general and brevet major-general of volunteers is recommended:

STATE OF CONNECTICUT, EXECUTIVE DEPARTMENT,
Hartford, February 2, 1863.

ABRAHAM LINCOLN,
President of the United States.

SIR: Permit me to commend to your favorable consideration Col. Joseph R. Hawley, of the Seventh Regiment Connecticut Volunteers,

as an officer well qualified for the appointment of brigadier-general of volunteers.

Colonel Hawley raised the first company organized in this State to suppress the rebellion, has risen by his merits to his present position, and shown himself equal to every emergency and capable of bearing every responsibility which has been placed upon him. He is a gentleman of high reputation and unexceptionable character, of untiring energy, whose whole soul is engaged in overwhelming the enemies of the Government.

With high consideration, I am, your obedient servant,

WM. A. BUCKINGHAM.

HEADQUARTERS DEPARTMENT OF THE SOUTH,
Hilton Head, S. C., February 26, 1864.

To the ADJUTANT-GENERAL OF THE ARMY,
Washington, D. C.

SIR: In compliance with your request of the 29th ultimo, I have the honor to commend for promotion to the brevet of brigadier-general the following named colonels serving in this department:

* * * * * * *

5. Col. J. R. Hawley, Seventh Connecticut Volunteers, for meritorious services generally and for conspicuous gallantry at the fight at Olustee, Fla., February 20, 1864.

* * * * * * *

Very respectfully, your obedient servant,

Q. A. GILLMORE,
Major-General Commanding.

HEADQUARTERS DISTRICT OF FLORIDA,
DEPARTMENT OF THE SOUTH,
Jacksonville, Fla., March 3, 1864.

Maj. Gen. Q. A. GILLMORE,
Commanding Department of the South.

SIR: I have the honor to recommend for advancement Col. J. R. Hawley, Seventh Connecticut Volunteers, an officer whose previous reputation in this department has always been so high for intelligence and good conduct as to have entitled him to, and to procure for him, recommendations for advancement from other officers than myself.

Colonel Hawley commanded a brigade at Olustee February 20, and his good conduct in this severe battle was such as justly to confirm all previous actions in his favor.

And I therefore respectfully urge for him the honor that is believed to be his due.

Very respectfully, General, your most obedient servant,

T. SEYMOUR,
Brigadier-General, Commanding.

(Indorsement.)

Respectfully forwarded to the Adjutant-General of the Army, approved and urgently recommended. Colonel Hawley's promotion to a brevet of brigadier-general is requested. Colonel Hawley was recommended for a brevet of brigadier-general in my letter to the Adjutant-General of the Army of February 26.

Q. A. GILLMORE,
Major-General.

HEADQUARTERS DEPARTMENT OF THE SOUTH,
HILTON HEAD, S. C., *March 12, 1864.*

STATE OF CONNECTICUT,
EXECUTIVE DEPARTMENT,
Norwich, April 20, 1864.

SIR: Permit me to call your attention to the merits of Col. J. R. Hawley, Seventh Connecticut Volunteers, for whose promotion application has been made.

He is a large-hearted, thoroughly honest, and earnestly patriotic man; abandoning an influential editorial position, he has from the commencement of the rebellion given himself to the service, being a captain in the three months' and a colonel in a three years' regiment now reenlisted. He has always shown himself a sagacious, brave, and efficient officer. Held in such high estimation at home that, unsolicited by himself, he received an honorable appointment of delegate at large to the Baltimore convention, and so esteemed in the field that he is trusted by his superiors and honored by his subordinates. I am confident you never will regret his promotion. If he can not be promoted at present, I would earnestly request, if it can be done, that he may be brevetted a brigadier-general.

I am, with high regard and esteem, your obedient servant,

WM. A. BUCKINGHAM,
Governor of Connecticut.

ABRAHAM LINCOLN,
President of the United States.

STATE OF CONNECTICUT, *New Haven, May 18, 1864.*

To His Excellency ABRAHAM LINCOLN,
President of the United States:

The undersigned, State officers, members of the general assembly, and other citizens of the State of Connecticut, beg leave to ask at the hands of your excellency the nomination of Joseph R. Hawley, of Hartford, in this State, now colonel of the Seventh Regiment of Connecticut Volunteers, for the commission of a brigadier-general of volunteers.

Colonel Hawley has been in the volunteer service of his country from the beginning of the war, and is now acting brigadier in General Butler's army, Terry's division, Tenth Army Corps, Gillmore commanding.

Sumter fell on Saturday. On the Monday following his was among the first names in the first company that was that day raised and the first in the State tendered to the governor for the defense of the country.

First chosen first lieutenant and then captain, he led his company into the first fight of the war, and on that disastrous day his commanding and courageous "steady boys" kept his line unbroken and brought them off with honor from the field.

Having served out his term, he raised another company at once, without asking for promotion, but was thereupon made lieutenant-colonel of the Seventh Connecticut Volunteers, and on the promotion of Colonel Terry became its commanding officer.

The Seventh has written its own eulogy on the history of this war, and its well-earned fame it gladly shares with its beloved commander.

Thus Colonel Hawley has been in the service from the start, and for most of the time as commander of a regiment or brigade. His tried coolness, bravery, ability, and good conduct in the camp and in the field have marked him as a soldier of no common merit and one eminently fit for the commission asked by his fellow-citizens to be conferred upon him.

His part in the bloody contests of Bull Run, Pulaski, James Island, Morris Island, Pocotaligo, and Clustee has made for him a most honorable record.

Connecticut takes a just pride in her heroic sons, living and dead, and feels it to be a pleasant duty to promote the advancement of her young men, who are among the truest and bravest, and thus furnish them with a new stimulus for emulating the deeds of her distinguished names who have fallen in the defense of their country.

(Signed by the governor, lieutenant-governor, and other State officers and fifty-five others, members of the State senate and the house of representatives, including the speaker of the house.)

HEADQUARTERS FIRST DIVISION
TENTH ARMY CORPS,
Bermuda Hundred, May 29, 1864.

WILLIAM FAXON, Esq.,
Washington, D. C.

MY DEAR SIR: I know that you need no prompting to do all in your power for Joe Hawley's advancement or advantage, and yet I have this promotion so much at heart that I can not forbear writing to you to urge that his friends in Washington should make strenuous efforts to secure it. To an "outsider" it would seem that a member of the Cabinet must have the power to secure the promotion of an officer of such undeniable ability and brilliant services. I know that Mr. Welles is very friendly to Hawley, I know also his delicacy about asking for appointments for his friends, but can not he be induced, in this instance, to abandon his usual rule and ask earnestly that this long-delayed justice shall be done?

Would it be of any use for me to write to Mr. Welles on the subject? Is there anything that we can do here that would be likely to forward the matter?

Please let me hear from you as soon as may suit your convenience.

In the meantime, believe me to be,

Very sincerely, yours,

ALFRED H. TERRY.

WASHINGTON, *June 15, 1864.*

His Excellency ABRAHAM LINCOLN,
President of the United States.

SIR: I have the honor to forward to you the accompanying recommendations of Col. Joseph R. Hawley for the office of brigadier-general of volunteers. To these recommendations I wish to add my cordial indorsement and to say that, in my judgment, he has honestly earned and fairly deserves his promotion.

I am, very respectfully, your obedient servant,

HENRY C. DEMMING.

To His Excellency ABRAHAM LINCOLN.

SIR: Please excuse me for inclosing this slip for your perusal. Col. Joseph R. Hawley has served his country nobly, having been in the Army since the commencement of the war.

His name was the first down in Connecticut in answer to your first call; he served as captain during the three months' service. Immediately upon returning he recruited a company for the three years' service, and his was the first company to go into camp in that service in the State. He was appointed lieutenant-colonel of the Seventh Connecticut, was long since made its colonel, and has now for many months had command of a brigade.

My husband, as you well know, don't like to interfere too much in army appointments. He has spoken on this subject often to you and also to the Secretary of War. He feels very desirous to see so good a patriot and able military man as Colonel Hawley has proved himself receive the promotion he has nobly earned.

Please excuse my boldness, and think of this; it will be a just act. I would not presume to address you on such a subject did I not so well know the feelings of wise men in the matter.

With great respect, always your friend,

MRS. GIDEON WELLES.

JUNE 27, 1864.

[Indorsement.]

Submitted to the Secretary of War and General Halleck.

A. LINCOLN.

JUNE 28, 1864.

HEADQUARTERS FIRST DIVISION, TENTH ARMY CORPS,
Bermuda Hundred, Va., July 12, 1864.

Hon. GIDEON WELLES,
Secretary of the Navy.

DEAR SIR: May I venture to address you for the purpose of asking your active interference in behalf of the promotion of our friend, Colonel Hawley? I know that you entertain a high opinion of and sentiments of friendship for him, and perhaps I should assume that every effort in his behalf which your position permits you to make has already been made, but as I do not know this to be the case, and as it seems to me that the influence of a member of the Cabinet energetically exercised in favor of one who has been so strongly recommended as he has been, of one who possesses such undoubted qualifications, of one who by his services has so fully earned the reward, could scarcely fail to secure his promotion, I respectfully ask that such influence may be exercised. I am well aware that I need say nothing to you of Colonel Hawley's general ability, of his honorable character, or of his sincere, unselfish patriotism; but I have served with him for three years, and I probably am better acquainted than anyone else with his military capacity and with the facts upon which his claims to promotion rest. I will, therefore, hastily sketch his military career:

Immediately after the fall of Sumter he raised a company for the First Connecticut Volunteers and was elected its captain. In this capacity he participated in the summer campaign, receiving official notice of his conduct at the first battle of Bull Run. His regiment was mustered out of service in August, 1861, and he immediately raised a company for the Seventh Connecticut Regiment. Of this regiment he was appointed lieutenant-colonel, and he accompanied it to South Carolina as a part of General Sherman's expedition.

Soon after the capture of Port Royal his regiment was sent to Tybee Island, and upon it devolved a very large part of the labor of the siege of Pulaski. During the bombardment of the fort Colonel Hawley was constant in the trenches, and he rendered valuable service.

In May, 1862, a vacancy having occurred in the colonelcy of the regiment, Colonel Hawley was promoted to fill it. In the following June the regiment took part in General Benham's operations on James Island, and he led it with conspicuous gallantry in the unfortunate assault on Fort Lamar.

On the 22d of October of the same year he commanded his regiment at the battle of Pocotaligo, and received very honorable mention of his good conduct in the reports of his commanding officers.

In January, 1863, he was assigned to the command of Fernandina, Fla. This post was a difficult one to govern, as it was a mongrel population of contrabands, loyal and semiloyal refugees, and covert rebels, and it had fallen into a bad and disorderly state under the colonel's predecessor. After he took command matters speedily changed their aspect, and the post became one of the most quiet and orderly in the department. Such a high degree of administrative ability did he evince that when similar difficulties arose at St. Augustine he was transferred to that place for the purpose of effecting similar reforms. Equally good results followed him in his new command.

In June, 1863, four companies of his regiment, under the lieutenant-colonel, formed part of General Gillmore's force when he moved on Charleston. These companies led the attack on Morris Island July 10, and also the assault on Wagner July 11. Immediately after the commencement of the operations Colonel Hawley earnestly solicited General Gillmore to permit him to join him with the remainder of his regiment. In accordance with his request he was ordered to Morris Island, where he remained, sometimes in command of his regiment and sometimes in command of a brigade, until the close of the siege.

For his services there and elsewhere he was recommended by General Gillmore for promotion.

When the expedition to Florida was undertaken last winter he was placed in command of one of General Seymour's brigades. During the whole of that affair he commanded it with marked ability. His conduct at Olustee is spoken of as beyond praise. In the language of a brother officer, "If there was any glory in that fight it belonged to Hawley."

When the Tenth Corps was reorganized, prior to coming to Virginia, General Gillmore brigaded his troops with special reference to making him the senior officer in one of the brigades, and consequently its commander. With his brigade thus constituted he has taken part in all General Butler's operations in this vicinity, and he still commands it. At the battle of Drewrys Bluff he displayed most distinguished courage and ability, repulsing with his troops four distinct and separate assaults of the enemy.

Of his capacity as a regimental commander, let the reputation of his regiment, universally acknowledged to be the best in the corps, speak. Of his capacity as a brigade commander, the fact that the organization of the corps was specially arranged so as to give him such a position, while many colonels senior to him commanded regiments only, is a sufficient proof.

Not content with merely fulfilling his routine duties he has been an industrious student, and to-day is better read and better informed as a soldier than a large proportion of those of our officers who have been regularly bred to the profession of arms. With his whole heart in the cause, and eminently conscientious in the discharge of his duty, he has been and is a most faithful and valuable servant of the Government.

It seems to me that such a man should not be left without the usual reward of such services, and that the promotion which has been given to so many who were his inferiors in both rank and service should not be denied to him.

I have heard that the name of Colonel Stedman, of the Eleventh Connecticut, has been mentioned for promotion. I believe that Colonel Stedman is a good officer, but I am sure that neither his merit nor his services will bear comparison with Colonel Hawley's, and I most sincerely hope that Hawley may be spared the mortification which he would feel were his junior to be promoted over him. I have written at great length, and I fear I have trespassed on both your time and patience, but I have thought that perhaps you were not aware how strong Colonel Hawley's claims are, and I could not do even this meager justice to the subject in fewer words.

Permit me to congratulate you on the splendid success of the *Kearsarge*, and to subscribe myself,

Very respectfully, your friend and obedient servant,

ALFRED H. TERRY.

WASHINGTON, *July 16, 1864.*

SIR: I beg leave to submit to you a letter from General Terry in behalf of Col. Joseph R. Hawley, to whose merits I have on former occasions called your attention.

All that is said in his favor by General Terry I would fully indorse. I have known him intimately for ten years and know of no one who has been more devoted to the cause in which we are all interested than Colonel Hawley. He volunteered at the very beginning and has continued in active service since. The governor and others earnestly desire his promotion. His friends have seen others of less merit and capability promoted, and they feel extremely solicitous, as you will perceive by General Terry's letter, that his worth and services should be recognized.

It is, I believe, the only instance where I have asked this distinction, and this I have preferred on separate occasions, with others, because I know the honor could not be more worthily bestowed.

Very respectfully,

GIDEON WELLES.

His Excellency A. LINCOLN.

[Indorsement.]

I believe Mr. Welles has never had a brigadier-general on his recommendation. I wish this appointment made so soon as it can be with consistency.

A. LINCOLN.

JULY 18, 1864.

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111 REMSEN STREET, BROOKLYN, N. Y.,
July 23, 1864.

To the ADJUTANT-GENERAL OF THE ARMY,
Washington, D. C.

SIR: I have the honor to call the attention of the Department to my recommendation, now on file in your office, of certain colonels of volunteers for the brevet of brigadier-general. The letter of recommendation is not now before me, but I desire particularly to call attention to the merits of

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Col. Joseph R. Hawley, Seventh Connecticut Volunteers, * * * all officers of great merit, and of long and faithful service.

I am not aware that any of my recommendations for brevets have received favorable action.

Very respectfully, your obedient servant,

Q. A. GILLMORE, *Major-General.*

HEADQUARTERS FIRST DIVISION, TENTH ARMY CORPS,
Before Petersburg, Va., August 16, 1864.

Lieut. Col. E. W. SMITH,
Acting Adjutant-General, Tenth Army Corps.

COLONEL: I have the honor to recommend that Col. Joseph R. Hawley, of the Seventh Regiment Connecticut Volunteers, who now commands, and since the organization of the corps has commanded, the Second Brigade of this division, be promoted to the rank of brigadier-general for his distinguished gallantry at the battle of Deep Run on the 16th instant.

During the whole of the present campaign Colonel Hawley has rendered most efficient service. At the battle of Drurys Bluff his brigade repulsed four distinct assaults from greatly superior numbers of the enemy, and at Deep Run, although suffering from illness, which made every movement painful to him, and which would have kept many men from the field, he led his brigade in the charge upon the enemy's works, and when they were carried advanced beyond them and successfully engaged the heavy masses which were soon concentrated upon us. On this occasion, as well as in every action in which he has been engaged, he has set a splendid example of courage and devotion to the service of his country—an example which is eminently deserving of recognition and reward.

I am, Colonel, your obedient servant,

ALFRED H. TERRY,
Brigadier-General, United States Volunteers.

[First indorsement.]

HEADQUARTERS TENTH ARMY CORPS,
Before Petersburg, Va., September 7, 1864.

Respectfully forwarded, earnestly recommended.

D. B. BIRNEY, *Major-General.*

[Second indorsement.]

The promotion of Colonel Hawley is most deserved and it will be beneficial to the service that he should receive his brevet to a command which he has actually and gallantly exercised for many months.

BENJ. F. BUTLER,
Major-General Commanding.

HEADQUARTERS DEPARTMENT OF VIRGINIA,
Richmond, July 15, 1865.

Hon. E. M. STANTON,
Secretary of War.

SIR: I respectfully but earnestly recommend that the following-named officers be promoted for faithful and efficient services during the war and for gallant conduct in the field, viz:

Brig. Gen. J. R. Hawley, United States Volunteers, to be major-general by brevet. * * *

Much of the service of these officers has been under my personal observation, and I make this recommendation in the belief that the promotion which I ask for them has been fully earned by meritorious conduct.

I have the honor to be, sir, very respectfully, your obedient servant,

ALFRED H. TERRY,
Major-General Commanding.

[First indorsement.]

Approved and respectfully forwarded to the Secretary of War.

U. S. GRANT,
Lieutenant-General.

HEADQUARTERS ARMY OF THE UNITED STATES,
October 19, 1865.

[Second indorsement.]

Approved.

E. M. STANTON,
Secretary of War.

STATE OF CONNECTICUT, EXECUTIVE DEPARTMENT,
Norwich, September 22, 1865.

SIR: I would respectfully ask you to give Brig. Gen. Joseph R. Hawley, chief of the staff of Maj. Gen. A. H. Terry, now at Richmond, the brevet promotion of major-general.

General Hawley's name stands first on the roll of Connecticut Volunteers. He raised the first company in the State that entered the service for the purpose of suppressing the rebellion, and went as a lieutenant. He has voluntarily been in some of the severest battles and in some of the most responsible positions, where he has ever proved able to meet the highest expectations of his friends. In integrity and high character he is unimpeachable, and is one of the most fearless, earnest, able, and judicious advocates of the rights of man in New England. His brevet promotion would, I feel confident, be right.

With high regard, your obedient servant,

WM. A. BUCKINGHAM,
Governor of Connecticut.

Hon. E. M. STANTON,
Secretary of War, Washington D. C.

Official statement furnished to Hon. JOSEPH R. HAWLEY, United States Senate.

By authority of the Secretary of War:

F. C. AINSWORTH,
Brigadier-General, U. S. A., Chief Record and Pension Office.

RECORD AND PENSION OFFICE,
WAR DEPARTMENT,
December 8, 1962.

Mr. HILL of Connecticut. Mr. Speaker, I am heartily in favor of this amendment, not only because of the unanimous request of the legislature of Connecticut, but because I am in full sympathy with the motives which prompted that action.

The Senate of the United States has acted wisely in honoring a man who through all his life has honored his country and given to its history a record which few men can equal.

As lawyer, editor, soldier, governor, Representative in Congress, and Senator, he has filled each and every position with marked ability, and now retires with the respect, the confidence and love of his associates and the people of the State which he has served so long and well.

This action is taken in no sense as a reward for integrity and a spotless life, although in General Hawley's case such a characterization would be eminently true, for the nation has a right to expect this from all its servants.

It is due to him because in old age, with limited means, and broken by disease, the peculiar character of his life work makes it specially fitting that the nation's gratitude should be shown in this particular way.

General Hawley was the first man in Connecticut to tender his services to the State at the outbreak of the civil war, and entering that war as a first lieutenant, he left it five years later, when peace had come, as a full brigadier and major-general by brevet.

Those years were spent in active service, and in more than a score of battles he not only showed conspicuous bravery, but by hard experience in the greatest war which the world has known fitted himself for practical work in after life while serving as a member of the Senate Committee on Military Affairs for twenty-four years, and fifteen years its chairman.

He has never drawn a pension for his army service, as he might have done, and this measure comes to us from the Senate of the United States not only as a manifestation of its sympathy for a stricken member, but when enacted into law it will stand as an expression of a nation's regard for a brave soldier and faithful servant.

The SPEAKER. The question is on the motion to concur in the amendment with an amendment.

The question was taken; and the motion was agreed to.

Mr. HULL. Mr. Speaker, I move that we agree to the conference asked by the Senate.

The motion was agreed to.

The SPEAKER announced the following conferees on the part of the House: Mr. HULL, Mr. PARKER, and Mr. SLAYDEN.

DISPOSITION OF PAPERS IN DEPARTMENTS.

Mr. BATES. Mr. Speaker, by direction of the Joint Select Committee on the Disposition of Papers in Executive Departments, I have three reports, on Senate Documents Nos. 595, 273, and 255, which I ask leave to file and have printed.

The SPEAKER. Without objection, the reports will be received and printed.

There was no objection, and it was so ordered.

RIVER AND HARBOR APPROPRIATION BILL.

Mr. BURTON. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 18809, the river and harbor appropriation bill.

The motion was agreed to; accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the river and harbor bill, with Mr. WM. ALDEN SMITH in the chair.

Mr. BURTON. Mr. Chairman, before proceeding with the reading of the bill, there are one or two paragraphs which were passed yesterday and which I would like to have disposed of now. I first offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Page 9, line 10, after the words "*Provided*, That," strike out the words "such extension shall," and also all of lines 11 and 12, and insert the following in lieu thereof: "Plan of improvement shall be first submitted to the said Chief of Engineers and approved by him, and no part of this appropriation shall be expended therefor."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio.

The question was taken; and the amendment was agreed to.

Mr. BURTON. Mr. Chairman, I desire to say to the gentleman from New York [Mr. SCUDDER] that I have not yet heard from the engineering department in regard to the paragraph on page 8 and do not feel ready to dispose of that. I ask, however, that the committee return to page 28, to the provision relating to the water hyacinth in Florida waters. The gentleman from Florida [Mr. DAVIS] was absent yesterday, and I understand he desires to be heard on this.

Mr. DAVIS of Florida. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Add, after the last word in line 13, page 28, the following proviso: "*Provided*, That if chemical process be used for the destruction of the hyacinths, no ingredient shall be contained therein injurious to cattle which may feed upon them."

Mr. DAVIS of Florida. Mr. Chairman, I desire to say, briefly, that the appropriations heretofore made for the destruction of the hyacinths have been used in the employment of a chemical process applied by means of spraying.

The water hyacinth is an aquatic plant which floats on the surface of the water. The roots do not attach themselves to the soil at all. All those who have traveled in Florida know that the St. Johns River, where this process has been used, is a broad stream, averaging from a mile to 3 miles in width, with little or no current, and for the most part shallow along its edges. These hyacinths float upon the surface of the water and drift with the winds and the tides. Cattle wade out into the river and feed upon them, sometimes going out so far that only their heads are above the water. In this process which has been used there is some poisonous ingredient, and when the cattle feed upon the hyacinths they have died in great numbers. In one place in my own county at least thirty head of cattle belonging to honest farmers were killed at one point. I have introduced a bill in this House to pay one poor man for eighteen head of his cattle that have been killed. The people who are furnishing this tell me that they can get along without this poisonous ingredient. It is a great hardship for the farmers who own cattle along this river to have them destroyed as is being done. The amendment I offer simply provides that if the chemical process be continued no poisonous ingredient shall be contained which would be injurious to cattle. I ask that the amendment be adopted.

Mr. BURTON. Mr. Chairman, the water hyacinth has proved a great obstacle to navigation in these inland streams. The process of disposing of it by maceration has been attempted, but it has been found to be ineffective. Afterwards a chemical was found which destroyed the plant. However, that chemical contains poison. Now, I am ready to concede that there is danger that cattle will be poisoned by the ingredient used to dispose of the plant if the cattle are not very carefully guarded. I am inclined to think, however, that the adoption of this amendment would result in no part of this appropriation being used. Very probably it would result in the increase of this obstruction to navigation, so that sooner or later some of the smaller streams would be rendered entirely unnavigable. I know it is the desire of the committee to accommodate the gentleman from Florida and to, as far as possible, observe his wishes. If he is willing to take this responsibility of the probable impediment of those streams, the retention of this appropriation unexpended, and, what is more, a decrease of appropriations for those streams in the future, I can make no objection, because I think in that locality if they desire to avoid the danger of poisonous substance more than they desire the use of the appropriation we should observe their wishes. I would suggest, however, another form which is rather briefer, if it be agreeable to the gentleman from Florida. Do I understand that the gentleman is ready to take that responsibility?

Mr. DAVIS of Florida. I am.

Mr. BURTON. And that that is the wish of his constituents?

Mr. DAVIS of Florida. Yes.

Mr. BURLESON. I think it ought to be confined to Florida.

Mr. BURTON. There is another provision for Louisiana and Florida, and there is no such request there. They desire to have it used. I will say that in time I think some process may be discovered which may be free from poisonous substances. I offer the following as a substitute for that offered by the gentleman from Florida, which I send to the desk.

The Clerk read as follows:

Provided, That no process shall be used for such removal which requires the deposit of poisonous substances in such waters.

Mr. BURTON. Is that satisfactory?

Mr. DAVIS of Florida. Yes.

Mr. BURTON. Then I offer that amendment.

Mr. BREAZEALE. Will the gentleman yield for a question?

Mr. BURTON. In one moment. I would suggest to the Chair that the gentleman from Louisiana desires to ask a question.

Mr. BREAZEALE. That amendment does not affect the streams of Louisiana?

Mr. BURTON. It does not affect the streams of Louisiana and Texas.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 28, strike out the period at the end of line 13, insert a colon, and add the words, "*Provided*, That no process shall be used for such

removal which requires the deposit of poisonous substances in such waters."

Mr. DAVIS of Florida. Mr. Chairman, I would move that amendment.

The CHAIRMAN. Does the gentleman desire to withdraw his original amendment?

Mr. DAVIS of Florida. The original amendment; yes, sir.

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Ohio.

The question was taken; and the amendment was agreed to.

Mr. BURTON. Now, on page 38——

Mr. COOPER of Texas. On yesterday I asked that a certain paragraph be passed in the expectation that I would offer an amendment. I now desire to announce that I do not wish to offer the amendment, and ask, therefore, that the paragraph be considered as read.

Mr. BURTON. I will now ask that the Clerk proceed with the reading.

The Clerk read as follows:

For the construction of Lock and Dam numbered 21 in said river, $74,000: *Provided*, That a contract or contracts may be entered into by the Secretary of War for such materials and work as may be necessary to complete the said lock and dam, to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate $200,000, exclusive of the amounts herein and heretofore appropriated: *Provided, further*, That the balance remaining to the credit of the Cumberland River on any project therein above said Lock and Dam numbered 21 shall be made applicable for the construction thereof.

Mr. GAINES of Tennesssee. Mr. Chairman, I know that no amendment can be made to this bill in the House, and I shall not undertake it, but I wish to lay clearly before the committee the present conditions existing in the Cumberland River above and below Nashville.

Below Nashville, "lower Cumberland," Lock A has been in operation since last November, making a pool 40 miles below Nashville, a city of about 125,000 inhabitants, 191 miles from the Ohio River. Lock 1 is in the "upper Cumberland" and was put in operation last November.

In addition to this in the upper Cumberland (above Nashville) there are six locks—2, 3, 4, 5, 6, and 7—without dams and gates.

If these six locks were given dams and gates—put in operation—we would have at least about 106 miles of slack water in addition to the existing 40 miles, or 146 miles of slack water, emptying into the lower Cumberland, which is navigable to the Ohio River about five months in the year.

The Chief of Engineers and Colonel Sears, in charge of these works, in their report for 1904, urged Congress "to erect dams and gates" for Locks 2, 3, 4, and 5 "above Nashville" and to proceed to construct Locks B, C, and D "below Nashville" and to take the funds from Locks 21 and 22 and from Smith Shoals, about $25,000, and make them available for the "general improvement of the Cumberland River above Nashville," where Locks 2, 3, 4, 5, 6, and 7 are located.

In the face of these conditions and this recommendation, substantially repeated by Colonel Adams from 1899 to and including 1903 (when Colonel Sears succeeded him), yet the committee has failed to report in this bill any funds to erect any one of these dams and gates, and applies all the funds this bill carries for locks and dams in the Cumberland to Lock 21, which lock can make only 28 miles of slack water, and in a section about 300 miles above Nashville and 513 miles from the juncture of the Cumberland with the Ohio River and nearly 200 miles from Carthage, 116 miles above Nashville.

This bill makes available $74,000 cash and about $25,000 additional, and authorizes $200,000, to complete Lock 21; total, $300,000.

This amount would at least pay for three dams and gates, say at Locks 2, 3, and 4, "above Nashville," and put them in operation, and thus add 72 miles of slack-water navigation to the 40 miles now existing, as a result of Locks A and No. 1 below Nashville, or a total of 112 miles of slack water with an "outlet" to the Ohio five months in the year.

Lock 21 can not have this "outlet" to the Ohio except when the river rises high enough to open navigation from the Burnside vicinity, 513 miles from the Ohio.

Following the recommendations of Colonel Sears, in 1904, I introduced a bill to appropriate $500,000 for improvement above Nashville and $300,000 below Nashville, and to make available the funds unused, and about $25,000, at Locks 21 and 22 and Smith Shoals, "in the Cumberland, above Nashville, general improvement," to quote Colonel Sears's language.

The Chief of Engineers approved these, Colonel Sears's recommendations. Yet this bill does not carry a cent for these improvements. The River and Harbor Committee preferred to complete Lock 21, then to add dams and gates to Locks 2, 3, and 4, and complete them, which this $300,000 would do with the balance we have on hand.

The committee preferred to make a pool 28 miles long rather than to add to an existing pool 40 miles long another pool 72 miles long with an outlet to the Ohio, although the 72-mile pool would cost no more than the 28-mile pool.

I can not stop to compare the commerce which would pass over a pool of water 28 miles long, from Lock 21 to Burnsides, and a pool 120 miles long, from Lock 5, "upper," to Lock A, "lower Cumberland," with a five months' "outlet" to the Ohio through middle Tennessee and northwestern Kentucky; nor will I compare now the commerce of the vicinity of Lock 21 and its 28-mile pool with that of the Cumberland Valley, over 300 miles long. A drop of water to the ocean suggests a proper comparison.

I leave the rest to your imagination, and pass on to the consideration of Lock 21 and compare it in its almost totally incomplete state—but litle work having been done on it—to the locks that are complete above Nashville, ready and waiting for dams and gates to put them into operation.

Hence the merits of Lock 21 in its present condition can not be compared to the merits of Locks 2 to 7—total six—that stand to-day waiting for dams and gates to become operative. As these locks stand above Nashville, representing a large investment, no benefit is derived from them by the Government or the people, and the navigability of the river is to-day as though these locks had never been erected on its banks.

The worthiness of the two projects for improvement at this day and time can not be compared.

Lock 21 can only benefit a few people of that vicinity and the Cincinnati Southern Railroad, which taps Burnside, running from Ohio south. The commerce of this pool must be hauled to this railroad and poured into its lap, except possibly when the river is very high, when this lock will be useless until the river falls again. Thus there is a railroad embargo on Lock 21 to the north, and a natural embargo—the river when low.

The gentleman from Michigan [Mr. BISHOP] defends this item for Lock 21 by arguing that Colonel Adams, in 1899, 1900, and 1901, said that Lock 21 would do more for commerce in the (whole) river than any single lock in the (whole) river.

I deny Colonel Adams ever said that, or that in effect.

In 1899 he said this:

There is no single lock, and perhaps it may be said no two or three locks, in this system the completion and operation of which would do as much for the commerce of the upper Cumberland River as the completion and operation of Lock No. 21. This lock may be likened to Lock A of the lower river system, in that it will afford a 3-foot stage at Burnside, Ky., the same as Lock A will give at Nashville.

Colonel Adams repeats this language (about Lock 21) in his report of 1900 and 1901, and makes an additional significant statement to that just quoted, which is very pertinent now, and I will read it:

But necessarily this will only produce another lake-like reach of navigable water, as would Lock A on the lower river improvement, until provided with an outlet.

It is as plain as the flag hanging on the wall that Colonel Adams did not say Lock 21 would do more for the commerce of the Cumberland than any one or three locks "in the river" or in all the river. His statement was confined to the locks and commerce in the "upper Cumberland" and not "in the river" or in the whole river or that below Nashville.

"There is," said he, "no single lock, and perhaps it may be said no two or three locks, in this system"—that is, in the upper Cumberland—"the completion and operation of which would do as much good for the commerce of the upper Cumberland"—"upper Cumberland," he says—"as the completion and operation of Lock 21."

In 1902 the chairman of the River and Harbor Committee [Mr. BURTON] called on Colonel Adams to explain what he meant by this language, and Colonel Adams replied as follows:

[Second indorsement.]

ENGINEER OFFICE, UNITED STATES ARMY,
Nashville, Tenn., January 27, 1902.

Respectfully returned to the Chief of Engineers, United States Army.

Owing to the high grade of the Queen and Crescent Railroad at its crossing over the Cumberland River, a short line of railway, called the Burnside and Cumberland River Railway, has been built to reach the grade of the river, and three steamboats are owned and operated in connection with this railroad as feeders to the main line of the Queen and Crescent Railroad at Burnside. Much of the commerce of the upper Cumberland goes in that direction, therefore, and not toward Nashville.

I am of the opinion that no single lock above Nashville, i. e., between Nashville and Burnside, would do as much toward augmenting commerce as Lock 21, for the reason as stated; nevertheless, like all the locks on the river as now arranged, only another lake-like stretch of water would be produced with railway embargo beyond it.

M. B. ADAMS,
Lieutenant-Colonel of Engineers, U. S. Army.

February 1, 1902, Major Kingman replied to this inquiry to the same effect. Neither of these letters have been published. I hold in my hand official copies of them.

The CHAIRMAN. The time of the gentleman from Tennessee [Mr. GAINES] has expired.

Mr. GAINES of Tennessee. Mr. Chairman, I ask the indulgence of the committee for five minutes more.

The CHAIRMAN. How much time does the gentleman from Tennessee [Mr. GAINES] desire?

Mr. GAINES of Tennessee. Five minutes.

The CHAIRMAN. The gentleman from Tennessee [Mr. GAINES] desires five minutes more. Is there objection?

There was no objection.

Mr. GAINES of Tennessee. The Chief of Engineers, General Wilson, in 1899 approved the statement of Colonel Adams as to Lock 21. I will insert his words here. General Wilson says:

There is no single lock, and perhaps I may say no two or three locks, in this system the completion and operation of which would do as much for the commerce of the upper river as the completion and operation of Lock No. 21, to be built at a point some 29 miles below the crossing of the Cincinnati Southern Railway at Burnside, Ky. This lock may be likened to Lock A of the lower-river system, in that it would afford a 3-foot stage at Burnside, as the other will at Nashville. By act of June 3, 1896, $20,000 was made specifically applicable to Locks 21 and 22, and the sites for these locks and dam abutments have been purchased. Much delay has attended the necessary proceedings in connection with these purchases, which have been consummated at last. There is a balance of $17,038.89 remaining of the above that is expected to be applied in getting out stone for Lock No. 21.

The annual expenditure for these open-channel operations is estimated at $5,000, therefore the amount that can be profitably expended on the river above Nashville during the year ending June 30, 1901, may be estimated as follows:

For continuing operations at Locks 21 and 22	$300,000.00
For first year's operations in completion of Locks 1 to 7, inclusive	400,000.00
For maintenance, open-channel work	5,000.00
Total	705,000.00

The commerce of the Cumberland River above Nashville during the calendar year 1898, as near as could be ascertained, aggregated 124,518 tons, having an estimated value of $2,311,384.57.

July 1, 1898, balance unexpended		$268,089.51
Amount appropriated by sundry civil act approved July 1, 1898		250,000.00
Amount appropriated by river and harbor act approved March 3, 1899		100,000.00
		618,089.51
June 30, 1899, amount expended during fiscal year		234,870.93
July 1, 1899, balance unexpended		383,218.58
July 1, 1899, outstanding liabilities	$7,812.07	
July 1, 1899, amount covered by uncompleted contracts	154,924.64	
		162,736.71
July 1, 1899, balance available		220,841.87
Amount (estimated) required for completion of existing project		6,805,000.00
Amount that can be profitably expended in fiscal year ending June 30, 1901:		
For works of improvement	$700,000.00	
For maintenance of improvement	5,000.00	
		705,000.00

Submitted in compliance with requirements of sections 2 of river and harbor acts of 1866 and 1867 and of sundry civil act of June 4, 1897.
(See Appendix C C 3.)

It is significant, however, that General Wilson, Chief of Engineers, in 1899, does not, in his report of 1900, reiterate his approval of Colonel Adams's statement as to Lock 21, but simply uses this language:

There is a balance of $17,035 applicable to Locks 21 and 22 that is expected to be applied in getting stone for Lock 21.

It is also significant that the Chief of Engineers, General Gillespie, in 1901, simply states this:

There is a balance of $16,955.39 applicable to Locks 21 and 22 that is expected to be applied for getting out stone for Lock 21 when further appropriations for this section are made.

In 1902 the Chief of Engineers, General Gillespie, contents himself with one sentence on the subject: "There is a balance of $16,875.39 applicable to Locks 21 and 22," at page 391.

Colonel Adams went so far as to urge Congress to unite the balances unused at Locks 21 and 22 and at Smith Shoals, and use the same "below Nashville." Here are his words (War Report, 1902, p. 1702):

There is a balance of $16,875, applicable to Locks 21 and 22, which is recommended to be made available below Nashville, except what may be needed for contingencies.

On the same page, after stating that there is an available balance of $9,747 at Smith Shoals, Colonel Adams says:

The above balance ($9,747) is recommended to be made available for the improvement below Nashville, except what may be needed for contingencies.

In 1903 General Gillespie says:

There is a balance of $16,875.39 applicable to these locks, which can not be advantageously used unless sufficient appropriation to complete one lock and dam are made.

Colonel Adams made no mention whatever of these Locks 21 and 22 in his report of 1903.

Colonel Sears and the Chief of Engineers, in 1904, recommend the use of these two balances, making about $25,000, in the river "above Nashville," and recommend the completion of Locks 2 to 5 above Nashville.

Colonel Adams in 1899, 1900, and 1901 recommended the "completion" of Locks 1 to 7 "above Nashville," and the "continuation" of operations on Locks 21 and 22, and the "completion" of those "below Nashville."

In 1900 and 1902, after he had studied the river carefully, he urged as most important the "completion" of Locks 1 to 7 on the Cumberland "above Nashville," and those "below Nashville," so as to give an "outlet" to the immense commerce between Carthage and Nashville and Nashville and the Ohio River, recommending "open-channel work" only above Carthage in the section where Lock 21 is located.

He said it would cost four times less, and could be done in "one-fourth" of the time, to improve the Cumberland from Carthage toward the Ohio than it would to improve it, as contemplated, from Nashville to Burnside.

In 1902 he said the lower Cumberland was "twice" as worthy of improvement as that just "above Nashville;" that that section "above Nashville" was "ten times" as worthy as that beyond Carthage, and urged the improvement of the lower Cumberland "before anything else," and that section between Nashville and Carthage next.

Colonel Adams, in his report of 1902, page 1704, says:

My recommendation, therefore, is that the section below Nashville be pushed to completion before everything else; that the section between Nashville and Carthage be completed next; but I am obliged to regard the section above Carthage as unworthy of improvement, except through a fostering care of the Government by maintenance of existing open-channel work.

"Complete," he says, "the lower Cumberland before everything else." Then Locks 1 to 7 above Nashville, and continue channel work above Carthage.

Now, before this is done the River and Harbor Committee abandons "everything else"—to do what? Erect and put in operation Lock 21.

Colonel Sears and General Mackenzie recommend that the funds for Locks 21 and 22 and Smiths Shoals be made applicable to the Cumberland "above Nashville, general improvement." Thus they in 1904 abandon Locks 21 and 22 and Smiths Shoals for the locks I ask the committee to finish, to wit, Locks 2 to 5.

Colonel Sears says (Annual Report of the Chief of Engineers, p. 2346):

There is a balance of $8,302.18 in the United States Treasury remaining of the appropriation of the sundry civil act of July 1, 1898, for the "construction of Locks Nos. 5, 6, and 7." This amount remains after completion of masonry of said locks and dam abutments. No appropriation for this section has been made since 1899.

The balance hereinbefore mentioned under Locks Nos. 21 and 22, viz, $16,875.39, remains after having acquired the sites of locks and abutments of Dams Nos. 21 and 22. No appropriation for this section has been made since 1896.

These balances, aggregating $25,177.57, can be used to no practical benefit to the sections to which applicable, as the amounts are too meager to proceed with lock and dam construction, and can not be utilized elsewhere, owing to their restricted application.

It appears that it would be of greater advantage to the work above Nashville generally were the amounts in question to be made available where they could be presently utilized. It is believed that this could be done without prejudice to the work to which balances pertain, as operations have been carried forward in localities affected as far as practicable with funds in hands.

In view of the foregoing it is respectfully recommended that the unexpended balances now in the United States Treasury of amounts heretofore appropriated by the acts of June 3, 1896, and July 1, 1898, for Locks Nos. 21 and 22 and Locks Nos. 5, 6, and 7, respectively, be made available for "Improving Cumberland River above Nashville, Tenn., general improvement."

The additional appropriation recommended below should be applied to putting in operation Locks 2, 3, 4, and 5, by construction of dams and erection of gates.

Mr. John S. Walker, assistant engineer, has continued in immediate charge of the details of the work, and the officer in charge desires to note his high appreciation of Mr. Walker's faithful and efficient services.

Money statement.

July 1, 1903, balance unexpended		$243,691.39
Cash deposit, pay due sundry persons uncalled for		2.70
Cash deposit, redemption United States internal-revenue stamps		2.18
		243,696.27
June 30, 1904, amount expended during fiscal year:		
For works of improvement	$87,632.46	
For maintenance of improvement	3,353.92	
		90,986.38
July 1, 1904, balance unexpended		152,709.89
July 1, 1904, outstanding liabilities		27,471.48
July 1, 1904, balance available		125,238.41
July 1, 1904, amount covered by uncompleted contracts		24,024.71

Amount (estimated) required for completion of existing project		$6,605,000.00
Amount that can be profitably expended in fiscal year ending June 30, 1906, in addition to the balance unexpended July 1, 1904:		
For works of improvement	$495,000.00	
For maintenance of improvement	5,000.00	
		500,000.00
Submitted in compliance with requirements of sundry civil act of June 4, 1897, and of section 7 of the river and harbor act of 1899.		

In 1904 the Chief of Engineers, page 442, says:

Locks Nos. 21 and 22 (296.25 miles and 320.25 miles, respectively, above Nashville).—There is a balance of $16,875.39 applicable to these locks which can not be advantageously used unless sufficient appropriations to complete one lock and dam are made.

Smith shoals section—Locks Nos. 1 to 6.—The allotments for this section amount to $30,000, of which there remains a balance of $9,747.06.

The engineer officer in charge, in Appendix B B 2 to this report, recommends for reasons stated, that the balances now remaining in the United States Treasury to the credit of "Locks Nos. 21 and 22" and "Locks Nos. 5, 6, and 7," and specifically applicable to these sections of the upper Cumberland, be made available for "Improving Cumberland River above Nashville, Tenn., general improvement." The recommendation is concurred in.

On pages 441 and 442, same report, the Chief of Engineers had already stated that the present condition of the work is as follows:

Locks Nos. 1, 3, 4, 5, 6, and 7 (2.5 miles below, and 26 miles, 44.75 miles, 72 miles, 89.6 miles, and 106.6 miles, respectively, above Nashville).—The masonry of the lock walls, and of abutments of the dams, is completed, that of abutments Nos. 3 and 4 being completed during the past fiscal year.

Lock No. 2 (9 miles above Nashville).—The masonry of the lock walls is completed. This lock will require no abutment for the dam.

Lock No. 8 (125.25 miles above Nashville).—Sites for the lock and abutment have been approved and the abutment site acquired.

Locks Nos. 9 to 20.—No surveys have been made to determine and select sites for these locks.

Yet, Mr. Chairman, in the face of these recommendations the distinguished committee—and I can not believe they studied these recommendations carefully—still stick to the statement of Colonel Adams of 1899 to 1901, that he himself abandoned absolutely in 1902 and 1903, that Colonel Sears abandoned in 1904, that Colonel Newcomb abandoned in 1904, including the Chief of Engineers and every other officer that has had charge of the Cumberland River; and the committee proceeds to take money away from the silent locks above Nashville, victims of this unwise policy, and take $300,000 and go into the mountains of Kentucky and try to drown out an isolated shoal for the benefit of a railroad and a handful of people to the detriment of the people in the Cumberland and to their surprise and amazement.

There has been no appropriation made for Locks 21 and 22 since 1896. There has been no "recommendation" for the War Department "to complete" either of these locks as far back as 1899. There has been no official statement since 1902 that Lock 21 was more meritorious than any other lock in the "upper Cumberland," because, at least at that date, several locks were ready for dams and gates. And at no time have the works on the upper or lower Cumberland been abandoned for this isolated lock.

Colonel Adams took charge of the Cumberland River April 1, 1899, and submitted his report in 1899, dated July 18, 1899.

In 1899 Colonel Adams recommended the "completion" of Locks 1 to 7, between Nashville and Carthage, and "for continuing operations at Locks 21 and 22, $300,000" and $225,000 to "continue" work in the Cumberland below Nashville, as follows:

ABOVE NASHVILLE.

The amount that can be profitably expended on the river above Nashville during the year ending June 30, 1901, may be stated as follows:

For first year's operations in completion of locks Nos. 1 to 7, inclusive	$400,000.00
For continuing operations at Locks Nos. 21 and 22	300,000.00
For maintenance open-channel work	5,000.00
Total	705,000.00

Money statement.

July 1, 1898, balance unexpended		$268,089.51
Amount appropriated by sundry civil act approved July 1, 1898		250,000.00
Amount appropriated by river and harbor act approved March 3, 1899		100,000.00
		618,089.51
June 30, 1899, amount expended during fiscal year		234,870.93
July 1, 1899, balance unexpended		383,218.58
July 1, 1899, outstanding liabilities	$7,812.07	
July 1, 1899, amount covered by uncompleted contracts	154,924.64	
		162,736.71
July 1, 1899, balance available		220,481.87

Amount (estimated) required for completion of existing project		$6,805,000.00
Amount that can be profitably expended in fiscal year ending June 30, 1901:		
For works of improvement	$700,000.00	
For maintenance of improvement	5,000.00	
		705,000.00
Submitted in compliance with requirements of sections 2 of river and harbor acts of 1866 and 1867 and of sundry civil act of June 4, 1897.		

APPROPRIATIONS.

Improving Cumberland River above Nashville, Tenn., under the present project for a system of locks and dams from Nashville, Tenn., to head of Smiths Shoals, mouth of Rockcastle River, Kentucky.

Act of—	
August 5, 1886	$75,000
August 11, 1888	200,000
September 19, 1890	250,000
July 13, 1892	250,000
August 18, 1894	200,000
June 3, 1896	20,000
June 4, 1897 (sundry civil act)	350,000
July 1, 1898 (sundry civil act)	250,000
March 3, 1899	100,000
Total	1,695,000

LOWER CUMBERLAND.

As to the lower Cumberland, in 1899, Colonel Adasm, at page 241, War Report of that year, says:

The sum of $5,000 is also required for the removal of surface obstructions—snagging below Nashville—in accordance with the adopted project, making the amount that can be profitably expended during the fiscal year ending June 30, 1901, $255,000.

Money statement.

July 1, 1898, balance unexpended		$34,393.67
Amount appropriated by river and harbor act approved March 3, 1899		100,000.00
		134,393.67
June 30, 1899, amount expended during fiscal year		37,963.15
July 1, 1899, balance unexpended		96,430.52
July 1, 1899, outstanding liabilities		9,208.56
July 1, 1899, balance available		87,221.96
Amount (estimated) required for completion of existing project		1,714,500.00
Amount that can be profitably expended in fiscal year ending June 30, 1901:		
For works of improvement	$250,000.00	
For maintenance of improvement	5,000.00	
		255,000.00
Submitted in compliance with requirements of sections 2 of river and harbor acts of 1866 and 1867 and of sundry civil act of June 4, 1897.		

APPROPRIATIONS.

Improving Cumberland River, Tennessee and Kentucky, general river, 1832 to 1838.

Act of—	
July 17, 1832	$30,000
June 28, 1834	30,000
July 7, 1836	20,000
March 3, 1837	55,000
July 7, 1838	20,000
Total	155,000

Improving Cumberland River below Nashville, Tenn.

[Under old project for open-channel work, from 1871 to 1890.]

Act of—	
March 3, 1871	$30,000
June 10, 1872	20,000
March 3, 1873	25,000
March 3, 1875	25,000
June 18, 1878	45,000
March 3, 1879	40,000
June 14, 1880	20,000
March 3, 1881	15,000
August 5, 1882	15,000
July 5, 1884	7,500
August 5, 1886	12,500
August 11, 1888	10,000
September 19, 1890	40,000
Total	305,000

[Under new project for locks and dams, from 1892 to 1899.]

Act of—	
July 13, 1892	$40,000
August 18, 1894	30,000
June 3, 1896	80,000
March 3, 1899	100,000
Total	250,000

COMMERCIAL STATISTICS.

Cumberland River below Nashville, Tenn., from January 1, 1898, to December 31, 1898.

	Tons.
Live stock	44,000
Grain	35,427
Railroad ties	10,000
Logs	5,275
Lumber	4,722

	Tons.
Wood	1,600
Shingles	20
Spoke billets	875
Staves	200
Cotton	2,500
Tobacco	5,000
Hay	250
Flour	392
Salt	700
Produce	800
Coal	300
Bricks	150
Fertilizers	50
Machinery	77
Sheet steel	38
Pig iron	700
Iron rails	500
Explosives	1,639
General merchandise	5,017
Total tonnage	120,232

Estimated value, $5,711,998.58. Passengers carried, 31,300.

In 1900 and in 1901 Colonel Adams repeats his recommendations of 1899 with reference to Locks 1 to 7 and Locks 21 and 22, as shown by the War Report of 1900, page 2901, and War Report of 1901, page 2415.

In 1901 he says:

The amount that can be profitably expended on the river above Nashville during the year ending June 30, 1903, may be stated as follows:

For operations in "completion" of Locks 1 to 7, inclusive	$898,740.15
For continuing operations at Locks 21 and 22	300,000.00
For maintenance, open-channel work	5,000.00
Total	1,203,740.15

But instead of recommending $255,000 to "continue" the work in the lower Cumberland, as he did in 1899, Colonel Adams asked for $1,714,500 to "complete" the six locks and dams between Nashville and the Ohio River.

At pages 2893–2894 (Colonel Adams's report of 1900), Colonel Adams states that it was more important to improve the Cumberland from Carthage to the Ohio River than up the river to the supposed "coal fields." He had studied, he says, the river since his report of 1899, which was prepared, he says, after he had been in charge of the river only "three months."

He states that it would cost to improve the river below Nashville, about $1,714,500, and that to complete the river above Nashville to the vicinity of Burnside, would cost (estimate) $6,805,000, and would take eight years to do the work, while the lower Cumberland could be improved in about two years and cost one-fourth as much. He then says, in part:

There is little doubt, too, that the immediate benefits to be derived would be greater by affording an all-year navigation down into the Ohio River (from Nashville and from Carthage, 120 miles above Nashville), than by affording an all-year navigation up the river so as to reach the coal fields there.

Colonel Adams, therefore, recommended in 1900 that the seven locks above Nashville, and those below Nashville "be made operative together at the earliest admissible date."

I will insert here what Colonel Adams says on this subject:

LOWER CUMBERLAND.

Colonel Adams, in 1900, page 2893, in urging the improvement of the lower Cumberland, said:

The annual report for last year, 1899, was prepared when I had only three months' charge of the Cumberland River improvement; necessarily, therefore, with limited knowledge of the most important features of the enterprise.

Naturally, too, at first glance, seeing that there were four locks completed and four more approaching completion, partly above and partly below Nashville, but all absolutely valueless as aids to navigation until made operative by the construction of their accessories, i. e., their gates, dams, approaches, etc., it seemed of paramount importance that these costly structures should be made operative at the earliest possible date, in order that a return on the large outlay already incurred might soon be realized; consequently, my first annual report asked for appropriations in accordance with these views.

Further consideration of the subject, however, goes to show that these early impressions were only partially correct, for it is exceedingly doubtful that a return at all commensurate with the cost would result from merely rendering these eight locks operative, inasmuch as such a course would only produce a lake-like reach of navigable water, extending from 41 miles below to 125 miles above Nashville, that would be lacking a navigable outlet during about seven months of the year.

I am decidedly of the opinion that it would be injudicious to undertake to render the locks on this isolated reach of river operative until an outlet can be provided into the Ohio River, on the one hand, or, on the other hand possibly, until the time is nearly arrived when the extension of the improvement to the coal fields at the headwaters of the Cumberland River can be pushed vigorously to completion.

The estimated cost of providing an outlet into the Ohio River, i. e., the completion of the scheme of improvement below Nashville, is $1,714,500, and with the funds available and the lock sites secured, the work might be accomplished in about two years; whereas the extension of the improvement to the coal fields, i. e., the completion of the scheme of improvement above Nashville, is estimated to cost $6,805,000, and with the funds available and the lock sites secured would require about eight years for its accomplishment.

There is little doubt, too, that the immediate benefits to be derived would be greater by affording an all-year navigation down into the Ohio River (from Nashville and from Carthage, 120 miles above Nashville) than by affording an all-year navigation up the river so as to reach the coal fields there.

The upper river improvement will therefore cost four times as much and take four times as long for its completion as the lower river improvement, and might be expected to greatly cheapen the cost of coal and transportation to and from the farms near the banks of the upper river; whereas the lower river improvement, though costing only one-fourth as much in money and time, may be expected to greatly cheapen the cost of transportation to and from the farms along its banks, too, and to greatly reduce the cost of innumerable commodities that would then seek this means of going to and from the Ohio Valley. Indeed, it appears too obvious to require further elucidation that earlier and larger returns may be expected from the lower river improvement than from the upper river improvement. Therefore it seems well warrantable that early provision be made for the construction of six more locks and accessories below Nashville, and that the seven locks (one now built) constituting the lower river system of improvement, as well as the seven other locks now built and constituting the lower portion of the upper river system of improvement, be made operative together at the earliest admissible date.

It seems impossible to urge the course that has just been indicated with too much vehemence, being apparently the only way of securing a return for the expenditures already incurred and that may hereafter be incurred within a reasonable time and for a reasonable additional outlay.

If large boats could be assured an all-year stage of water between Nashville and the Ohio Valley, it is probably not saying too much that a reduction of 40 to 50 per cent in most freight charges to and from Nashville, Clarksville, and perhaps other points, would inevitably follow, and I do not hesitate, therefore, to ask for the entire sum that will be required to carry the lower river scheme of improvement and the lower portion of the upper river scheme of improvement to completion at an early day, and the accompanying money statements have been prepared accordingly.

The Chief of Engineers (Report, 1900, p. 211) says:

The officer now in local charge (Colonel Adams) presents a strong argument in his report, given in the proper appendix, to which attention is invited, wherein the necessity for completion of the lower river improvement so as to afford an outlet into the Ohio River is urgently set forth. It is desirable that this improvement shall be accomplished at the earliest possible date, and thereby afford an all-year navigation between the city of Nashville and the Ohio River, as well as an outlet to the reach of improved river above Nashville, so that the improvements already made there would become available to commerce.

The Chief of Engineers in 1900 approved the recommendations of Colonel Adams for the lower and upper river, but cut the proposed appropriation to $600,000 above and below Nashville.

The Chief of Engineers, 1901, again approves his recommendation, but cuts the amount to $600,000 below and $600,000 above Nashville.

Colonel Adams in 1901 again urges that the locks between Carthage and Nashville "be made operative together at the earliest admissible date." and that $1,714,500 be made available to do so. I will insert here what he says at page 2409, Report 1901, as follows:

Estimates show that the upper river improvement will cost four times as much and take four times as long for completion as the lower river improvement, and might be expected to greatly cheapen the cost of coal and transportation to and from the farms near the banks of the upper river; whereas the lower river improvement, though costing only one-fourth as much in money and time, may be expected to greatly cheapen the cost of transportation to and from the farms along its banks, too, and to greatly reduce the cost of innumerable commodities that would then seek this means of going to and from the Ohio Valley. Indeed, it appears too obvious to require further elucidation that earlier and larger returns may be expected from the lower river improvement than from the upper river improvement. Therefore it seems well warrantable that early provision be made for the construction of six more locks and accessories below Nashville, and that the seven locks (one now built) constituting the lower river system of improvement, as well as the seven other locks now built and constituting the lower portion of the upper river system of improvement, be made operative together at the earliest admissible date.

It seems impossible to urge the course that has just been indicated with too much vehemence, being apparently the only way of securing a return for the expenditures already incurred and that may hereafter be incurred within a reasonable time and for a reasonable additional outlay.

If large boats could be assured an all-year stage of water between Nashville and the Ohio Valley, it is probably not saying too much that a reduction of 30 to 40 per cent in most freight charges to and from Nashville, Clarksville, and perhaps other points, would inevitably follow, and I do not hesitate, therefore, to ask for the entire sum that will be required to carry the lower river scheme of improvement and the lower portion of the upper river scheme of improvement to completion at an early day, and the accompanying money statements have been prepared accordingly.

Money statement.

July 1, 1900, balance unexpended	$23,609.72
Amount received on account of transfer of public property	161.95
	23,771.67
June 30, 1901, amount expended during fiscal year	22,896.50
July 1, 1901, balance unexpended	875.17
July 1, 1901, outstanding liabilities	226.30
July 1, 1901, balance available	648.87
Amount (estimated) required for completion of existing project	1,714,500.00

Amount that can be profitably expended in fiscal year ending June 30, 1903, in addition to the balance unexpended July 1, 1901:		
For works of improvement	$1,709,500.00	
For maintenance of improvement	5,000.00	
		1,714,500.00
Submitted in compliance with requirements of sundry civil act of June 4, 1897, and section 7 of the river and harbor act of 1899.		

On page 1704, Report 1902, which you will find in the RECORD this morning, part of my speech of yesterday, Colonel Adams uses this language:

In compliance with section 7, river and harbor act of 1899, the determination of worthiness involved too much elaboration for incorporation in this report; therefore, the study of the subject was submitted to the Chief of Engineers in a separate report. The conclusions reached, however, were as follows:

That section of river below Nashville on which two locks are built is twice as worthy of improvement as the section between Nashville and Carthage on which six locks are built, and the section between Nashville and Carthage is ten times as worthy of improvement as the section above Carthage, on which no work has been done.

However, it is claimed as far as learned, that the outlay for canalization above Carthage is warrantable except mainly for the purpose of reaching coal fields alleged to be there. These fields should be vast to warrant an expenditure of $6,000,000 in transportation facilities. It is respectfully submitted, therefore, as a fair business proposition that at least the extent, depth, and quality of the coal said to be there should be accurately determined by borings and openings before incurring the expenditure.

My recommendation, therefore, is that the section below Nashville be pushed to completion before everything else; that the section between Nashville and Carthage be completed next; but I am obliged to regard the section above Carthage as unworthy of improvement except through a fostering care of the Government by maintenance of existing open-channel works.

At page 1696 of the report of 1902, by Colonel Adams, you will find that he again urges the completion of the seven locks above Nashville and the seven below, all between Carthage and the Ohio River. He says:

If Congress deems it wise to make improvement by canalization above Carthage, Tenn., estimates show that the upper river improvement will cost four times as much and take four times as long for completion as the lower river improvement, and might be expected to greatly cheapen the cost of transportation to and from the farms near the banks of the upper river; whereas the lower river improvement, though costing only one-fourth as much in money and time, may be expected to greatly cheapen the cost of transportation to and from the farms along its banks, too, and to greatly reduce the cost of innumerable commodities that would then seek this means of going to and from the Ohio Valley. Indeed, it appears too obvious to require further elucidation that earlier and larger returns may be expected from the lower river improvement than from the upper river improvement. Therefore it seems well warantable that early provision be made for the construction of six more locks and accessories below Nashville, and that the seven locks (one now built) constituting the lower river system of improvement be made operative at the earliest admissible date.

It seems impossible to urge the course that has just been indicated with too much vehemence, being apparently the only way of securing a return for the expenditures already incurred and that may hereafter be incurred within a reasonable time and for a reasonable additional outlay.

If large boats could be assured an all-year stage of water between Nashville and the Ohio Valley, it is probably not saying too much that a reduction of 30 per cent in most freight charges to and from Nashville, Clarksville, and perhaps other points, would inevitably follow, and I do not hesitate, therefore, to ask for one-half the sum that will be required to carry the lower river scheme of improvement to completion at an early day, and the accompanying money statement has been prepared accordingly.

In 1903, at page 1586, Colonel Adams says:

The additional appropriation recommended below should be applied to putting in operation Locks 2, 3, 4, and 5, by construction of dams and erection of gates, and recommends $495,000 for works of improvement and $5,000 for maintenance.

The Chief of Engineers cuts this amount to $300,000, there being an available balance of $216,765 July 1, 1903.

Colonel Adams, for the lower Cumberland, recommended $400,000, there being an available balance July 1, 1903, of $125,000, which the Chief of Engineers reduced to $200,000, there being this available balance of $125,000 July 1, 1903.

At page 416, report of 1903, the Chief of Engineers, in speaking of the condition of the Cumberland above Nashville, with none of these locks in operation, says:

The availability or adaptability of the improvement for the purposes of navigation and commerce has not been increased by the work done under the existing project, and can not be until a definite section of the river has been canalized and locks put in operation. The present condition of the work by reason of its character and incompleteness is such that it has not at present any appreciable effect upon the object sought to be attained—that is, the opening up of the upper Cumberland River to navigation—other than that the improved channel already secured has been maintained.

Thus we see, gentlemen, that Colonel Adams, from 1899 down to 1903, has urged the completion of the seven locks above Nashville, except in 1903, when he urged the completion of the dams and gates of Locks 2 to 5, Lock 1 having been completed, and the dams and gates therefor, I believe, provided for.

Thus we see that from 1899 down to and through 1901 Colonel Adams recommended the continuation of the work at Locks 21 and 22, but thereafter abandoned Locks 21 and 22, including Smith shoals, and urged that the funds available therefor be used in the lower Cumberland, while we see Colonel Sears recommends that the funds for these locks be now used in the upper Cumberland to carry on the improvement above Nashville, where Locks 2 to 5 are located. At the same time Colonel Sears urges the purchase of sites and material and the construction of Locks B, C, and D, in the lower Cumberland.

These officers have continually recommended the continuation of work in the lower Cumberland.

And yet, in the face of all these instructions, and the common sense of the situation, the committee abandons the Cumberland above and below Nashville and directs in this bill that only Lock 21, over 300 miles above Nashville, be put in operation.

The CHAIRMAN. The time of the gentleman from Tennessee [Mr. GAINES] has expired.

Mr. BISHOP. Mr. Chairman, in view of the statement of the gentleman from Tennessee, it is perhaps due the committee that some explanation should be made of the action of the River and Harbor Committee in appropriating money to build Lock and Dam No. 21 on the Cumberland River. This is not a hasty action. Cumberland River has been under improvement in various ways from 1830 up to the present time. Appropriations were made for the river by the State of Tennessee and the State of Kentucky. After the Government took control it proceeded to improve by what they called "open-river navigation," and $155,000 was devoted for that purpose. Subsequently a scheme was devised for canalizing the river, or making slack-water navigation, extending from the Ohio River up to what is known as "Smith Shoals." The river was divided into three sections—that below Nashville, that above Nashville, and the Smith Shoals section. Below Nashville six locks and dams were provided; from Nashville to Burnside twenty-two locks and dams were provided; above Burnside six locks and dams were provided for.

Mr. GAINES of Tennessee. The gentleman means on paper, of course.

Mr. BISHOP. Yes, sir. Now, then, there has been appropriated, under the present project for these locks and dams for the improvement of this river, on the lower river $890,000.

Mr. GAINES of Tennessee. For the lock-and-dam system?

Mr. BISHOP. Yes, sir; and open-river work since the Government has taken charge. There has been expended on the upper-river improvement, $2,241,000, in round numbers. The lower-river section embraces 191 miles; the section from Nashville to Burnside, 357 miles; above Burnside, about 50 miles. The amount required to complete the improvements below Nashville is $1,534,000; for that above Nashville, or to Burnside, $6,605,000. Under the present plan of improvement, Lock and Dam No. A, below Nashville, covering Harpeth Shoals, is now in use. Lock and Dam No. 1, on the improvement above Nashville, has been completed and is now in use. Thus Lock and Dam No. 1 furnishes a pool at Nashville, the same as pools have been created at Pittsburg, where vessels and barges may be loaded during the dry season and be floated out to the Ohio whenever there is a proper stage of water.

The contention is made by the gentleman from Tennessee——

The CHAIRMAN. The time of the gentleman has expired.

Mr. GAINES of Tennessee. I ask unanimous consent that the gentleman may be permitted to conclude his remarks.

The CHAIRMAN. If there be no objection the gentleman will be given that permission.

There was no objection.

Mr. BISHOP. I have no quarrel with the gentleman from Tennessee. I admire his loyalty to his State and to his city. I think, however, in this matter his loyalty to his city has got the advantage of his generosity, because of the amount of $2,241,000 that has been expended in the upper Cumberland nearly every dollar of it has been spent in the vicinity of Nashville.

Mr. GAINES of Tennessee. One million one hundred and six thousand dollars.

Mr. BISHOP. Lock and Dam No. 1 has been completed and it gives them the pool at Nashville. Six additional locks have been constructed right in the immediate vicinity of Nashville.

The Committee on Rivers and Harbors, with the present limitation on the appropriations, believe it will be impossible for them to pursue a system of building locks and dams until the entire Cumberland River has been locked and dammed for slack-water navigation. We believe——

Mr. GAINES of Tennessee. Will my friend allow me a moment? Will the gentleman please tell the House if navigation on the upper Cumberland has been improved one iota by the expenditure of this money, and if the engineer does now recommend that they should proceed with the work of putting in the dams?

Mr. BISHOP. As I was saying, the committee has come to the conclusion that with the limitations put upon the river and harbor appropriations it will be impossible and unjust to the balance of the country to pursue this plan of improving and building all the locks and dams that are required to canalize that river. To-day, by the building of Lock and Dam No. A in the lower river, the worst shoals have been covered and navigation improved to that extent. By building Lock and Dam No. 1, in the upper reach we have a pool at Nashville. We now propose to build a lock and dam at a point near Burnside so as to give them a pool or harbor to answer the demands of commerce in the upper reach of the river. The gentleman says this is against the judgment of the engineers, that this has been included in this bill. Let me refer the gentleman to the reports made upon that project covering a period of nearly twenty years, and I refer him in the first instance to the report of General Barlow, on page 1517 of the Report of the Chief of Engineers for the year 1886. In that he says:

In continuing this improvement under future appropriations it would seem proper to take into consideration the fact that a section of the river below Point Burnside, extending perhaps to the Kentucky State line, finds its most direct markets via the Cincinnati Southern Railway. The claims of this part of the river for immediate improvement are therefore quite as great as those of the portion directly above Nashville. The facilities for carrying on the improvements from Fort Burnside are equal, if not superior, to those of Nashville.

This is in a section of Kentucky, a mountain section, that is not reached to-day by railway. Railways do not parallel the river as they do in the vicinity of Nashville. The people are dependent upon this river in order to get their crops to the markets, as well as the produce of their mines and their forests. They must have help, and they depend upon the Government for that help. There are at least eight or ten counties that depend upon this river, and after the gentleman has had two millions and upward of dollars in and around Nashville he now begrudges the poor pittance of a single lock and dam for the upper reach of that river and the people of Kentucky. [Applause.]

Let us see. This was in 1886. In 1887, by the report of the engineers, found on page 1761, he repeats his former recommendation. And this report is by General Barlow, one of the ablest engineers in the service of the United States.

Mr. GAINES of Tennessee. Will the gentleman yield.

The CHAIRMAN. Does the gentleman yield to the gentleman from Tennessee?

Mr. BISHOP. Yes.

Mr. GAINES of Tennessee. I will ask the gentleman if conditions now in the vicinity of Nashville have not been entirely changed by putting in these locks where I want you to put in dams now?

Mr. BISHOP. I will show to the gentleman and to the House that the engineers of the Army have been consistent from that day until this hour in their recommendations.

Again, in 1891, on page 2273, they say:

The prospective advantage to commerce, as well as present benefits to the community, is the expansion of the lower river trade to points above Nashville, as fast as locks and dams can be completed and utilized for the upper river, by the opening up of a cheap and safe means of transportation for the almost unlimited mineral and forest resources of the upper Cumberland Valley. A steamboat line is operating between Burksville and the head of navigation—Burnside—independent of the Nashville trade.

Again, in 1891, they repeat their former recommendation.

Again, in 1896, in the Engineer's Report, found on page 2245, they say:

By act of June, 1896, $20,000 were made specially applicable to Locks Nos. 21 and 22, and the sites for these locks and abutments of dams have been acquired by the United States. There is no single lock, and perhaps it may be said no two or three locks, in this system the completion and operation of which would do so much for the commerce of the upper Cumberland River as the Lock and Dam No. 21.

Mr. GAINES of Tennessee. Will the gentleman yield for a short question?

The CHAIRMAN. Does the gentleman from Michigan yield to the gentleman from Tennessee?

Mr. BISHOP. Yes.

Mr. GAINES of Tennessee. Who is stating that? What engineer states that?

Mr. BISHOP. That is Colonel Adams.

Mr. GAINES of Tennessee. Now, read the report of 1902, where he took that money and carried it to the lower Cumberland and abandoned that lock and dam.

Mr. BISHOP. In 1901, long after Colonel Adams had gone away—and remember these recommendations were made in the first instance by the engineers long before Colonel Adams came there—I read now from page 2413 from the report of the engineers for 1901, where they say:

By act of June 3, 1896, $20,000 were made specially applicable.

And then they repeat the former recommendation. This is by Colonel Kingman. The United States engineers have been consistent in their recommendations for the building of Lock and Dam No. 21, covering a period of nearly twenty years. So much for the reports of the engineers.

Mr. GAINES of Tennessee. Will the gentleman read the report of 1902, where Colonel Adams abandoned Lock 21 and recommends that the money be expended on the lower Cumberland?

Mr. BISHOP. I will read that.

Mr. GAINES of Tennessee. I have it here, and will read it if you wish. Page 1702.

Mr. BISHOP. I have the reports of the engineers here, and they are sufficient.

Now, in the report of the engineers for 1904, which is the very last report, he says:

By act of June 3, 1896, $20,000 were made specially applicable to these locks. The site for the locks and abutments to Nos. 21 and 22 have been acquired. There is a balance of $16,875 applicable to these locks, which can not be advantageously used unless sufficient appropriations to complete lock and dam are made.

In other words, there have been $16,000 remaining in the Treasury to the credit of Lock and Dam 21, and $9,000 to the Smith Shoals section unused, and he recommends that it may be transferred for another purpose, but no act of the Engineer Department has ever in any way discredited the building of Lock and Dam 21.

Mr. GAINES of Tennessee. If the gentleman will yield, I will take issue with him and read what Colonel Adams has said. He says:

There is a balance of $16,875 applicable to Lock 21 and 22, which is recommended to be made available below Nashville.

Mr. BISHOP. The Engineer Department has never abandoned Lock 21. They say if they can not have the money, enough to build Lock 21, there is no use in keeping the money idle.

Mr. GAINES of Tennessee. How does the gentleman construe that language?

Mr. BISHOP. Oh, let me make my own speech. Now, the advantage of Lock and Dam 21 is this: It will furnish a pool at the headwaters of navigation in that stream. In that neighborhood they produce a great amount of farming products and an immense amount of forest products. It extends up into the finest coal belt of Tennessee and Kentucky. It will aid in opening up that country and do more for the benefit of the people of Kentucky and Tennessee than any other lock and dam that can be built on that river. The building of Lock and Dam 21 will give not only a pool at Burnside for the loading of coal to float down the river to the markets of the South and West, but give as well slack-water navigation for the entire year for a reach of the Cumberland River, 28 miles in extent, to a section of Kentucky that is filled with possibilities of development in coal, oil, timber, and farming.

Mr. BURTON. Mr. Chairman, I ask for a vote.

Mr. GAINES of Tennessee. Mr. Chairman, I would like a little time.

Mr. BURTON. How much time does the gentleman want?

Mr. GAINES of Tennessee. Three minutes.

Mr. BURTON. I will yield to the gentleman three minutes.

[Mr. GAINES of Tennessee addressed the committee. See Appendix.]

The Clerk read as follows:

That the locks and dams shall be at least equal in size and capacity to other locks and dams constructed on the Cumberland River.

Mr. GAINES of Tennessee. Mr. Chairman, I rise to ask some information of the Chair. I desire to make a point of order against the proposition where that private franchise is being granted, which begins on line 9, page 40.

The CHAIRMAN. The Chair thinks the paragraph referred to has not yet been read.

Mr. GAINES of Tennessee. Where is the Clerk reading?

The CHAIRMAN. He has just concluded the reading of the last line on page 40.

Mr. GAINES of Tennessee. Where does the paragraph end? Does it end there or does it end at the word "franchise," over on page 42? I raise the point of order that it is new legislation, if it is now in order, and changes existing law.

The CHAIRMAN. It is not now in order. The paragraph ends at the foot of page 40. The Clerk will read.

The Clerk continued to read.

Mr. GAINES of Tennessee (interrupting the reading). Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. GAINES of Tennessee. Where is the Clerk reading?

The CHAIRMAN. The Clerk has concluded the reading of page 40, which ended that paragraph. He is now reading from the top of page 41.

Mr. GAINES of Tennessee. I now desire to raise the point of order to that portion of the bill beginning on line 9, page 40, down to and including line 25, on the same page.

The CHAIRMAN. The Chair will ask the gentleman to wait until the paragraph has been concluded.

Mr. GAINES of Tennessee. I understood the Chair to rule that it had been read.

The CHAIRMAN. The Chair misunderstood the gentleman. The Chair thinks it would require unanimous consent to return to the paragraph complained of.

Mr. GAINES of Tennessee. Mr. Chairman, I was doing my best to get a ruling of the Chair.

The CHAIRMAN. Two paragraphs had been read after the one mentioned by the gentleman from Tennessee.

Mr. GAINES of Tennessee. I beg to differ from the Chair. I do not think it is a paragraph. I do not think it is finished or that it will be finished until the Clerk concludes on page 42.

The CHAIRMAN. The Chair will submit the question. If there is no objection, the Clerk will return to line 9, page 40, to which the gentleman from Tennessee desires to make a point of order.

There was no objection.

The CHAIRMAN. The gentleman will state his point of order.

Mr. GAINES of Tennessee. I make the point of order that it is new legislation, that it changes existing law, and that it is not recommended by the War Department. I also make the further point that the company to which this grant is given has forfeited its charter, and that it is no longer in existence.

The CHAIRMAN. The Chair will state to the gentleman from Tennessee that as this is not a general appropriation bill the point does not lie.

Mr. GAINES of Tennessee. Then the Chair overrules the point of order?

The CHAIRMAN. The rule which the gentleman invokes would apply only to a general appropriation bill, and this is not so regarded under the rule.

Mr. GAINES of Tennessee. Very well.

The Clerk read as follows:

Congress reserves the right to alter, amend, or repeal any of the provisions of this act in so far as it relates to this franchise.

Mr. GAINES of Tennessee. Now, Mr. Chairman, I move to strike out all of that portion of the bill beginning with line 9, on page 40, down to and including line 12, on page 42. I desire just a moment to read to this House the repeal of the charter existence of this Cumberland River Improvement Company. I read from Exhibit A, war report, submitted by Colonel Barlow in 1887, at pages 1764 and 1765:

CHAPTER 52.—An act to repeal an act entitled "An act to incorporate the Cumberland River Improvement Company," approved April 24, 1882.

Be it enacted by the general assembly of the Commonwealth of Kentucky:

SECTION 1. That an act entitled "An act to incorporate the Cumberland River Improvement Company," approved April twenty-fourth, eighteen hundred and eighty-two, be, and the same is hereby, repealed.

SEC. 2. This act shall take effect from and after its passage.

CHAS. OFFUTT,
Speaker of the House of Representatives.
JAMES R. HINDMAN,
Speaker of the Senate.

COMMONWEALTH OF KENTUCKY,
Office of Secretary of State:

I, J. A. McKenzie, secretary of state for the commonwealth aforesaid, do hereby certify that the foregoing writing has been carefully compared by me with the original on file in this office, whereof it purports to be a copy, and that it is a true and exact copy of the same.

In testimony whereof I hereto sign my name and cause my official seal to be affixed. Done at Frankfort this 27th day of September, A. D. 1886.

[SEAL.]

J. A. MCKENZIE,
Secretary of State.
By H. M. MCCARTY,
Assistant Secretary of State.

I will state that we have been having hearing after hearing for eight years on this Cumberland River work—since the beginning of my first term in Congress—and I may add for eighteen years, for I have been engaged in this work that long, and I have never seen or met the president of this company, nor any member thereof has ever been before the committee when I was there, and I have attended all the hearings the past eight years—that is to say, if such officers were present they never, to my knowledge, made themselves known as such. Hence I think it is folly for us to go along here and give a franchise to something which has not shown its head officially in this House or in the committee room—something that has been wiped out of existence by the legislative wisdom, certainly by the legislative act of the great State of Kentucky. Yet here we are today giving that company a franchise for forty years.

There is another objection. It is unlike the franchise on the Monongahela River I alluded to yesterday (described in an opinion in 148 U. S. Reports) when I called the attention of the gentleman from Ohio [Mr. BURTON] to the fact that there was, as the Supreme Court report shows, a provision requiring this Monongahela Navigation Company to put its locks and dams first, the Federal Government to do its work afterwards; but in this instance we put up lock and dams—twenty-one—first and we wait for this myth, for this headless something, this concern whose charter has been abrogated by the legislature, which has nobody visible at its head so far as I know or can learn, to guarantee its doing its part. The first that I remember of hearing of this company was when this bill or its contents were published.

Mr. SHERLEY. Does the gentleman know there is a corporation that has gotten its charter within less than a year in that name?

Mr. GAINES of Tennessee. I have been dealing with the committee, I will say to my friend, and endeavoring to ascertain all the facts, but I never heard of this company until I read the press or, I believe, this bill.

Mr. BURTON. Will the gentleman yield for a question? I think this discussion is unnecessary in view of the fact that a certified copy of the charter was shown the members of the committee giving a copy of the act of the State of Kentucky within a year. I trust the gentleman from Tennessee will be more careful in his statements of facts that are made.

Mr. GAINES of Tennessee. I will state to the gentleman from Ohio this is the first time I have ever heard of this fact. I have read from the official war record the gentleman has on file in his committee saying this charter—a charter, etc., of the Cumberland River Improvement Company—was repealed in 1886, and have done so in the best of good faith.

Mr. BURTON. I would ask the gentleman from Tennessee not to take up the time of the Committee with an action of twelve or fourteen years ago and giving out information which is entirely misleading and incorrect.

Mr. GAINES of Tennessee. Well, I want to say, Mr. Chairman, that I have been seeking this information and this is the first time I have received it. The gentleman did not make that statement yesterday when I alluded to this act of 1886 repealing this charter. This is the first time it has ever come to my knowledge. I was simply reading the statute and laws of Kentucky before me and was doing so with as much good faith as the gentleman from Ohio has shown in framing this bill.

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Tennessee, to strike out all of lines 24 and 25 on page 41 to line 12 on page 42.

The question was taken; and the amendment was rejected.

Mr. BURTON. I have an amendment to offer, but perhaps the gentleman from Tennessee desires to be heard upon the amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 42, line 15, strike out the period at the end of the line and insert a comma, and add the words "of this amount not more than $5,000 may, in the discretion of the Secretary of War, be expended in the improvement of Little Tennessee River."

The CHAIRMAN. The question is on the adoption of the amendment.

Mr. GIBSON. I wish to state on behalf of the amendment, although I do not suppose anything is necessary, inasmuch as the chairman has proposed it, that it was offered by me to him yesterday for his approval. All I wish to say is that the citizens living along the banks of the Little Tennessee River are now engaged in improving the river themselves, and the object of this amendment is to enable the General Government to cooperate with the people living in that vicinity.

The question was taken; and the amendment was agreed to.

Mr. HUGHES of West Virginia. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

In line 25, page 43, after the word "dollars," add the following:

"Thirty-five thousand dollars is hereby appropriated, or so much thereof as may be necessary, in raising the crest of the lock and dam at Louisa, Ky."

Mr. HUGHES of West Virginia. Mr. Chairman, I wish to say in support of this amendment that this was authorized in the river and harbor bill of the Fifty-seventh Congress, but there was no appropriation made for this purpose. For the

benefit of the House I will read part of the river and harbor bill of the Fifty-seventh Congress, which is as follows:

Improving the Big Sandy River and Tug and Levisa forks of same, West Virginia and Kentucky; the former in accordance with the river and harbor act of March 3, 1889; the latter in accordance with the report submitted in House Document No. 235, Fifty-sixth Congress, second session, $175,000: *Provided*, That a contract or contracts may be entered into by the Secretary of War for such materials and work as may be required to prosecute work upon the said projects, to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate $175,000, exclusive of the amounts herein or heretofore appropriated. Of the said amounts appropriated and authorized, so much thereof as may be necessary shall be expended for completing the locks and dams upon the Big Sandy River; of the balance, so much thereof as may be necessary shall be used in purchasing a site for a lock and dam and the construction of a lock on each of the said forks next above their junction, and any remaining sum may be expended in raising the crest of the lock and dam at or near Louisa in the Big Sandy River.

Now, Mr. Chairman, I have consulted with the Chief of Engineers, Mr. McKenzie, and he advises me that there is barely enough remaining of the appropriation, that can be used for the improvement of the Big Sandy River, to build the two locks provided for in this bill, and I do not care to interfere in any way with the progress of the building of these two locks. We have already been delayed one year now, which I think was unnecessary, on account of the dilatory tactics that have to be gone through with in purchasing land for Government purposes. It was my intention originally to offer the following amendment instead of the one which I have just offered:

For construction of locks and dams on each of the said forks next above their junction, $235,000, of which the sum of $35,000, or so much thereof as may be necessary, may be used for raising the crest of the dam at Louisa, Ky.

Now, Mr. Chairman, it was my intention to offer this amendment instead of the one I have offered, but as economy seemed to be the watchword of the chairman of the committee in making up this bill, I have merely asked for $35,000 for raising the dam at Louisa, and have decided to let the additional appropriation of $200,000, which will be necessary for completing the lock and dam in the fork of each river, wait until the next river and harbor bill.

Now, I think this is a very modest request, and I hope the chairman of the River and Harbor Committee will not make any objection to it.

Mr. Chairman, in my opinion the public money can in no way be better spent than in the improvement of our waterways. In addition to this, the question that seems to be most agitating the minds of the people at this time is the rate question. I am sure that Congress could not in any way better regulate the rate system than by making liberal appropriations for our waterways, and by so doing give the railroads competition wherever it is possible to do so.

It is my intention, when the time comes, to offer another amendment to this bill, and while I have the floor I wish to make a few remarks in support of said amendment. This amendment is as follows:

Improving Ohio River, continuing improvement at movable dam No. 26, in accordance with report submitted in House Document No. 336, Fifty-seventh Congress, first session, to be used for the survey, acquisition of site for lock and dam, and construction of lock, $35,000.

Now, Mr. Chairman, I labored long and hard with the River and Harbor Committee and tried to convince them that this small appropriation should be put in the bill at this time, and my reason for that was this: Mr. Bixby makes the following report, which report I will ask be inserted as a part of my remarks:

FINAL REPORT ON SURVEY OF OHIO RIVER FROM MARIETTA, OHIO, TO THE MOUTH OF BIG MIAMI RIVER.

UNITED STATES ENGINEER OFFICE,
Cincinnati, Ohio, January 14, 1902.

GENERAL: I have the honor to submit herewith the following final report on a survey of the Ohio River from Marietta, Ohio, to the mouth of the Big Miami River, made in compliance with section 1, river and harbor act of March 3, 1899, and pursuant to instructions of the Secretary of War of April 10, 1899, and of your office of April 11, 1899. This report is accompanied by twenty-two drawings, showing the locations of the proposed dams in plan as well as in profile.

The wording of the act of March 3, 1899, in which this work is provided for, is as follows:

"Improving Ohio River from its head to its mouth: Continuing improvement, * * * of which amount the Secretary of War is hereby authorized to expend $35,000, or so much thereof as may be necessary, upon a survey of said Ohio River from Marietta, Ohio, to the mouth of the Big Miami River, with a view to the improvement of said river between said points by movable dams and otherwise, so as to provide 6 feet of water in said river at low water, this survey to include a report upon the location of the necessary dams and the probable cost thereof."

It is assumed that the phraseology of the act looks to securing the desired 6 feet depth down to the mouth of the Big Miami, to do which will require that the last dam be placed somewhere below the last-named point and not immediately at or above it.

The object apparently desired by those interested in securing this survey is the continuation of the similar improvement already provided for on this river above Marietta by past appropriations and the construction of dams of a nature much similar to that already in successful operation at Davis Island, near Pittsburg, at the head of the Ohio River, and those in construction or under approved projects between Davis Island and Marietta.

In my opinion, the improvement of the above-named portion of the Ohio River in the manner and to the extent named is worthy of being undertaken by the General Government, and its execution, as shown below, will require the construction of twenty movable dams, at a total estimated cost of $19,950,000.

The planning for a system of dams of such character necessarily requires that the preliminary surveys be made with special care and accuracy. The nature of such surveys, the conditions which dam locations on the Ohio River must fulfill, the extent and order of work necessary to secure the sites, to construct the dams, to complete the channels through the connecting pools, and to secure a satisfactory service of the same has already been explained in considerable detail by me in a former report, dated December 28, 1898, upon the similar surveys for the similar system of dams in this river above Marietta (see House Doc. No. 122, Fifty-fifth Congress, third session; reprinted on pages 2361–2366, Annual Report of the Chief of Engineers for 1899), which report has already received the favorable indorsement of Congress in the shape of appropriations for Dams Nos. 13 and 18, referred to therein. The general descriptions and provisions of the report of December 28, 1898, apply equally to dams on the Ohio River between Marietta and the Big Miami; the present report supposes their continuance, and the present estimates are made under such supposition.

The method of such work is briefly stated as follows:

The survey is commenced with a traverse (or base) line, used also as a line of precise levels, following closely the bank of the river and reaching from the point farthest upstream to that farthest downstream within the limits of the survey. This traverse line and precise-level work serves as a basis of the entire survey, is the most important element in determining the general location of dams, and is later utilized by the Government in the preparation of harbor-line maps along pools above each dam and by town and city and county engineers along the river in their future engineering work. For the immediate necessities of dam locations, as well as for the reputation of the Government, such precise-level work must be done with great accuracy. It is therefore checked by two independent sets of observations, and is rejected and done over again whenever any errors are detected in excess of 0.01 foot per mile. At the few points where possible such precise-level line is connected with the existing bench marks of the United States Coast and Geodetic Survey, whose work is thereby utilized.

In connection with the precise leveling, cross-section levels from the water surface up to usually above freshet line are also made at intervals of about 400 feet up and down stream, such levels being required to be accurate within 0.02 foot per mile. For future reference during future construction work metallic monuments are buried in the ground at intervals of 1 mile up and down stream near the established mile points. The elevation of these metallic monuments and of all points determined by the survey is computed and recorded to show their heights above mean sea level at Sandy Hook, N. J., based upon comparison with the bench marks of a former level line run by the United States Coast and Geodetic Survey from Sandy Hook, N. J., to Parkersburg, W. Va., and known as one of the transcontinental lines of that Department. The precise-level party is closely followed by a topographic and hydrographic party, by whom soundings are made across the river in cross sections, spaced at intervals of about 400 feet up and down stream along deep pools and at intervals of about 200 feet along shoals and bars, the soundings in each cross section being spaced at intervals of about 40 feet.

In order to determine the local low water along the river special temporary water gauges are established at intervals of about 20 miles up and down the river, and such water gauges are read two or more times per day throughout the continuance of field work. Wherever possible, the lowest known low water and the highest freshet in the neighborhood of the gauge are also determined and recorded.

After the end of field work the results of topography and hydrography are plotted in the office on maps, showing the same in plan on a scale of 1 inch to 200 feet (1:2,400) for use in studying the general and exact locations of dams and for future general reference. As finished, these maps, if in a single piece, would make a roll about 3 feet wide and nearly 700 feet in length. The size of this roll naturally forbids its reproduction for publication or general distribution. The detailed locations of the dams are made on the detailed maps, but for the purposes of preliminary study and of this final report special smaller maps (herewith appended) are prepared to show the low-water surface and the channel bottom of the river in profile on a scale of 1 inch to 5,000 feet (1:60,000) horizontally and 1 inch to 4 feet (1:48) vertically.

Upon both sets of maps all points of the low-water surface, bottom, and banks are referenced by their heights above mean sea level. At places where it is desirable to know the existing limits of low-water channels contour lines are drawn upon the hydrographic maps to show depths in the river at the local low-water stage.

Such work for the length of river from Marietta to Petersburg (a few miles below the Big Miami) has now been completed, and the location of the proposed dams has been based thereon.

After the general location of dams has been determined on the profile maps, its more careful location is studied on the topographic and hydrographic maps, so as to render it, as far as possible, subject to the following conditions:

First. To allow room in the river for a navigable pass 600 feet wide above Point Pleasant (the mouth of the Kanawha) and 700 feet below that point, with its center nearly in line with the existing channel at towboat stages of water.

Second. To allow room in the river for weirs of at least 240 feet total length.

Third. To allow room in the river for the passage of coal tows around each half of the dam during construction of the other half.

Fourth. To allow of the sill or bottom of the navigable pass being placed at least slightly above the present bed of the river and yet at least as far below the water surface as are the channel bars, which, at coal-boat stages, determine the available depth of the river in the pools above and below.

Fifth. To avoid positions where coal tows must be flanked or placed obliquely to the channel line by reason of river bends or oblique currents.

Sixth. To allow of the view of dams by approaching boats for distances of at least half a mile both up and down stream.

Seventh. To avoid positions near shifting sand or gravel bars and mouths of sand-bearing rivers, creeks, and runs, unless such bars and streams be below the dams on the weir side.

Eighth. To allow of positions below the mouths of large tributaries like the little Kanawha, Kanawha, Guyandot, Big Sandy, Scioto, Licking, and Big Miama, near enough to extend navigation properly to the nearest dam in such tributary, but yet far enough below the mouth of such tributary to avoid trouble from deposits and flood overflows and to allow proper handling of boats entering or leaving such tributaries.

Ninth. To avoid the cutting up or otherwise injuring the existing harbors of large cities, especially Parkersburg, Pomeroy, Point Pleasant and Gallipolis, Huntington and Catlettsburg, Ashland and Ironton, Portsmouth and Cincinnati, Newport and Covington.

Tenth. To allow of good pools below the dams probably to be first constructed, below large cities and streams, into which coal tows can descend and assemble while waiting for higher water to carry them to other dams farther downstream.

Eleventh. To allow of distance from dams to the next ripple or sharp bar below sufficient to permit some improvement of the ripple by future dredging, while awaiting the building of the next dams, without spoiling the then existing good draft of water over the sill of the dams above the ripple.

Twelfth. To allow, as commerce develops and demands, an extra 3-foot depth for navigation, of dredging a 9-foot-depth channel from the lower end of the lock to a 9-foot depth in the pool below, without excessive cost and delays.

The first, second, and third conditions prevent locations in narrow parts of the river, and especially at islands where the back channel is bare at low water and of insufficient depth at coal-boat stages. The third condition prevents location within a half mile of the ends of islands or high mid-river bars. The fifth and sixth conditions prevent location at sharp bends.

While all of these conditions can not be fulfilled at each location, still most of the dams have been successfully so located, and the departures from these conditions have been comparatively and remarkably slight.

The location and principal data, including estimated cost, of these dams thus located are as follows:

Dam No.	Distance below Pittsburg.	Bank next lock.	Low-water level.	Sill level, navigable pass.	Lift.	Lower pool level, 6-foot draft.	Estimated total cost.	Location as to near towns or streams.
	Miles.		*Feet.*	*Feet.*	*Feet.*	*Feet.*		
16	143.6	Ohio				586.6		Already located under previous surveys.
17	164.3	W. Va.			8.2	578.4		Do.
18	179.3	Ohio			8.2	570.2		Do.
19	190.1	W. Va.	557.6	556.4	7.8	562.4	$950,000	Below Parkersburg, W. Va., and Little Kanawha River.
20	200.5	do	551.5	549.7	6.7	555.7	1,000,000	Below Hockingport, Ohio, and Big Hocking River.
21	206.1	do	546.6	544.0	5.7	550.0	950,000	Between Reedville, Ohio, and Murraysville, W. Va.
22	219.9	Ohio	538.5	536.2	7.8	542.2	1,000,000	Below Ravenswood, W. Va.
23	229.6	W. Va.	529.6	528.4	7.8	534.4	1,000,000	Above Milwood, W. Va.
24	241.7	Ohio	522.7	520.6	7.8	526.6	1,050,000	Between Letart Falls and Pomeroy, Ohio.
25	259.7	do	514.9	513.3	7.3	519.3	1,000,000	Below Pomeroy, Ohio, and Middleport, Ohio.
26	274.0	W. Va.	509.1	505.8	7.5	511.8	950,000	Below Kanawha River and Gallipolis, Ohio.
27	287.8	do	501.4	498.3	7.5	504.3	950,000	Below Chambersburg, Ohio, and Little Guyandot River.
28	309.5	do	492.5	490.8	7.5	496.8	950,000	Below Huntington, W. Va., and Big Guyandot River.
29	320.1	Ohio	484.8	483.3	7.5	489.3	950,000	Between Big Sandy River and Ashland, Ky.
30	339.0	Ky	477.6	475.7	7.6	481.7	950,000	Below Greenup, Ky.
31	358.3	Ohio	470.0	468.2	7.5	474.2	950,000	Below Portsmouth, Ohio, and Scioto River.
32	383.5	do	462.8	460.8	7.4	466.8	1,000,000	Below Vanceburg, Ky.
33	392.8	do	458.6	455.3	5.5	461.3	1,000,000	Above Manchester, Ohio.
34	419.2	do	452.0	448.5	6.8	454.5	1,050,000	Below Ripley, Ohio.
35	442.3	Ky	444.9	442.6	5.9	448.6	1,050,000	Above New Richmond, Ohio.
36	458.3	do	437.9	435.1	7.5	441.1	1,100,000	Above Cincinnati, Ohio.
37	481.3	Ohio	428.8	427.3	7.8	433.3	1,050,000	Below Cincinnati, Ohio, at Home City and between Culloms and Medoc bars.
38	[a] 503.0	Ind. [a]	[a] 422.0	[a] 420.0	[a] 7.0	[a] 426.0	1,050,000	Below Big Miami River and Aurora, Ind.
Total							19,950,000	

[a] The location, levels, etc., of the lowest dam, No. 38, are necessarily only approximate, and can not be advantageously made until new surveys are ordered and made over the river from the Big Miami to Louisville. The information already on file in the Cincinnati office is sufficient to indicate quite clearly that a good location for Dam No. 38 can easily be found near Rising Sun bar (about 13 miles below the Big Miami) for properly connecting Dam No. 37, the one below Cincinnati, with No. 29, the first dam of the future Big Miami-Louisville series, and also that such dam can be constructed within the $1,050,000 allowed for above.

Prior to and during the actual construction of dams much dredging must be done, at, above, below, and between dams, to straighten the connecting channel ways, to remove such portions of bars as would prevent the passage of tows around dams during construction, to remove such temporary bars as are always caused, to a greater or less degree, by temporary works of construction, and to also remove the channel ends of old spur dikes so far as they may be obstructions to the improved navigation. Such dredging is a necessary accompaniment of dam construction in all navigable rivers. Its costs should naturally be considered a part of such construction, and such cost is therefore included in and covered by the estimates of this report, especially in connection with dams Nos. 20 to 26, inclusive, and dam No. 36.

Between Marietta and the lower end of the present survey below the mouth of the Big Miami the majority of the dams will, according to the information so far secured, be necessarily founded on gravel bottoms, like those already built or planned above Marietta. Where good rock bottom can be secured, it will of course be utilized as a means of adding to the strength of the dam; but the existence of this rock bottom will not materially affect the cost of the completed structure, and may, therefore, be neglected so far as concerns all questions of estimates of cost.

After appropriations are made for individual dams and before the actual construction of each dam is commenced, careful local surveys at each location are made, for which about $5,000 per dam should be allowed, to determine the nature of the subsoil of the river bed (affecting foundations and dredging) and of its banks (affecting abutments), and to determine many other questions necessarily pertaining to the purchase of the needed property and preliminary to the making of contracts and to the best adjustment of details concerning the economy of final construction. These local surveys may require some slight changes in the final exact location of the dams; but past experience at dams above Marietta indicates that such changes will diminish rather than increase the final cost of the dam, should best be made just prior to actual construction, and need not be considered as materially affecting the amount of appropriation as necessary to insure the construction and completion of the dam.

After these detailed local surveys shall have been made the necessary property is sought and secured, requiring special funds immediately available. The cost of such property is a matter of much uncertainty, and will vary considerably at the various locations.

From past experience with dams in the river above Marietta, the cost of the work below Marietta down to the Big Miami is estimated as follows:

For an average lock of 600 feet length and 110 feet width, with navigable pass of 600 feet length, and with weirs of 240 feet available openings, all arranged to provide 6 feet navigable depth in the shoalest parts of the improved channel of the pools, with an average lift at each dam of 7.2 feet:

Lock, including cofferdam, excavations, foundations, masonry timber, and ironwork of fixed and movable parts, power plant, machinery, and accessories	$350,000
Navigable pass; same items as above	$150,000
Weirs, piers, abutments; same items as above	170,000
Miscellaneous, including local surveys, purchase of sites, embanking, retaining, riprapping, and paving of banks, lock employees' houses, storehouses, other buildings, dredging of approaches to locks and passes, dredging of shoals and removal of obstructions in pools, engineering work of location, construction, and inspection, office work of engineering and disbursements, and other contingencies	200,000
Total	870,000

But the extra width and height of lock esplanade filling, extra length of weirs, and extra channel dredging, incident to the individual locations of the dams, increase the above estimates to final totals of from $950,000 to $1,100,000 at the individual dams as given in the detailed table above.

The total cost for the entire system of twenty dams, from No. 19 (above Parkersburg) down to No. 38 (below Big Miami), inclusive, is therefore estimated at $19,950,000.

Improved methods of work, such as may arise during the next few years, may reduce some of these estimates during the actual progress of work, while, on the other hand, unforeseen contingencies may somewhat increase such estimates; but the above estimates are made with the expectation that extra expenses in one direction will and may be covered by the saving in other directions, and it is believed that these estimates are as close as it is safe to depend upon at the present day, and they are, therefore, herewith submitted as a sufficient basis for the appropriations necessary to the commencement of work, as well as for showing the probable final cost of the completion of the slack-water system herewith described.

For the most economical prosecution of the work, appropriations should be so made that $25,000 per dam near Parkersburg, $35,000 per dam from there to below Portsmouth, and $50,000 near Cincinnati, should be immediately available for local surveys and purchase of sites (the unused portions to be later available for work of actual construction), in order ot allow the necessary preliminary work on each dam being done considerably in advance of actual contracts and actual construction of the work. Past experience shows that nearly a year is needed at each lock for local surveys, examination of titles, and other legal work connected with the acquisition of sites; and, furthermore, that the price of property near any selected location rises very rapidly as soon as such location is approximately known. For such reasons, the progress of construction of these dams would be much simplified and hastened if a first appropriation to the extent of $700,000 could be made immediately available for the purchase of all the sites from Marietta to the Big Miami.

The most economical prosecution of the work further requires that after the sites have been secured further appropriations should then be made, in such way as to allow the progress of work at several locations at once, in order to reduce to as few years as possible all necessary interference with the regular river traffic. Past experience has

shown that the construction of a single dam requires about one year for acquisition of site, at least two years for the construction of the lock, at least two years more for the navigable pass and weirs, and at least one year more for the installation of operating machinery, or at least six years in all. If there were no restrictions to such progress by reason of lack of funds, all locks could be built at the same time, after which each navigable pass could be commenced as soon as each lock was finished, and each set of weirs could be commenced as soon as each navigable pass was finished. Such method of construction would allow the completion of all the dams in the time now required to complete a single dam.

I am decidedly of the opinion that specially advantageous results to commerce, obtained with special quickness, will follow the construction of dams across the Ohio River whenever these dams are built a short distance below large tributaries and large cities, partly because the large harborages thus obtained in the Ohio River will afford fine places for the loading and unloading of coal fleets and other tows, and for the stoppage and assemblage of such fleets and tows while waiting favorable stages for departure up and down both the main river and its tributaries, and partly because such increased harborage will be most advantageously placed by being at the already established centers of population and freight communications, thus giving special stimulus to commerce and related business interests. Cincinnati, Newport, and Covington, at the mouth of the Licking, form together the largest center of commerce on the portion of the river now under survey. The Kanawha River has already been slack watered from its mouth to the head of navigation. The Little Kanawha River and the Big Sandy River have already been partially slack watered.

The Scioto River is the largest of the remaining tributaries. I therefore recommend strongly that the next dam to be built in the Ohio River be built below Cincinnati, the next one below Point Pleasant and Gallipolis (mouth of the Kanawha River), and the next three below Parkersburg (mouth of the Little Kanawha), Catlettsburg (mouth of the Big Sandy), and Portsmouth (mouth of the Scioto); after which the rest of the dams between Pittsburg and the Big Miami should follow in the order which may at that time appear to the engineer in charge as the most useful to the general river commerce. The above estimate for twenty dams allows for the location of the first five at the points above named, and the after interpolation of the remaining sixteen dams between such points and the termini of the present survey.

A report under date of February 10, 1899 (House Document No. 265, Fifty-fifth Congress, third session [a]), specially called for by Congress, has already been submitted as regards the construction of a dam at or near Cullums Ripple, below Cincinnati, the cost of such dam having been estimated at $1,050,000, of which $50,000 was recommended for immediate use for local surveys, purchase of sites, preparations for contract work, and commencement of actual construction. In that report I assumed that the object of the inquiry was to obtain a report upon such a dam as would secure the best results for the harbor of Cincinnati, and that the phraseology "at or near Cullums" would allow of a final location of the dam as far below Cullums as it could be placed and yet secure a channel depth opposite Cincinnati of not less than 6 feet at low-water stage. The farther downstream such dam be placed, under such conditions, the longer will be the available harbor of Cincinnati.

The present survey shows an excellent location near Home City, about half way between Cullums Ripple and Medoc Bar, the next bar farther downstream, so as to give a long pool above the dam, and another of fair length immediately below it for assemblage of coal tows after passing the lock. The recommendations of the report of February 10, 1899, are, therefore, herewith repeated to the effect that the construction of such a dam is advisable, and that its cost is estimated at $1,050,000. Whenever such appropriation is made for such a dam, the dam might perhaps be best designated as Dam No. 37 of this report, or as the "dam in the Ohio River at Home City, between Cullums Ripple and Medoc Bar, below Cincinnati, Ohio."

Very respectfully, your obedient servant,

W. H. BIXBY,
Major, Corps of Engineers.

Brig. Gen. G. L. GILLESPIE,
Chief of Engineers, U. S. Army.

(Through the Division Engineer.)

[First indorsement.]

ENGINEER OFFICE,
U. S. ARMY, CENTRAL DIVISION,
Cincinnati, Ohio, January 17, 1902.

Respectfully forwarded to the Chief of Engineers, United States Army.

I concur in the general features of the project of improvement outlined by Major Bixby, and also in his opinion that it is worthy of being undertaken by the General Government.

G. J. LYDECKER,
Colonel, Corps of Engineers,
Division Engineer, Central Division.

It will be seen by this that this appropriation is for the purchase of a site for what is No. 2 of five dams, the first recommended to be built between Marietta, Ohio, and the mouth of the Big Miami River. No. 1 on the list is below Cincinnati, Ohio, and this dam is well under way. For No. 3, which should come after the one for which I am asking this appropriation, the site has been purchased, and I am sure the Senate will tack on the amendment to this bill, making an appropriation for the immediate construction of dam No. 3.

This leaves dam No. 2, unless this amendment is adopted which I shall offer when the time comes, without any appropriation to begin this work. I am sure the chairman of the committee will bear me out in this statement, that the next river and harbor bill will contain an appropriation for building lock and dam No. 26. That being the case, it will only facilitate this work by making a small appropriation now for the purchase of this site.

[a] See pages 2367–2371, Annual Report of the Chief of Engineers for 1899.

It is useless, Mr. Chairman, for me to take up the time of your committee setting out the many reasons why these five dams should not at once be provided for. I shall ask to have embodied in my remarks resolutions recently passed by the Catlettsburg Chamber of Commerce, which relate more particularly to dam No. 29, which is below the mouth of the Big Sandy River, and almost the same condition applies to dam No. 26, below the Big Kanawha River.

In addition to this, the Big Kanawha River is locked and dammed from its head to its mouth. This river goes a long way toward supplying the coal for Cincinnati, Louisville, and the southern market.

Resolutions of the Catlettsburg Chamber of Commerce.

Resolved, That we urgently petition Chairman BURTON and the River and Harbor Committee of Congress to carry on the work of improving the Ohio River in accordance with the recommendation of Major Bixby in his report, which was approved by the Secretary of War and recommended by him to Congress, for the following reasons:

First. Because the Ohio Valley Improvement Association, which represents the business interest of the entire Ohio Valley, approved this plan of procedure by its resolution adopted at its meeting in Evansville, Ind., in 1903, and reapproved and adopted the same at its meeting recently held in Huntington, W. Va., November, 1904, which resolution, adopted by the Ohio Valley Improvement Association, reads:

"*Resolved*, That the improvement of the Ohio River be made according to the reports and recommendations of the United States engineers and approved by the Secretary of War."

Which represents the consensus of opinion of the business interests of the Ohio Valley.

Secondly. We ask that the recommendations of Major Bixby be carried out to the letter, because we thoroughly concur with him in his opinion when in his report he says:

"I am decidedly of the opinion that specially advantageous results to commerce, obtained with special quickness, will follow the construction of dams across the Ohio River whenever these dams are built a short distance below large tributaries and large cities, partly because the large harborages thus obtained in the Ohio River will afford fine places for the loading and unloading of coal fleets and other tows, and for the stoppage and assemblage of such fleets and tows while waiting favorable stages for departure up and down both the main river and its tributaries, and partly because such increased harborage will be most advantageously placed by being at the already established centers of population and freight communications, thus giving special stimulus to commerce and related business interests. Cincinnati, Newport, and Covington, at the mouth of the Licking, form together the largest center of commerce on the portion of the river now under survey. The Kanawha River has already been slack watered from its mouth to the head of navigation. The Little Kanawha River and the Big Sandy River have already been partially slack watered.

"The Scioto River is the largest of the remaining tributaries. I therefore recommend strongly that the next dam to be built in the Ohio River be built below Cincinnati, the next one below Point Pleasant and Gallipolis (mouth of the Kanawha River), and the next three below Parkersburg (mouth of Little Kanawha), Catlettsburg (mouth of the Big Sandy), and Portsmouth (mouth of the Scioto); after which the rest of the dams between Pittsburg and the Big Miami should follow in the order which may at that time appear to the engineer in charge as the most useful to the general river commerce."

Thirdly. Your committee having wisely provided for the construction of the locks recommended by Major Bixby below Cincinnati and below the Little Kanawha River, and the lock below the Big Sandy River (No. 29) being the next in order of construction to that of the Little Kanawha, according to the recommendations of this eminent engineer, we urgently ask that you provide for the immediate construction of No. 29, because the naturally deep pool below said lock and the pool formed by said lock above same will produce 25 miles of deep-water navigation in the Ohio River, upon the banks of which pools there is to-day seventeen municipalities in three States, with a population of near 100,000, and being the most densely populated section upon the entire Ohio River that is not provided with a lock either finished or in process of construction.

Fourthly. We ask for the immediate construction of Lock No. 29 because the manufacturing interests of this section of the valley are of far more importance than those of any other section of the Ohio Valley that is not as yet provided with a lock and dam, either in process of construction or completed, as evidenced by the following facts. There are upon the banks of this pool, with a daily capacity:

	Tons.
7 iron furnaces	1,465
5 fire brick works	548
1 steel plant	500
1 sheet mill	75
3 nail mills	700
5 rolling mills	580
2 cement works	400
7 flour mills	142
7 ice plants	285
24 lumber mills	1,655
2 box factories	30
3 potteries	23
6 building brick works	480
2 stove works	35
2 hub, spoke, and handle works	60
3 wire mills	300
3 furniture and dimension mills	150
2 glass works	20
1 veneer mill	30
1 excelsior work	20
9 iron foundries	1,475
50 coke ovens	100
1 engine works	20
2 breweries	100
Total	9,193

Calculating 300 shipping days to the year will make the annual capacity of the above plants 2,757,900 tons.

This only represents the output of the mills, with no calculation for incoming freights on raw materials or fuel.

In addition to the above, there are upon this pool eight machine shops, giving employment to 1,200 men; one car works, giving employment to 1,500 men; one frame factory, giving employment to 300 hands, and numerous small factories, all of which are interested in the construction of pool No. 29, in order to obtain low freights and cheaper fuel.

Fifthly. We ask for the immediate construction of lock No. 29, because the utilization of the 40 miles of slack-water navigation now completed in the Big Sandy River is dependent upon the construction of this lock. This lock being located so as to form a portion of the Big Sandy system, thereby enables all the above-named factories to obtain their coal supply from said river, upon which there is the largest undeveloped coal field in the United States, and without this lock access to the Big Sandy is cut off during low water.

Sixthly. The construction of lock No. 29 will place additional water on Guyan and Dogham bars, thereby extending the low-water navigation of the Ohio River more than 50 miles.

As soon as this dam just below the mouth of the Big Kanawha is completed—in the Ohio River—it will work the following benefit to transportation with a slight rise in the Ohio River, by letting down the dams in the Big Kanawha simultaneously there will be created in the Ohio River an artificial tide of sufficient depth for navigation. This can be done at least a dozen times in a dry season, thus letting out the coal barges from the great coal fields of West Virginia, so they can be transported, with their useful commodity, to Cincinnati, Louisville, and other southern markets. The last fact mentioned is important for the reason that in many instances it will prevent a coal famine.

It is very often the case that the Ohio River in the fall of the year is dry and not navigable for quite a long period of time and in extra cold weather the railroads are totally unable to supply the market with coal. This is not to be wondered at, however, when a towboat tows, say, twenty barges and each one of these barges carries almost as much as a whole train load of coal.

Now, Mr. Chairman, I am very much in earnest in having this bill amended and $35,000 added for the purpose of a site for Lock and Dam No. 26. I will agree with some that it is apparent that Uncle Sam needs more revenue; however, it is true that he has a comfortable surplus, and that if all of the appropriations asked for this year were granted there would still be a nice balance, though it would not be sufficient for another year of such financiering. I know that the Administration has asked that the Departments be as economical as possible in asking for appropriations, and this same solicitation has also been extended to the chairmen of the committees of this House and they are agreed on a cheeseparing policy, but this can be carried too far and important improvements of this nature will not be taken care of. I am in favor of making a liberal appropriation for our rivers and harbors, also for the improvement and building of Government buildings all over the United States. It now looks like an effort will be made to prevent the passage of the omnibus public building bill at this Congress.

I would regret this exceedingly, and I think, as a matter of party policy, it would be a serious if not a fatal mistake. In the bill reported by the Committee on Public Buildings and Grounds, in my district I have an appropriation of $100,000 for a Government building at Bluefield, Mercer County, W. Va. This is comparatively a new town, and its growth is phenomenal. This building when completed will be used for a Federal court room and its offices and also for a city post-office. The urgent needs for this building at this time can not be fully expressed by me in the limited time allotted me. However, I wish to say this to show you something of the magnitude of this post-office. Twelve years ago the receipts from this office were $300; the receipts this year will be something over $20,000 per annum. The present post-office building is very cramped and small and in no way fitted for doing a large business, such as is done in this office, but it is impossible for the Government to do any better in the building they have until a new one is erected. In addition to this, a very large part of the business of the Federal court of the southern district of West Virginia comes from this immediate locality, and accommodations for holding court are very inadequate; and for this reason a majority of the cases are sent to Charleston, W. Va., where they have a Federal court building. This naturally entails a very large expense, viz, that of taking prisoners and witnesses from Bluefield to Charleston, a distance of 275 miles. This alone would in a short while pay for the amount appropriated necessary to erect this building.

If we were in the midst of a financial crisis, if business were bad, and if money were hard to get, there might be some sense in adopting a crablike policy. But such is not the case. Money is easy and in plenty, business is good, and national taxes the lightest in all the history of the world. The American citizen contributes only about $5 per capita for national purposes (outside of the Post-Office), and he could make it $6 without feeling it, and indeed it would be a good thing not only for national purposes, but would help business materially from every point of view.

Is it wise that Uncle Sam should conduct business in ramshackle structures when he ought to have good ones of his own? Taxation properly appropriated is not burdensome on the people. Uncle Sam must be honest, yet progressive, and the people may always be depended on to indorse him.

Mr. BURTON. Mr. Chairman, I see no possible ground for this amendment. The sundry civil bill will carry an appropriation for the Big Sandy River. The estimate is $125,000. I have not examined it as yet to see what amount has been inserted in the bill, but it is part of the continuing contract authorized by the act of 1902. This improvement described in the bill is of much more vital importance than that, because, unless this improvement is made, access to the dam will be very difficult, if not impossible. It would be extremely injudicious to adopt such an amendment. If the gentleman from West Virginia [Mr. HUGHES] were to propose an amendment advocating an additional appropriation, there would be some arguments for it, though I should oppose it strenuously. But to divert from the purpose intended by this appropriation would certainly be most injurious.

Mr. HUGHES of West Virginia. If the chairman of the committee [Mr. BURTON] will allow me, is not the intention to divert the amount appropriated?

Mr. KEHOE. Mr. Chairman, I would like to ask the gentleman from West Virginia [Mr. HUGHES] a question.

Mr. HUGHES of West Virginia. Certainly.

Mr. KEHOE. I did not understand the gentleman from West Virginia [Mr. HUGHES] wanted to divert this appropriation? He still desires an additional appropriation?

Mr. HUGHES of West Virginia. Certainly. My amendment calls for $35,000 additional.

Mr. BURTON. That puts it on a different basis. The committee has pursued a policy that where there was a contract outstanding and money not yet appropriated upon it to refuse additional appropriations unless exceptional circumstances exist. This would be one of the very least deserving, in my judgment, of all. I do not believe in going on and improving that stream at great expense while the Ohio and other great streams remain unattended to. I trust the amendment will be voted down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from West Virginia [Mr. HUGHES].

The question was taken, and the amendment was rejected.

The Clerk read as follows:

Improving the Falls of the Ohio River at Louisville, Ky.: For maintenance and alteration of the existing dam, $80,000.

Mr. SHERLEY. Mr. Chairman, I move to strike out the last word. It is not my intention to offer any amendment to the paragraph just read, but I do feel called upon to say just a word relative to the improvement of the Ohio River at Louisville and my attitude in regard to the Ohio River generally. There can be, for the expenditure of $219,000, erected a dam at the head of the falls at Louisville that will create a 6-foot pool extending as high as Madison, Ind., that will aid, more than any other dam on the river, in the final canalizing of the Ohio River, and it can be done at a cost that is but a third of the cost of any similar dam at any other point on the river; and by a very small increase in cost a 9-foot pool can be created. It would not only do that, but it would serve to help deepen the channel over the Falls of the Ohio, which is about the most trying point in the navigation of the whole river. River men will tell you that there is more difficulty experienced now at the Falls of the Ohio than at any other place. And it did seem to me that the committee should have made a larger appropriation than is carried in this item and the subsequent one, relating to work on the Indiana chute.

But realizing, as I do, that they are limited to what to my mind is an absurdly small bill, realizing that they have given for the Ohio River nearly $2,000,000, and especially realizing that it is absolutely indefensible for any Member of Congress to approach legislation of this kind simply from the attitude of his own district, I shall not offer any amendment.

I am glad to represent the great city of Louisville. I shall ever be ready to fight for her rights, but I hope the day will never come when I shall be blinded to the rights of other sections of the country or when I am willing to stand here in criticism of other sections of the country because my city or my district does not get what I think it ought to have. [Applause.]

But this is what I think the membership of this House ought to do: Not to criticise the committee for the results of the most arduous labor that any committe does, not to undertake to point out that this and that thing have been neglected, for we know it, and the committee knows it and can not help it; but what we ought to do is to create a sentiment in America that would warrant the committee in bringing in a bill of fifty or sixty millions of dollars instead of one of $30,000,000. I would like to see the President of the United States in his speeches before the country not simply agitating in favor of an increase of our Navy. I would like to see him call the country's attention to the benefits to be derived from the improvement of our waterways and help create a sentiment that would not only give support to but demand of Congress the annual expenditure of twice the sum now spent. I think that when you are spending ten times as much on national insurance as you are in thus building up the business of your country you are making a mistake. I believe when the absurd difference between expenditure for war purposes and those for business purposes is brought home to the people they will demand a change.

I know that the sentiment now of the Ohio Valley favors a larger appropriation in the river and harbor bill, and that is not simply a selfish position from the standpoint of the people of that valley. Every man who does anything to cheapen the cost of transportation helps civilization as directly as in any other possible way. History shows that civilization has advanced to just the extent that the interchange of commodities and ideas has been made easy between different sections of a country and different parts of the world. This House and the country have been agitated over the question of freight rates. The President calls special attention to it, but not a direct word on this subject, and yet there is not a man who examines the schedules of the freight rates of the country to-day but knows that wherever water competition exists there you will find a low railroad rate. You will do more to bring about equity, you will do more to do away with excessive rates by having the right sort of improvement of your rivers and your harbors than by all the commissions you can create from now until the end of time.

The CHAIRMAN. The time of the gentleman from Kentucky [Mr. SHERLEY] has expired.

Mr. SHERLEY. Mr. Chairman, I ask unanimous consent to continue for five minutes longer.

The CHAIRMAN. The gentleman from Kentucky [Mr. SHERLEY] asks unanimous consent that he may continue for five minutes longer. Is there objection?

There was no objection.

Mr. SHERLEY. I have been told that years ago, when there were negotiations on foot to buy the Louisville and Evansville packet line, and those negotiations were being conducted with Mr. Jay Gould, after weeks of negotiations the matter finally fell through, and in response to an inquiry as to why, the answer came from Mr. Gould, "You do not own the right of way."

No, he could well say that no one did or could own the right of way of the rivers; the country owns them; and if the Ohio River and the Mississippi River—and I use those simply as marked illustrations—were navigable all the year around, it would not matter whether there was a pound of freight upon their waters, the good that would result would many times warrant the cost of the improvement. It is a false estimate to undertake to determine the value of a river simply by the commerce that floats on it or would float on it in case it could be used the year around. The very fact that there can be use of a river, continuous use, brings about a competition, a potential competition, that makes every railroad tapping that same territory meet and anticipate it with low rates.

Not only is that true, but we were well told yesterday how the city of Pittsburg was unable for months to send out to the rest of the country the great freight originating there from the scarcity of cars. The country has had to face the proposition for four or five years past of insufficient rolling stock to move our vast and growing commerce, and yet to-day we find a bill brought in here for $32,000,000, an insignificant sum in comparison with the other expenditures of the Government, and doubt expressed as to whether it will be allowed to become a law. The chairman of the committee tells us that $20,000.000 has been the average annual expenditure. I say to you that Congress ought to see to it that the expenditures for this purpose amount not to twenty but to forty millions a year. If it be true that we have not engineers enough to continue the work on such a scale, then increase their number, as we did last session.

I am in favor of increasing that branch of the Army, and it is about the only branch of the Army I am in favor of increasing, because it is the only branch of the Army which is not a burden, though it may be that to a very limited extent an army is a necessary burden. I hope, instead of the discussion constantly taking place only as to particular items, which is well enough, that there will also be enough protest raised here against the size of this bill to make the powers that be deal justly with the business interests as well as the war interests of America. [Loud applause.]

I withdraw the pro forma amendment.

The Clerk read as follows:

Improving Kentucky River, Kentucky: The Secretary of War may, in his discretion, use so much of the funds heretofore appropriated for the improvement of said river as may be necessary to construct a county bridge across Twomile Creek, in Clark County, Ky., and in repairing the damage to the county road caused by the construction of Lock and Dam No. 10 at Ford, Ky.

Mr. BURTON. Mr. Chairman, I would like to offer an amendment there, made necessary from the fact that it has been reported to the committee that this bridge has already been built by the county court.

The Clerk read as follows:

Page 44, line 13, strike out the words "construct a" and insert in lieu thereof the following: "Repay the county court of Clark County, Ky., the reasonable cost expended by it in constructing the;" and then strike out, on line 14, the words "in repairing" and insert the following words: "To repair."

Mr. BURTON. I would like to ask the gentleman from Kentucky [Mr. HOPKINS] whether that latter amendment is necessary? If it is not I will have it left out.

Mr. HOPKINS. I ask you to leave it in. I think it should be in.

Mr. BURTON. Is that improvement complete or incomplete?

Mr. HOPKINS. It is partially complete and partially incomplete.

Mr. BURTON. Then I ask that the whole amendment go in.

The question was taken; and the amendment was agreed to.

The Clerk read as follows:

Improving Ohio River: General improvement, $300,000: *Provided*, That from said amount the Secretary of War may, in his discretion, expend from the amount herein appropriated a sum sufficient for the following, or either of them, namely, to remove the rocks in the channel of said river or canal near to the falls at Louisville, Ky., for the dredging of pool No. 6 in said river, and for necessary dredging in said river at and near Middleport, Ohio: *Provided further*, That the unexpended balance of funds available for the construction of an ice pier at or near the mouth of Big Hocking River may, in the discretion of the Secretary of War, be expended toward the completion of an ice pier at Maysville, Ky.

Mr. HUGHES of West Virginia. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 47, after line 15, insert the following:

"Improving Ohio River: Continuing improvement at movable Dam No. 29 in accordance with report submitted in House Document No. 336, Fifty-seventh Congress, first session, to be used for the survey, acquisition of site for lock and dam, and construction of lock, $35,000."

Mr. HUGHES of West Virginia. Mr. Chairman, I will state in explanation of this amendment that this is $35,000 for the purchase of a site that was recommended by Mr. Bixby, the engineer who made the survey of this river. This amount, he said, would be required for the purchase of this site, and in his general report of the improvement of the Ohio River he recommends that the dams be erected in the following order: One below Cincinnati, Ohio; the second below Point Pleasant and Gallipolis, and then this one—$35,000—as indicated now; the third below Parkersburg; the fourth below Catlettsburg, Ky., and the fifth below Portsmouth, Ohio.

For the dam below Parkersburg, W. Va., the site has been purchased. That was the third one to be built of the first five dams, and was taken out of the regular order. It may be advanced by some that there is now in process, or will be after this bill is passed, a survey of the Ohio River, changing from a 6-foot to a 9-foot stage, and for that reason this amount should not be appropriated at this time, for the reason that the site on a 9-foot stage may be changed. I have gone over this with this engineer, and he assured me that if the location should happen to be changed it will only be changed a very short distance, and this site would not be purchased until that information was obtained.

My reason for asking for this appropriation at this time is, and I am sure that the chairman of this committee will bear me out in the statement, that the next river and harbor bill will contain an appropriation for the building of this lock and dam No. 26 on the Ohio River. As the committee well knows, it takes at least two years to get these sites. The reason for that is that the Government is so particular in purchasing sites, and very often they have to get them through a process of law, and are often delayed on account of infant heirs.

Now, on the Big Sandy River, where we have an appropriation now for the locks, this work could have been done last year, but we were delayed one year on account of the purchase

of these sites; and this is what we would like to obviate by offering this amendment at this time.

I hope that the chairman of the committee will not object to this small appropriation at this time. It will facilitate the improvement of this river two years by purchasing the site at this time.

Mr. BURTON. There are a number of dams projected on the Ohio River, and delegations have called separately advocating this one and that one. I really have wished sometimes that they might all come together into a room and enter into a joint discussion as to the merits of each project. I should be glad to go up into the gallery and listen to that discussion. [Laughter.] I think it is a little too much to ask of me to stand up against each one separately, each claiming his is the most important.

The proposition presented in this amendment is an entirely indefensible one. It suggests that we shall purchase a site for a dam which is not yet provided for. We have had some experience in that very matter. The gentleman from West Virginia speaks of Major Bixby's survey, and that this ground is where he surveyed the location for the dam. Major Bixby has gone away from the Ohio River to another station, and has also gone away from that, which indicates that it was some time ago that he made this survey.

It has been found necessary to change two of the sites, one of them nearly 6 miles and the other about a mile and a quarter or a mile and a half. What kind of a position would this House be taking to select the ground as the site for a lock and dam, when we do not know where that lock and dam will be, when there is a proposition pending to change the depth of the channel from 6 feet to 9 feet?

Mr. DOVENER. There are three cases of that kind, instead of two. The site of Dam No. 13 has been changed a mile and a half.

Mr. BURTON. My colleague suggests another instance of change in the site.

Mr. HUGHES of West Virginia. Before this site is purchased, will not the engineers in charge have decided where this site shall be for this Dam 26?

Mr. BURTON. We anticipate that it will be at least two years before the final report will be made on the survey. Indeed, the labor is such that I should think the work would be done insufficiently if they report within one year. The probable fact is that they will make a preliminary report and then a later report.

Mr. GAINES of West Virginia. Mr. Chairman, in answer to the position of the chairman of the committee [Mr. BURTON], I want to say that I understand that when we appropriate money for a site the engineers make such slight changes as may be necessary before they determine upon the exact location. I want to impress upon the committee the fact that there can be no great change of the location of this lock, for the reason that it is located below the mouth of the principal tributary of the Ohio River. It is located below the mouth of the Kanawha River for a definite and particular purpose, and that purpose would not be changed on any other survey for any different stage of water in the river.

Now, if the committee will indulge me for a moment, I want to state the importance of this lock to the navigation of the Ohio River and to the commerce of the Ohio River and its principal tributary, the Kanawha. The Kanawha River has been locked and dammed and is available for the purpose of coal transportation for almost all the days of the year. The Kanawha River can be used, and is used, almost two days in the year for every one day that the Ohio River is serviceable for navigation. For the last two years they have been adopting the plan of letting out the water in the locks on the Kanawha River, one after another, and in that way, upon a very slight rise in the Ohio River, are able, upon the head of water artificially created, to take the coal from the Kanawha coal regions to the markets of Cincinnati and Louisville and prevent a coal famine and unusually high prices of coal in those markets at any time.

Now, this lock is located below the mouth of that river. It will form a pool 18 miles long. By the adoption of the plan I have just mentioned, letting the water out from one lock to another in the Kanawha River and then having the boats in this big pool, with its ample harbors, with the immense amount of water that it will accumulate, you can, at almost all stages of the river, practically at all times, reach the Cincinnati and Louisville and all intervening markets and prevent a coal famine and high prices of coal. Now, we are not asking anything large of this committee, but asking it only to give us this appropriation of $35,000 for the purchase of a site, making it available, and letting us advance this work by two years.

It is no great amount of money, but it is a very great service. I am not speaking merely for home consumption, but ask the committee for once to stand by us with a vote, and do what is the proper thing, even though the River and Harbor Committee have not seen fit to grant it in the first instance.

The CHAIRMAN. The time of the gentleman from West Virginia has expired.

Mr. GAINES of West Virginia. I ask, Mr. Chairman, that I may have five minutes more.

The CHAIRMAN. The gentleman from West Virginia asks that his time be extended five minutes. Is there objection?

There was no objection.

Mr. GAINES of West Virginia. I was very much interested, Mr. Chairman, in the remarks of the gentleman from Kentucky [Mr. SHERLEY] when he said that we ought to spend more on rivers and harbors and less for national defense. I do not agree with the gentleman from Kentucky that we ought to spend less for national defense, but I do believe that we ought to do precisely what he said, instead of contending for special favors at particular points, instead of criticising the preference among projects of river and harbor bills, we ought to create a sentiment in this country for a larger appropriation for river and harbor purposes.

There is this difference, however, between army and navy appropriation bills and improvements of rivers and harbors: When we appropriate for national defense, we appropriate for annual recurrent expenses of the Government, and when we appropriate for rivers and harbors, we appropriate for permanent improvements. To my mind there is a reason why we should not each year bear the whole burden from taxation for these great improvements, but ought to take care of some of them by the issue of bonds.

But the amount asked here, Mr. Chairman and gentlemen, is not so much as materially to enlarge the sum carried by this bill and endanger its passage. It is a mere pittance in proportion to the great service to be rendered. The proposition for which my colleague the gentleman from West Virginia [Mr. HUGHES] offers this amendment is not a mere local proposition, it does not concern alone the development of coal of my own district, it does not merely concern the district of my colleague in the House who offered the amendment, but it concerns the commerce of a large section of the Ohio River. It concerns the great city of Cincinnati, it concerns the great city of Louisville and intervening points in many respects, particularly the important one of their supply of coal. I trust the members of the committee will give this matter consideration and not have their votes controlled merely by the suggestion of the Committee on Rivers and Harbors.

Mr. HUGHES of West Virginia. Mr. Chairman, I ask unanimous consent to substitute the amendment for Dam 26 instead of 29. I sent up the wrong amendment.

Mr. BURTON. Mr. Chairman, I ask for a vote.

The CHAIRMAN. The Clerk will report the amendment as modified.

The Clerk read as follows:

Page 47, after line 15, insert the following:

"Improving Ohio River: Continuing improvement at movable Dam No. 26 in accordance with report submitted in House Document No. 336, Fifty-seventh Congress, first session, to be used for the survey, acquisition of site for lock and dam, and construction of lock, $35,000."

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken; and on a division (demanded by Mr. GAINES of West Virginia) there were—ayes 12, noes 45.

So the amendment was rejected.

Mr. HEMENWAY. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

After line 10, page 47, add "and for dredging at or near Evansville, Ind."

Mr. ZENOR. Mr. Chairman, at the proper time I want to offer an amendment to the amendment.

Mr. HEMENWAY. Mr. Chairman, for three months last year navigation was suspended in the Ohio River below the mouth of Green River, when if we had had a dredge there for a small amount of money expended on dredging navigation would have continued. A request has been made to the River and Harbor Committee that certain provisions in this bill be made to provide for dredging in that territory between Louisville and Evansville and from Evansville to Cairo. The committee have not seen fit to insert that provision; so that I insist that of the $300,000 appropriated for general improvement of the Ohio River the Chief of Engineers be instructed to use a portion of it for dredging this section of the river. I see that the committee has provided that at Middleport, Ohio, a portion of this same sum shall be used for dredging. Green River is navigable all the year round; take it from the first dam up,

they can run boats the year round, but dredging is necessary below the mouth of the river. Now, I see no reason why a portion of the $300,000 appropriated for the general improvement of the Ohio River should not be used for dredging below the mouth of Green River and between Louisville and Evansville.

I do not offer this amendment purely to get into the RECORD, but with a view to curing this difficulty. Now, as I understand, the chairman of the committee, the gentleman from Ohio [Mr. BURTON], will offer an amendment later on asking that there be an investigation to determine whether or not dredges ought to be constructed and located at this point, but that is two years in the future, and this item inserted here will give us the relief for the next two years.

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Indiana.

Mr. ZENOR. Mr. Chairman, I would like to ask the gentleman a question.

The CHAIRMAN. Does the gentleman yield?

Mr. HEMENWAY. Yes.

Mr. ZENOR. Mr. Chairman, I have prepared an amendment, but perhaps the amendment offered by the gentleman covers the subject-matter of my amendment. I desire to inquire whether his amendment authorizes the dredging from the Ohio Falls to the city of Evansville.

Mr. HEMENWAY. Well, that is my intention in offering the amendment, to cover from Louisville to Evansville, from Evansville to Cairo.

Mr. ZENOR. I wanted to be sure about it, and if it does not cover the scope of my amendment, I desire to offer it as an amendment to the amendment.

Mr. HEMENWAY. If there is any doubt about it, I will be glad to have the amendment offered.

Mr. ZENOR. I would add to the amendment, "from the Ohio Falls to the city of Evansville."

The CHAIRMAN. The Clerk will report the amendment to the amendment.

The Clerk read as follows:

Add to the amendment the words "and from the Ohio Falls to Evansville, Ind."

Mr. ZENOR. Mr. Chairman, I desire to be heard briefly upon the subject of this amendment. I offer this amendment to the amendment in order to make sure that the proposition of my colleague from Indiana [Mr. HEMENWAY] covers the points of the river from the Ohio Falls to the city of Evansville. If there is any one point, in my judgment and in the judgment of steamboat and river men, on the lower part of the Ohio River which absolutely needs the work of a dredge it is certainly between the Ohio Falls and Evansville.

I recall that about 8 miles below the Ohio Falls, below the great cities of Louisville, Jeffersonville, and New Albany, containing a population of a quarter of a million, there is a bar or shoal which, during the low water in the latter part of the summer and the early part of the fall, renders navigation of that river absolutely impossible to the ordinary steam vessels and steamboats. There are not a great many of these shoal places between the city of Evansville and the Ohio Falls, but there are a few of them, and at low water it virtually suspends navigation between these points and shuts off the people who are dependent absolutely upon water transportation for their products to the markets. Now, the cities of Louisville, New Albany, and Jeffersonville constitute, as I say, the three great cities located on the Ohio Falls, separated only by the Ohio River, and they are the great markets for all the people living along this stretch of river, about 200 miles in length, from the city of Louisville to the city of Evansville. All along that stretch of river is located a very considerable number of towns, from fourteen to fifteen, aggregating a population of between thirty-five and fourty thousand people, and these towns are dependent upon keeping the channel of the Ohio River open to navigation at all seasons of the year. Mr. Chairman, I have had frequent and repeated interviews and conversations with river men and men who own and operate the boats between these points, and I know that I express the universal judgment and reflect the feeling and sentiment of all steamboat and river men that there ought to be a dredge boat placed in commission between those two points for the purpose of opening and keeping open the channel of this river.

It is believed that a dredge boat would not need to be used during the whole of the year. There are in all four or five shoal points which, if opened by a dredge boat, by the use of the boats themselves plying upon said river and the action of the water the channel would be kept open to navigation at all times of the year. In the latter part of the summer and the early fall upon these shoal places there is scarcely 15 inches of water, and it is practically impossible to navigate the river to any advantage without a removal of those shoal points or cutting a channel through them, and a dredge boat placed in commission that could be used for the purpose of opening a channel through these accumulated sand bars would keep the river open to navigation during the whole of the year. I remember that last summer, when one of the dredge boats of the Mississippi River was taken out of commission and brought to the city of Jeffersonville to be repaired, a petition was signed by a great many of the river men and by a large number of people and business men of the cities and different towns along this stretch of river to secure the consent of the War Department to place this boat, which had been repaired, upon the Ohio River during that summer for the purpose of opening the channel for navigation, but this was denied upon the ground that it belonged to the Mississippi River and was not equipped for service without certain appliances, then at some point on that river, which could not be secured in time to do us any good before the dredge would have to be returned and again placed in commission in that service.

The CHAIRMAN. The time of the gentleman has expired.

Mr. ZENOR. Mr. Chairman, I ask for five minutes more.

Mr. BURTON. Mr. Chairman, I must object to these extensions now. I think I can explain to the gentleman that his amendment is not necessary. Mr. Chairman, the two gentlemen from Indiana are both laboring under a misapprehension in the offering of this amendment, or else the amendment would result in obtaining something to which they are not entitled. There is a provision of $300,000 for the Ohio River for the general improvement. That amount of money is to be expended largely in dredging, including the whole of the Ohio River. Their attention has probably been called to three provisions here which may have misled them. There is a provision to remove the rocks in the channel of said river or canal near to the falls at Louisville, Ky., for the dredging of pool No. 6 in said river, and for necessary dredging in said river at and near Middleport, Ohio. These last two are apart from and different from the general improvement of the river.

Mr. HEMENWAY. I want to ask the gentleman whether it is necessary, if this money is nearly all to be used for dredging, that he should specify "and for necessary dredging in said river at and near Middleport, Ohio?" I want to know if that does not direct the attention of the Secretary of War on this point and say, by action of the committee, there is a special reason for dredging there, just as the amendment I suggested would direct the attention to the point below the city of Evansville, where navigation has been absolutely blocked, where the giving of a dredge boat there would have saved thousands of dollars to navigation in Green River and in and about the city of Evansville.

Mr. BURTON. At Middleport an improvement was requested relative to an ice harbor. The request was made that dredging be done. The report made upon that request was to the effect that the locality was not a part of the general improvement of the river and the engineer in charge could not expend money there unless he had specific authority from Congress. The situation is not at all the same at Evansville or at New Albany. If we put on Evansville, why not put in all the places along the Ohio? Each is part of the general improvement.

Mr. HEMENWAY. If the gentleman will permit, this is simply "and for necessary dredging in said river at and near Middleport, Ohio." Now, does the gentleman contend that any dredging that is necessary in the river in and about Middleport, Ohio, can not be done under this provision or——

Mr. BURTON. Under the general provision?

Mr. HEMENWAY. Why not insert "dredging in and at Evansville?" Could it not be done by a similar provision, because it follows the language of this provision exactly?

Mr. BURTON. I have already stated the reason. Dredging at Evansville is part of the general improvemnt of the river. If the Chief of Engineers, with the approval of the Secretary of War, should so desire it, every dollar might be spent right at Evansville and in this locality. Middleport is a place where an ice harbor was located, and certain dredging was required to make it available. The Engineer Department reported that they could not do it, because it was not a part of the general improvement of the river. One is a portion of the general improvement and the other is not.

Mr. ZENOR. Mr. Chairman——

The CHAIRMAN. Does the gentleman from Ohio yield to the gentleman from Indiana?

Mr. BURTON. Yes.

Mr. ZENOR. Do I understand the gentleman from Ohio, the distinguished chairman of this committee, to say that under the discretion vested in the Secretary of War under the provisions of

this particular paragraph of the bill it authorizes the Secretary to do any part of the dredging between the Ohio Falls and Evansville?

Mr. BURTON. Certainly; he could expend the whole money upon that if he wanted to.

Mr. ZENOR. Does the gentleman not believe under this restrictive language embraced in this particular paragraph that the Secretary will be confined to the removal of rocks in the channel and dredging the river and canal, and dredging what is known as Pool No. 6, and at Middleport, Ohio?

Mr. BURTON. By no means. The total amount of these improvements would not aggregate more than perhaps $75,000. It is questionable whether all of them will be undertaken by the Secretary of War, to be paid for from the appropriation for the general improvement.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

Mr. ZENOR. It occurred to me the restrictions placed upon the exercise of the discretion would prevent the dredging of any portion of that part of the river below the Ohio Falls.

Mr. BURTON. Certainly not. I ask, Mr. Chairman, for a vote.

Mr. STANLEY. Mr. Chairman, I move to strike out the last word.

Mr. BURTON. Mr. Chairman, I think debate has been exhausted, but if the gentleman desires to be heard——

Mr. STANLEY. If the Chairman will allow me five minutes.

Mr. BURTON. I think it is but fair to the committee that the discussion should be confined to giving the reason why this amendment is necessary rather than to point out the needs of the locality.

Mr. HEMENWAY. I am very sorry that I failed to impress the gentleman with the necessity for the amendment. I tried to impress the committee with the necessity for it, and if I failed——

Mr. BURTON. The gentleman from Indiana [Mr. HEMENWAY] always impresses me very much.

Mr. HEMENWAY. If I failed to impress the chairman of the committee I am very sorry.

Mr. BURTON. The gentleman from Indiana [Mr. HEMENWAY] did not use his usual judgment in pointing out the reason why it should be inserted here.

Mr. HEMENWAY. The reason is that because of the lack of a dredge or a little dredging in and near Evansville during the last few months thousands of dollars have been lost. We have asked the Committee on Rivers and Harbors not for a great and expensive dam, not for hundreds of thousands of dollars, but for just simply the right of a dredge down there, in order that the navigation coming out of Green River and going down the Ohio River might be taken care of. All the money appropriated here is going to the upper Ohio River.

We have always been unable to impress the Committee on Rivers and Harbors with the fact that we had a river below Louisville. But we have more traffic, barring the coal, than we have on the upper river, and yet we can not get onto this bill an item for a little dredging at the mouth of the Green River in order that we may keep up the traffic between Henderson and Cairo and other places.

Mr. BURTON. The gentleman from Indiana [Mr. HEMENWAY] is altogether mistaken in his statement of the situation.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana [Mr. ZENOR].

Mr. STANLEY. Mr. Chairman, I move to strike out the last word. If the learned chairman of the Committee on Rivers and Harbors will hear me with patience, for the purpose of only speaking a word, knowing his fairness and his justice as I do, I can not help but be convinced that he himself will concede that this amendment is necessary. You have in this Green River—I refer to the water—a stream of a greater depth than any other stream in the world considering its width, navigable for hundreds of miles, and the finest ice harbor in the world. That stream never freezes. It is more sluggish, however, at certain seasons than the Ohio River. Its rises are not governed by the same conditions that bring high water in the Ohio, and as a natural result the waters of Green River at the point of union with the waters of the Ohio River deposit their sediment right at the mouth of the Green River and cause this situation of affairs. Here are two streams, both navigable, and both, considering their size, the greatest freight carriers on earth. The Ohio River carries more freight upon its bosom than any other stream in the world, and moving toward the city of Evansville alone every year there passes out of the mouth of the river 600,000 tons of freight.

All the energies of that vast section through which Green River flows are paralyzed by a great mass of sand—a literal dike, a bar, continuous, perennial—right there at the mouth of the river; and all we ask of this committee is, no appropriation, all we ask is, no dam, but that the Government will send a boat and dig a channel at the mouth of that river to let that great congested freight that extends for miles and miles up that stream to the Ohio River and to the city of Evansville, and above and below it for a few miles, be moved. There is no place to-day where so slight an improvement would bring so great and so material an advantage. The expense is merely nominal. The good to be accomplished is incalculable.

Mr. ZENOR. Will the gentleman from Kentucky [Mr. STANLEY] yield?

Mr. STANLEY. Certainly.

Mr. ZENOR. If the gentleman from Ohio [Mr. BURTON] contends that the amendment is unnecessary, and that discretion now rests with the Secretary to do this dredging, if he chooses to do so, what impropriety would there be to make it clear that this amendment be adopted?

Mr. STANLEY. I appreciate the gentleman's suggestion. If it is necessary it ought to be done. It is unwise to say we will leave to anybody's discretion a thing that ought to be done, if it can be done by our asking. If it is not necessary, let us treat it like men and say we will not do it. If it is necessary, I do sincerely hope that the chairman of this committee is big enough and broad enough—and I believe he is—to concede to us this wretched modicum of assistance.

The CHAIRMAN. The time of the gentleman from Kentucky [Mr. STANLEY] has expired.

Mr. BURTON. Mr. Chairman, this amendment is entirely unnecessary from the standpoint from which the gentleman has been talking. In response to the question suggested by the gentleman from Indiana [Mr. ZENOR], namely, that if it is unnecessary, what would be the harm of inserting it, I want to say this: If you put in this designation of a specific locality it means that one place alone on this whole river is assured that it will be taken care of.

I am very much gratified to report to this House that we have done something in the way of reform in this bill.

Mr. ZENOR. Will the gentleman from Ohio [Mr. BURTON] allow me just one question?

The CHAIRMAN. Does the gentleman from Ohio [Mr. BURTON] yield to the gentleman from Indiana [Mr. ZENOR]?

Mr. BURTON. I will in a moment. In provisions for large streams wherein specific places were so frequently mentioned—for instance, in most of the bills on the Mississippi River below Cairo—there would be a dozen places to which special reference was made.

In this bill there is not one. On the Mississippi River, between the mouth of the Ohio River and the Missouri, there is not one. On the Mississippi River, between the Missouri and St. Paul, there is just one—an unfinished work. Now, what is the outcome of the old way of doing? Favoritism prevails. A Member or Senator who has the most influence would have his town inserted in the bill. We have changed that, and taken care of the general improvements of the river. It is for the good of the whole river Mississippi, the whole river Ohio to have just as few of these specific places put in as possible. There are inserted here three items because they did not come under the general improvement.

Mr. ZENOR. I understand the gentleman to say that the objection to this amendment was that it would designate a particular part of the river, and therefore would be substantially favoritism. I ask the gentleman whether he believes the dredging of the river at Middleport, Ohio, which is provided for in this bill there, is not a designation; and if in point of fact the gentleman is correct in the designation of these particular points, confining the operation to dredging at these points, does that exclude the further idea that the Secretary should have the discretion?

Mr. BURTON. I have three times answered the gentleman. The work that is to be done at Middleport is not a part of the general improvement of the river at all. There is an ice harbor there, and the engineer told us it was worthy of improvement.

Mr. HEMENWAY. Will the gentleman allow me to ask him one question? I would ask the gentleman if it is not as important to take care of the mouth of Green River as it is this place where this dredging is proposed to be done?

Mr. BURTON. Yes; Evansville is fortunate in having a natural ice harbor.

Mr. HEMENWAY. The gentleman is right. Green River is a natural ice harbor.

Mr. BURTON. This is a proposition that part of the river, that near Evansville, shall be dredged. It specifies only a portion of the Ohio River.

Mr. HEMENWAY. Out of this $300,000 of appropriation we ask that some of it shall be expended at or near Evansville in the Ohio River. I do not believe it will take as much as $10,000 for dredging between the mouth of Green River and Evansville and Henderson. I do not believe that the chairman of the committee wants to entirely ignore the lower river. We want to see this great ice harbor improved and that river made navigable the year round.

Mr. BURTON. I will repeat my statement, that the effect of the gentleman's amendment would be to provide for dredging operations at Evansville if there was no dredging at any other place in the Ohio River. I will ask for a vote.

Mr. STANLEY. Will the gentleman yield to me for one question?

Mr. BURTON. Oh, certainly.

Mr. STANLEY. Does not the excellent chairman of this committee think it important to have the traffic of the Ohio River, by the use of that harbor—made eternal by the Almighty—which is now closed to use by a bar of sand? Does he not think it better to spend a few dimes and clear away that little bar and throw this perennial harbor open than go to the expense of building up an ice harbor somewhere else?

Mr. BURTON. The gentleman's question involves so much of the creative power of the Almighty, together with some poetry of his own, that it is a difficult question to answer. [Laughter.] I think the gentleman will find this bill will take care of his locality.

The CHAIRMAN. The question is on agreeing to the amendment to the amendment.

The question was taken; and the Chairman announced that the noes seemed to have it.

Mr. HEMENWAY. Division!

The committee divided; and there were—ayes 25, noes 54.

So the amendment to the amendment was rejected.

The CHAIRMAN. The question is on the amendment of the gentleman from Indiana [Mr. HEMENWAY].

The question was taken, and the amendment was rejected.

Mr. ZENOR. I offer the following amendment.

The Clerk read as follows:

Amend by inserting, after the word "Ohio," in line 10, page 47, the following:

"*Provided further*, That of any unexpended balance available a sum not exceeding $15,000 be used for dredging in said river from the Ohio Falls, at Louisville, Ky., to Evansville, Ind."

Mr. BURTON. It seems to me, Mr. Chairman, that is the same amendment that we have already voted down.

Mr. ZENOR. The phraseology is entirely different. It provides that of any unexpended balance a sum not exceeding $15,000 may, in the discretion of the Secretary of War, be used in dredging that part of the river from Ohio Falls to Evansville.

Mr. BURTON. I ask for a vote, Mr. Chairman.

The question was taken, and the amendment was rejected.

Mr. KEHOE. Mr. Chairman, I offer the following amendment.

Page 47, after line 15, insert the following:

"Improving Ohio River: Continuing improvement at movable dam No. 29, in accordance with report submitted in House Document No. 336, Fifty-seventh Congress, first session, to be used for the survey, acquisition of site for lock and dam, and construction of lock, $35,000."

Mr. BURTON. Mr. Chairman, that is the same kind of a proposition as that presented by the gentleman from West Virginia. Does the gentleman from Kentucky desire to be heard on it?

Mr. KEHOE. Mr. Chairman, it is true this is an amendment similar to one offered by the gentleman from West Virginia [Mr. HUGHES], but it is for a different project, and it is one of the many necessary, overdue, and unprovided-for projects of the Ohio River. In the ordinary course of river and harbor legislation, had not the committee adopted a new policy with reference to the improvement of the Ohio River, this project would have been provided for in this bill. My friend the chairman of the committee [Mr. BURTON] does not state the proposition exactly correct, with reference to the position of the people of the Ohio Valley, when he says he wishes they would get into a hall and declare what they are for in order that he might understand what they mean. Every meeting held by the Ohio Valley Improvement Association has declared for but one thing, and that is that the improvement of the Ohio River be made according to the reports and recommendations of United States Engineer Major Bixby, in House Document No. 336, Fifty-seventh Congress, second session, which was approved by the Secretary of War. In the course of the policy laid down in the Bixby report this lock and dam would now be in process of construction. It should be constructed at once, for the reason that it will provide a pool upon the banks of which are located seven cities containing over 50,000 people and within which cities the daily output of tonnage is over 9,000 tons and annually exceeds 2,700,000 tons. In these cities are located hundreds of manufacturing plants, in several of which are employed from 100 to 1,500 men. The section where it is proposed to erect this lock and dam is the "bee hive" of the Ohio Valley, and no portion of our great country has a more prosperous prospect than this particular section. It also makes available 40 miles of navigation upon the richest undeveloped river in the world—the Big Sandy. I do not know who is the author of the proposition contained in this bill for the appointment of a new board to investigate and report as to how the Ohio River should be improved. The Ohio Valley Improvement Association never passed a resolution asking for anything of that kind, and in the Major Bixby report he distinctly states that while the survey was made for a 6-foot stage, yet it was made upon the idea that a 9-foot stage could be readily and easily provided for. He makes, in fact, a recommendation and an estimate as to the cost of either a 6 or a 9 foot stage in the Ohio River.

I agree with my friend from the Louisville district [Mr. SHERLEY] that we are for the improvement of all the rivers of the country, as well as the Ohio River; but I will go further than he does and say that we need no longer to build up a sentiment for river improvements in this country, because that sentiment has already been builded, and the people of the United States would to-day cheerfully approve not only a thirty million dollar river and harbor bill, but a fifty or seventy-five million dollar bill. The troube is not with the peope, it is with the committee. Never but once in the history of this country has a public meeting protested against the failure of an appropriation bill by Congress, and that was when the business men from every section of this Union met at Baltimore three years ago and protested against the failure of the river and harbor bill that was "talked to death" in the Senate. The people are ready for it now, and they are not afraid of the cost. They are willing and well able to bear the burden, and they know the superior worth of such appropriations to those for the Navy, Army, and foreign follies we have been wasting money on.

I am for appropriations for the defense of the country when the country needs defense, and would promptly vote for every dollar that might be needed for that holy purpose, but, thank God, no such action is now needed or necessary, and it is my fondest wish that years may pass before such a condition again confronts us. But if occasion ever again requires, the people I represent will be found ready with their money and men. River improvements are now more proper and necessary than war appropriations.

We have heard a great deal of talk this session about railroad legislation. It occurs to me that it would be equally proper, to say the least, if we should use our abilities and power to make competitors of the railways out of our rivers and waterways. We own the rivers and harbors, and the duty is upon us to improve our own property. We want to regulate the railroad property (a proposition in which I think there is some buncombe), instead of controlling and improving the rights of way of the rivers, that you will not delegate to anyone else, and that the Constitution wisely provided should be retained for the people.

The CHAIRMAN. The time of the gentleman has expired.

Mr. KEHOE. I would like another minute.

The CHAIRMAN. The gentleman from Kentucky asks unanimous consent for another minute. Is there objection?

There was no objection.

Mr. KEHOE. I doubt if the American people would object to a hundred million dollars expenditure for rivers and harbors at this time. Look at the State of New York. The things that have made it great are the great things it has done. It is now expending a hundred million dollars on a mere canal. By the provisions of this bill but thirty millions is provided for the rivers and harbors of the entire country. What a ridiculous difference. The people are not afraid of the debt, because the debt of a nation is not like that of an individual. It is not the principal you have to pay, but the interest, and as long as your country can meet the interest and provide for the principal by extensions, why, there is no danger of the day of settlement. In fact, this country needs some debt or outstanding bonds as a basis for its banking system.

The CHAIRMAN. The time of the gentleman from Kentucky has again expired.

Mr. KEHOE. Just one minute more.

Mr. BOWIE. I ask unanimous consent that the gentleman have five minutes.

The CHAIRMAN. Unanimous consent is asked that the time of the gentleman be extended five minutes. Is there objection?

There was no objection.

Mr. BURTON. I understand all the gentleman asks is another minute.

Mr. KEHOE. Just another minute. I just want to say a word of criticism along the line of what my friend from Kentucky [Mr. SHERLEY] said about adding to the Army in the way of engineers. I would not add a dollar for another army engineer. I would take the whole internal improvements of the Government out of the control of the Army and put same under control of civil engineers not controlled by war officers.

When a new Member comes to Congress he thinks when he gets an appropriation in the river and harbor bill that he has accomplished much, but he lives to learn that it is more difficult to get the Department to act than it was to secure the appropriation. If there is a branch of the Government service that needs new life more than any other, it is, in my opinion, with all due regard for the competency of the officers of the War Department, the Departments now controlling our internal improvements.

Mr. MACON. Mr. Chairman, I am not opposed to the improvement of the Ohio River, but I am opposed to the amendment of the river and harbor bill because I am exceedingly anxious to see it pass this session. I am convinced that if every Member of Congress who has a special project were to have an appropriation tacked on the bill to carry out that project we would not pass the bill at all, and hence I am opposed to all the amendments along the line indicated by the gentleman from Kentucky. I realize, sir, and I do not mean it as flattery, that the chairman of the River and Harbor Committee has given more study to the great questions that are undertaken to be put forward in this bill than any other chairman in this House has given any question before his committee. And, Mr. Chairman, knowing full well that he has given due consideration to all these questions and has brought forth a bill that in his judgment, backed up by his wise experience and long training as chairman of the committee, he believes to be a proper river and harbor bill to be passed by this body, I can not see why the Members of the House can not suppress for the time being their particular aspirations and allow Congress to pass the river and harbor bill that has been reported by the River and Harbor Committee. Time is pressing hard upon us and unless Members of the House are willing to surrender their pet projects for the time we can not hope to pass the bill during the few remaining days of the present session.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Kentucky.

The question was taken; and the amendment was rejected.

The Clerk, proceeding with the reading of the bill, read as follows:

The Secretary of War is hereby authorized and directed to appoint a board of engineers to examine the Ohio River, and report at the earliest date by which a thorough examination can be made the necessary data with reference to the canalization of the river, and the approximate location and number of locks and dams in such river, with a view both to a depth of 6 feet and 9 feet; and in said report shall include the probable cost of such improvement with each of the depths named, the probable cost of maintenance, and the present and prospective commerce of said river, upstream as well as downstream, having regard to both local and through traffic. They shall also report whether, in their opinion, such improvement should be made, and whether other plans of improvement could be devised under which the probable demands of traffic, present and prospective, could be provided for without additional locks and dams, or with a less number than is described in surveys heretofore made, giving general details relating to all of said plans and the approximate cost of completion thereof.

Mr. BURTON. Mr. Chairman, I desire to offer an amendment to that paragraph.

The Clerk read as follows:

On page 48, line 10, insert the following words: "They shall also examine said river from the mouth of Green River to Cairo, with a view to determining whether an increased depth can be maintained by dredges."

The question was taken; and the amendment was agreed to.

The Clerk, proceeding with the reading of the bill, read as follows:

The Secretary of War is hereby authorized and directed to transfer to Lake Michigan the dredge heretofore constructed for the harbors on the easterly shore of said lake for use in such harbors.

Mr. BOUTELL. Mr. Chairman, I move to amend by striking out lines 12 to 15, both inclusive.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 52 strike out the lines 12 to 15, inclusive.

Mr. BOUTELL. Mr. Chairman, this amendment provides for the movement to Lake Michigan of another Government dredge. There are already sufficient private dredges on Lake Michigan to do whatever work is demanded by the exigencies of the work on that lake. There are also now one and I do not know but two other Government dredges.

Mr. BURTON. On Lake Michigan there are small dredges.

Mr. BOUTELL. This provision is simply another insidious infringement by the Government on private interests, and I do not think that we should lend ourselves further to the principle involved in this sort of Government interference with private work. I trust the provision will go out.

Mr. TAWNEY. Mr. Chairman, I wish to say a word in favor of the amendment offered by the gentleman from Illinois. It is not because of any infringement by the Federal Government on the rights of individuals or the business of individuals that I oppose this provision. This dredge which it is proposed the Congress of the United States shall direct the Secretary of War to send to Lake Michigan was constructed by the War Department without any authorization by Congress whatever. If the War Department has the power and the authority, independent of Congressional authorization, to build and construct a hydraulic dredge, why do they come here and ask us to give them authority as to where that dredge shall be sent for use by the Government? It is purely and simply an administrative function that we are called upon to perform in respect to the use of this dredge constructed by the War Department without any legislative authority whatever.

I do not believe that it is any part of the business or function of the legislative branch of the Government to direct where this dredge should go any more than it would be to direct at what particular place or harbor it should be used.

The purpose of this provision is purely administrative, and it is no part of our duty to undertake to control the administrative affairs of the Government. We might as well undertake to direct the place to which a battle ship should be sent as to direct where this hydraulic dredge should be used.

Now, it having been constructed by the War Department without any legislative authority, why can not the War Department send this dredge wherever it is needed, and to the place for which it was intended to be used when they built the dredge or authorized its construction?

There is another side to this question, Mr. Chairman: The Government of the United States in sending this dredge to the Great Lakes is very likely to disturb the friendly relations which exist to-day, and has for the past year, between the employees of dredge companies and transportation companies and the companies themselves.

Mr. SCUDDER. I would like to ask the gentleman whether he can state what is the difference per yard for excavation between work done under contract and work done by Government dredges? It seems to me that that is a question which is germane to the amendment which has been offered by the gentleman from Illinois and should be taken into consideration by the committee.

Mr. TAWNEY. Well, so far as the matter of economy is concerned, that question might be entirely pertinent, but assuming that the dredging could not be done for less is no reason why the legislative branch of the Government should assume to exercise administrative functions. If the dredging can be done for less—and that is a justification for giving authority to the Secretary of War to send this dredge to the place it was intended for originally—if that is an argument in favor of this provision, then the same argument would apply to any other public utility. If the Government can operate a railroad more cheaply than it can be operated by private individuals, then by the same reasoning the Government should own the railroad and operate it. As a matter of fact, I have figures here showing that dredging done by the Government costs more than dredging done by private individuals under contract with the Government. The cost of maintaining one of these large hydraulic dredges is $60,000 a year. If it is necessary for the Congress of the United States to administer the affairs of the War Department in this instance in respect to the use of dredges, is it not far more necessary that Congress should assume the duty of administering the affairs of that Department in respect to matters that are of far more importance to the people than removing sand bars from the mouths of harbors for the benefit of transportation companies? This provision, I maintain and repeat, has no business in this appropriation bill, because it is purely an administrative function that it authorizes.

The CHAIRMAN. The time of the gentleman has expired.

Mr. ZENOR. Mr. Chairman, I offer as a substitute to the amendment offered by the gentleman from Illinois the following, which I send to the desk.

The Clerk read as follows:

Strike out the words "Lake Michigan," in line 13, page 52, and insert in lieu thereof the following:

"The Ohio River from Ohio Falls, Louisville, Ky., to Evansville, Ind."

Mr. BURTON. Mr. Chairman, that is not at all germane, and I raise the point of order on that.

Mr. ZENOR. I desire to be heard on that. I think it is entirely germane to the amendment offered by the gentleman from Illinois. The amendment is to strike out this particular provision. This provision is that the Secretary of War be directed to transfer this particular dredge to Lake Michigan. My amendment is simply to transfer it to the Ohio River between these points, and it occurs to me it is entirely germane to that particular paragraph of the bill. We have no objection to having this dredge transferred to the Ohio River, and it will not interfere with the constituents of the gentleman from Illinois [Mr. BOUTELL].

Mr. TAWNEY. I think the point of order is not well taken that this amendment is not germane to the amendment offered by the gentleman from Illinois.

The CHAIRMAN. The gentleman from Illinois moves to strike out from line 12 to line 15, and this amendment seeks to perfect the paragraph.

Mr. TAWNEY. Well, the amendment, I should certainly think, is germane and in order to the paragraph. If we can direct this dredge to be taken to Lake Michigan, we can direct it to be taken anywhere else, can we not?

The CHAIRMAN. The amendment offered by the gentleman from Indiana would take precedence over the amendment offered by the gentleman from Illinois.

Mr. TAWNEY. It may not be germane to the amendment offered by the gentleman from Illinois.

Mr. RYAN. Mr. Chairman, I desire to say that, so far as we on the Great Lakes are concerned, we are not opposed to this dredge going to the Ohio River, or any other place in that locality, provided the people there want it; but up in our locality we are opposed to the Government engaging in the dredging business. Two years ago two hydraulic dredges were provided for by the river and harbor bill. One of them is now on the Grand River, Michigan, and the other in Lake Erie. I offered an amendment at that time to strike from the river and harbor bill the provision providing for the building of a dredge in Lake Erie, but that amendment was defeated. This dredge referred to by the gentleman from Illinois [Mr. BOUTELL] and the gentleman from Minnesota [Mr. TAWNEY] was built without authorization of Congress by the War Department. The dredge is now on the Atlantic coast. They now want that dredge placed in Lake Michigan. We on the Lakes are opposed to that being done. We do not believe the Government ought to engage in competition with private endeavor—in this character of business, at least. We are not asking for an appropriation. We are not asking for anything to be added to this bill. It comes without any expense to the Government. We simply ask that that dredge be not sent to Lake Michigan, or any other point along the Great Lakes.

We do not believe it to be economy on the part of the Government, as it does not reduce the cost of dredging, and, I am informed, it increases the cost; and it is also opposed by all the labor organizations along the Great Lakes, representing 200,000 marine workers, showing the increased cost does not go to labor.

Mr. TAWNEY. Will the gentleman from New York allow an interruption right there so as to enable me to ask a question?

Mr. RYAN. Certainly.

Mr. TAWNEY. I was asked a moment ago as to the cost of dredging on the Lakes, and I have here a memorandum furnished me by a gentleman whose statement I regard as entirely worthy, which is as follows:

The price of dredging on the Great Lakes is continually decreasing, and in a brief way will call your attention to the fact that when the first deep-water channel was constructed for General Poe at Detroit the estimate for doing the work was $3,500,000, and it was let for less than $1,500,000. At Duluth and Superior, when the continuous contract for deepening those harbors was made, the Government engineers' estimate was about $3,100,000, and the contractors did the work for about $2,000,000. At Toledo, when the continuous contract was let, the work was bid in by the contractors at 8.25 cents per cubic yard. The Government having a dredge there placed it on the same work, giving it the choice digging and the shorter distances to move the material, and according to the engineers' own estimate it cost them 13.5 cents. Last year the work for making new channel at St. Clair Flats was let for 8.25 cents. We mention this to show that the dredging work on the Great Lakes is being done at less cost than any place in the country.

Mr. RYAN. I understand, Mr. Chairman, that the operation of the Government dredges is more expensive to the Government than the operation of dredges under private control.

Mr. ZENOR. I will ask the gentleman if the Government is not maintaining four dredges on Lake Michigan and two on Lake Erie?

Mr. RYAN. I understand four of those are small dredges, but those referred to in this discussion are hydraulic dredges, one on Lake Erie and one on the Grand River, Michigan. Those are dredges operating with their own power; they are not the dipper dredges, as the four referred to by the gentleman from Ohio are. The Government built two hydraulic dredges by authorization of Congress, and this one has been built without authorization, and this paragraph in the river and harbor bill authorizes and directs the Secretary of War to transfer to Lake Michigan this dredge, which is now on the Atlantic coast. This I am opposed to. An amendment was placed on the river and harbor bill in the Senate last year prohibiting the War Department from constructing any dredges out of any money appropriated for improving harbors and deepening channels, and that for dredge building a specific appropriation must be made. It is claimed that this dredge was building at that time and that this provision does not hold against it. However this may be, we hope this pending amendment of the gentleman from Illinois will prevail and that this dredge will not be sent to the Great Lakes.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana, upon which the point of order has been made.

Mr. BURTON. Mr. Chairman, I desire to be heard on this proposition. Surely it is quite unprecedented to take a vote now, as the advocates of the amendment have been heard some twenty minutes. I dislike, Mr. Chairman, to strike a discordant note in this enthusiastic chorus of men who do not want that dredge to go to Lake Michigan. Let me take up, first, some of the sense and some of the nonsense in their arguments. The nonsense is in the argument of the gentleman from Indiana, who proposes to locate a dredge drawing 14 feet in a locality where for a considerable share of the year the depth is about 3 or 4 feet. How would your dredge look up in the air like that? This is an old controversy. We have had it almost every year. The dredgers on the Great Lakes have recently come to terms with the workmen there, and they seem to be pulling together. One question is, Who knows more about this subject, and upon whom should we most rely, the engineers of the United States or the dredgers who have a desire to come here and dictate to Congress what it shall do?

Mr. TAWNEY. Will the gentleman permit me?

Mr. BURTON. Certainly.

Mr. TAWNEY. You ask who knows more, the engineers of the War Department or the dredgers? The engineers of the War Department knew, did they not, enough to construct this dredge without authorization by Congress? Did they not know enough to send it where they wanted it to go?

Mr. BURTON. Not by any means. They knew enough to construct it without authority of Congress——

Mr. TAWNEY. Have we ever directed where any Government dredge should be taken before?

Mr. BURTON. Let me answer your first question. For thirty years up to last spring the Engineer Department had a free hand. Whenever they pleased to construct dredges on the Lakes and the Atlantic coast and Gulf coast and rivers nobody ever said no or questioned their authority—not one, but last April they came on here and succeeded in having an amendment passed by the Senate prohibiting the building of dredges except by the authority of Congress on the Atlantic coast, north of Cape Henry, or on the Great Lakes. Now, let us look at the Senate amendment.

Provided, however, That this provision shall not apply to the dredge now being constructed for use in Lake Michigan or any other dredge now being constructed by the Government.

The engineering department was somewhat sensitive about this amendment, and members of the committee did not like to adopt it. As far as I am concerned I do not believe in giving a free hand to go into an employment which for the most part is occupied by private parties, though, on the other hand, I do not believe this discretion has been abused by the engineering department. We engaged in a conference with the Senate, at which time a representative of the dredgers came to us and said, "We do not object to that Lake Michigan dredge, but we do desire this statute to be passed with that exception." How could they say otherwise? In the very amendment which they had obtained in the Senate the Lake Michigan dredge was excepted, virtually declaring that they did not care about that. Now, in some way and by some influence, they have succeeded in keeping this dredge away. Built by the money appropriated for the harbors on the east shore of Lake Michigan, it was designed for them, intended for them, and they ought to have it.

Mr. TAWNEY. Is it not a fact there is a dredge on Lake Michigan, one of the Government hydraulic dredges, and that that was the dredge that was referred to by this section and by the committee?

Mr. BURTON. By no means.

Mr. BOUTELL. Mr. Chairman, I ask unanimous consent that the time of the gentleman from Ohio [Mr. BURTON] be extended.

The CHAIRMAN. The gentleman from Illinois [Mr. BOUTELL] asks that the time of the gentleman from Ohio [Mr. BURTON] be extended. Is there objection?

There was no objection.

Mr. BOUTELL. Will the gentleman from Ohio [Mr. BURTON] yield for a question?

Mr. BURTON. Certainly.

Mr. BOUTELL. Where is this dredge that it is now proposed to move?

Mr. BURTON. In Boston Harbor.

Mr. BOUTELL. How will it be moved to Lake Michigan?

Mr. BURTON. By going to the mouth of the St. Lawrence River, and going up that river and through the channels to Lake Michigan.

Mr. BOUTELL. Could the gentleman from Ohio [Mr. BURTON] state what would be the approximate cost for moving it from its present location?

Mr. BURTON. I do not worry nearly as much about that as do the dredgers. I would state that another dredge, built at Sparrows Point, Md., has reached the Lakes. I do not know the exact place at which the delivery was to be made by the builders.

Mr. BOUTELL. Could the gentleman from Ohio [Mr. BURTON] state how many other dredges of this character there are on the Atlantic coast?

Mr. BURTON. I could not tell by any means the number on the Atlantic coast, but those owned by the Government are not of any considerable number, at least on the north Atlantic coast.

Mr. BOUTELL. What I am trying to get at is this. Is there not plenty of scope for the use of this Government dredge on the Atlantic coast leaving the one Government dredge on Lake Michigan that is already there?

Mr. BURTON. I would say no. Most of the improvement on the Atlantic coast is of a different nature. Most of it, also, is under private contract. This dredge in question was built and is especially designed for the lakes. They can go out in rough weather and dredge when the ordinary dipper dredge could do no work at all.

Mr. BOUTELL. But there is now one hydraulic dredge on Lake Michigan?

Mr. BURTON. It is not comparable with this, however, or the same style of dredge.

Mr. BOUTELL. They are on Lake Michigan?

Mr. BURTON. This is a sea-going dredge, and was built for use on the lakes.

Mr. BOUTELL. I would really like to keep it on the sea.

Mr. BURTON. One gentleman said, "We on the lakes." The question came up here once in regard to Lake Erie and the affirmative proposition on the bill to build a dredge for Lake Erie, and the opposition of the gentleman made at that time did not command half a dozen votes. The committee was almost solidly in favor of it. So it seems to me to be a somewhat important matter, Mr. Chairman.

Mr. SCUDDER rose.

The CHAIRMAN. Does the gentleman from Ohio [Mr. BURTON] yield to the gentleman from New York [Mr. SCUDDER]?

Mr. BURTON. Certainly.

Mr. SCUDDER. Mr. Chairman, I would like to ask the gentleman from Ohio [Mr. BURTON] whether, as a matter of fact, he has any data as to the relative cost between contract work and Government work in the matter of dredging? The gentleman from Minnesota [Mr. TAWNEY], I think it was, read from a communication which he received, and which I also received, but that is from the standpoint of a dredger on the lake. I think the question of cost is an element which should enter into this deliberation.

Mr. BURTON. I will state in regard to that, that the reports filed show that this work is done much more cheaply by the Government than by the private dredgers.

Mr. SCUDDER. That is what I wish to know.

Mr. BURTON. The dredge in the Cape Fear River below Wilmington is said to have broken the record for low cost.

Mr. TAWNEY. Does it not make a great deal of difference as to whether your hydraulic dredge is working in a current or working, as it would, in still water of the lakes in respect to the cost of dredging?

Mr. BURTON. Certainly. But the general average of work would be about the same in each.

Mr. BURGESS. Mr. Chairman, I desire to know if I am correct in this assumption. I understood with reference to this item that one of the reasons why the people who are interested in these works on the lakes desired the privilege of this dredge was the sudden storms.

Mr. BURTON. Yes; my colleague is correct. I will dwell upon that. I was about to go into that. I will explain that at all these lake ports sudden storms occur, and it is very desirable to have a heavy seagoing dredge to go out and make the improvements. For instance, at Cleveland we had one that was constructed under the provisions of the last river and harbor act. In regard to the talk that work is done more cheaply by the dredgers when an emergency arises at those harbors at Conneaut and other places on the lake, the dredgers have charged as much as 35 cents per cubic yard, and at times you can not obtain a dredge at all.

Mr. BUTLER of Pennsylvania. Will the gentleman please repeat his statement, so that I may understand the matter? Has this dredger been built out of money appropriated for the lake region?

Mr. BURTON. Most decidedly.

Mr. BUTLER of Pennsylvania. Is it used in the lake region?

Mr. BURTON. It is specifically designated for that purpose.

Mr. TAWNEY. Was any authority given for its construction out of that fund?

Mr. BURTON. No; not specifically, but under general authority that the engineer department has exercised, I think I may say fully for thirty years, on questions of that kind.

Mr. BUTLER of Pennsylvania. No legislative authority was given them?

The CHAIRMAN. The time of the gentleman has expired.

Mr. TAWNEY. I ask unanimous consent that the time of the gentleman may be extended five minutes.

The CHAIRMAN. The gentleman from Minnesota asks unanimous consent that the time of the gentleman from Ohio be extended five minutes. Is there objection? [After a pause.] The Chair hears none.

Mr. BURTON. I would state this dredge also serves another very useful purpose. A great deal of dredging is done on the Great Lakes, and this is some protection against extortionate charges by private parties. While I do not believe in going on building dredges on a large scale, I do believe that the Dredgers' Association should stand by their agreement. They said they had no objection to have that Lake Michigan dredge sent to its destination. They obtained the passage of the amendment in the Senate bill. This House, I want to say, never would have agreed to that statute with my consent unless that agreement had been made that the people on Lake Michigan should have what they paid for.

Mr. MARTIN. Will the gentleman allow me to ask him a question?

Mr. BURTON. Certainly.

Mr. MARTIN. Has the Secretary now authority to transfer this dredge to Lake Michigan if, in his judgment, it is to the interest of the service? I do not know whether he has or not, and so I want to ask you if there is anything involved in it that Congress should direct them in a matter which seems to be purely administrative. On your judgment, has he the authority to do so?

Mr. BURTON. I should think so.

Mr. MARTIN. If that is true, would it not make the argument that you are making as a good one against vesting it in the hands of the committee? And could we not very well leave it with the Secretary to deal with this purely administrative matter as to where this dredge should be used?

Mr. BURTON. I think I may as well state to the committee that I think, from a conversation had with the Secretary, that he would not feel like ordering this dredge to the Lakes. He would rather leave it to Congress. He thinks it is a proper question to be disposed of by Congress. The Secretary of War prefers that if any other use is to be made of it, or any other action taken, it should be taken by Congress. The Secretary of War desires to transfer the responsibility in this matter to Congress.

Mr. TAWNEY. I think it would have been wiser, for my part, if Congress had relieved him of the responsibility of building a dredge in the first instance, instead of going on to build a dredge without any authority and then coming and asking Congress to tell him what to do with it.

Mr. BURTON. To whom is the gentleman from Minnesota referring?

Mr. TAWNEY. I am referring to the War Department.

Mr. BURTON. Let me tell the gentleman, this dredge was devised in the Engineer Department and approved by the Secretary of War. No step could be taken toward the building of the dredge without his approval.

Mr. TAWNEY. If they are responsible for saying where the dredge shall be used, do you not think it would have been more

consistent to come to Congress in the first instance and ask to be relieved of the responsibility of authorizing its construction?

Mr. BURTON. The gentleman illustrates again that he is thoroughly mistaken.

Mr. TAWNEY rose.

Mr. BURTON. I decline to yield until I have answered your question. The Secretary of War for a period of many years approved these contracts for dredges. Every plan for a dredge was submitted to him by the Engineering Department. This continued until about a couple of years ago, when private dredgers endeavored to get hold of the whole business. It was then thought that it would be much cheaper for the Government temporarily to have dredges of its own than it would be to allow these people to be in complete control of the business.

Mr. BOUTELL. I understood the gentleman from Ohio to say that this dredge was built out of money appropriated for Lake Michigan?

Mr. BURTON. Yes.

Mr. BOUTELL. And was built for that purpose?

Mr. BURTON. Yes.

Mr. BOUTELL. And was built under the direction of the Secretary of War?

Mr. BURTON. Not under the direction of the Secretary of War, but with his approval. The plans were prepared by the Engineer Department.

Mr. BOUTELL. They have the general approval of the War Department?

Mr. BURTON. Yes.

Mr. BOUTELL. Will the gentleman state where this dredge was built?

Mr. BURTON. At Sparrow Point, Md.

Mr. BOUTELL. It certainly is not possible that a vessel built out of the money appropriated for Lake Michigan was doing work at Sparrow Point, Md.?

Mr. BURTON. It was built at Sparrow Point, Md.

Mr. MINOR. I suggest to the gentleman from Illinois [Mr. BOUTELL] that he ask the chairman of the Committee on Rivers and Harbors if the bill for the towing of this dredge is included? It would have to be towed around to the mouth of the St. Lawrence River, up the St. Lawrence, through the Welland Canal, and through Lakes Erie, Huron, and Michigan to get it there.

Mr. BOUTELL. I should like to renew my question as to whether the gentleman has any information as to what it will cost to take the dredge from Sparrows Point, Maryland, to Lake Michgan.

Mr. BURTON. I do not know that anybody has calculated the exact cost. I do not think it would be great. It goes upon its own steam.

Mr. RYAN. I understood the gentleman to say that when the matter was up in the Senate the matter of this dredge was excluded from Lake Michigan.

Mr. BURTON. No; it was included—that is, it is excluded from the prohibition of the law.

Mr. RYAN. As I understand it, this public act 193, approved April 28, 1904, reads as follows:

SEC. 4. That no appropriations heretofore or hereafter made for improving harbors and deepening channels shall be used for the construction of Government dredges for use on the Great Lakes or on the Atlantic coast north of Cape Henry, unless there shall be a specific appropriation for that purpose: *Provided, however,* That this provision shall not apply to any dredge the construction of which has heretofore been authorized by the Secretary of War.

I do not see anything in that that refers specifically to this particular dredge.

Mr. BURTON. I can inform the gentleman in regard to that. The House insisted on a stronger provision in favor of the Government dredges than the Senate did, and the Senate provision was modified. The act as finally agreed upon not only includes the Lake Michigan dredge, but probably half a dozen others. This dredge is included in the proviso, because it had been not only authorized, but the plans had been made, and it was nearly, if not entirely, finished at the shipyards.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

Mr. TAWNEY. I ask unanimous consent that the time of the gentleman may be extended five minutes.

Mr. BURTON. I do not care for the time now.

Mr. TAWNEY. I want to ask the gentleman a question.

The CHAIRMAN. Unanimous consent is asked that the time of the gentleman from Ohio be extended five minutes. Is there objection?

There was no objection.

Mr. TAWNEY. I should like to ask the gentleman when this dredge was built—the exact year when it was commenced.

Mr. BURTON. I do not know. My colleague from Michigan [Mr. BISHOP] knows better about that. I think it was provided for from appropriations under the act of 1902.

Mr. TAWNEY. I want to ask the gentleman one further question. I have tried to ask it before, and I think I have, but I have not received any answer to it. Is it not your judgment that this is purely an administrative function that the legislative department of the Government is called upon to perform?

Mr. BURTON. I want to say that this Congress has the absolute control of the laws of this country, and absolute control of its appropriations, and will reserve that control, or else it will abdicate its chiefest dignity and chiefest responsibility.

Mr. TAWNEY. This does not relate to any appropriation. It relates to the use of something that was constructed out of money appropriated for an entirely different purpose. And now you say that the War Department, an administrative Department of the Government, that has jurisdiction of the matter, comes here and asks to be relieved of the responsibility of performing this administrative act.

Mr. BURTON. I do not think he has any objection to our acting in the matter, and certainly no feeling in regard to it.

Mr. TAWNEY. Is it good policy for the legislative branch of the Government to enter upon the discharge of administrative functions?

Mr. BURTON. This Congress, by the amendment, expressly provided, if it had not been provided by express law before, for the operation of this dredge. That makes it just the same as if it had been provided for by an act of Congress, and it seems to me we are authorized to keep jurisdiction of this subject and to state in this bill that the intention of Congress should be carried out.

I desire to yield the balance of my time to the gentleman from Michigan [Mr. BISHOP], and at the close of his remarks I shall ask for a vote, unless my colleague from Ohio desires to ask a question.

Mr. GROSVENOR. I should like five minutes in which to state my position on this subject.

Mr. BISHOP. I ask unanimous consent for five minutes.

The CHAIRMAN. The gentleman from Michigan asks unanimous consent for five minutes. Is there objection?

There was no objection.

Mr. BISHOP. Mr. Chairman, I am interested in obtaining the use of this dredge for Lake Michigan. I am interested only in the commerce and in the business improvement of the harbors upon that lake. The main interest is one of time. I have lived for nearly thirty years upon the banks of that lake and have watched the improvements that have been made from time to time. Under the present régime, whenever one of the harbors becomes clogged with sand, as it frequently does during the storms in summers, and especially during the storms of winter, the requirements of navigation demand that the bars that form at the mouth of these various harbors should be removed as quickly as possible.

Now, the Engineer Department sends its agents to the harbor to ascertain the amount of sand that has drifted into it, the size of the bar, the number of yards necessary to be removed, and then plans and specifications must be drawn; they must advertise for bids, wait until they are opened, perhaps readvertise for bids, and the summer is gone before the improvement can be made.

With a Government dredge such as has been constructed by the Engineer Department for use upon these harbors, in a week or a month at the furthest it could remove all the sand bars collected at the mouths of these harbors, and we could have the use of the harbors during the entire summer. Last year and the year before last and the year before that not a stroke of work was done until after July. Many of the vessels seeking to enter these harbors after the winter's storms found themselves barred from it, or had to enter with lighter loads because there could not be obtained a dredge to take the sand out at once. If the Government has its own machinery on the ground, with its crew employed, there will be no delay in sending the men there to find out how much sand is to be removed and there will be no advertising.

Mr. TAWNEY. Will the gentleman permit an interruption right there?

Mr. BISHOP. As soon as I am through.

Mr. TAWNEY. Would it not be necessary in order to take the dredge around to a harbor to come to Congress and get its authority or the direction of the Secretary of War?

Mr. BISHOP. No.

Mr. TAWNEY. Why is it necessary now?

Mr. BISHOP. Because some of the Members of this House have become imbued with the interests of the dredge owners on Lake Michigan. [Applause.]

Mr. TAWNEY. Why could not the Secretary of War send the dredge there?

Mr. BISHOP. It is not because you gentlemen want the work done cheaper, it is because you stand here as the mouthpieces for a combination that is taking the funds from the Government, charging exorbitant prices for doing the work which the Government can do for one-half the price. Now, I will make this statement because I know it is true. I had letters from leaders of labor organizations and those who claim to be in these organizations—telegrams without number—and one of them was to me two days ago, stating to me that he came at the instigation of the dredge owners. They have succeeded in arousing a spirit of antagonism on the part of the labor organizations, and that is practiced by the dredge owners because they fear that if a Government dredge comes to Lake Michigan it will be discovered that the work can be done for less than one-half the price and at the time that it is needed. [Applause.] These are the facts, and it is time that this House knew it. No man will appear on this floor advocating not sending that dredge to Lake Michigan who speaks in the interest of economy or in the interest of the Government, but as the mouthpiece of these men who are trying to throttle the Government and hold it up for exorbitant prices for doing the work and to the injury of commerce. [Applause.]

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. BISHOP. I ask for an extension of five minutes, Mr. Chairman.

The CHAIRMAN. The gentleman from Michigan asks that his time be extended five minutes. Is there objection?

There was no objection.

Mr. BUTLER of Pennsylvania. I would like to ask the gentleman if there is no competition in the dredging business on Lake Michigan?

Mr. BISHOP. There is a nominal competition only. For eight years I have stood at the elbow of the engineer at Grand Rapids. A dredging company of Chicago will bid an exorbitant price. They refuse the bid. Then they will advertise again and another dredging company will put in a bid within a cent or two of the other bid, and when one company takes the contract another company sends its dredge to do the work.

Opposition was made to taking a dredge to Grand River two years ago, and the honorable chairman of this committee will testify to the truth of what I state. They were paying, when that dredge went there, 18 cents a cubic yard for dredging Grand River. This Government dredge is doing it now for a trifle more than 3 cents per cubic yard.

Mr. BUTLER of Pennsylvania. Fifteen cents a yard less?

Mr. BISHOP. Yes. They say here that the Government can not do it any cheaper. I wish to state a few of the prices that have been paid. In 1896 and 1898 it was 12 cents per cubic yard; in 1899, 15 cents per cubic yard; in 1903, 16 cents per cubic yard. This very spring bids were asked to dredge Grand Haven Harbor, that was filled up by the storm only a few months ago. The dredge men bid 21 cents a cubic yard. Thus, year by year, they are raising their price, and there is not a dredge man who does not know that that work can be done at a profit for 8 and 10 cents per cubic yard with modern suction dredges, or even with a dipper dredge. Now, then, if you want to vote for the amendment to strike out, you vote for it against the interests of economy, against the interests of commerce, against the wish of every man not engaged in the dredging business along the shore of Lake Michigan. [Applause.]

I desire to insert here some of the reasons urged by the Engineer Department why this dredge should be transferred to Lake Michigan.

The dredge built for the harbors on the eastern shore of Lake Michigan is intended primarily for work which dredges now owned by contractors on the Great Lakes are not well qualified to perform—that is, to remove the bars which in the spring of the year and after severe storms are liable to form at harbor entrances, the quick removal of which is most important. The contractors' dredges of the type now in use on the lakes are not suited for work in exposed positions. The dredges which the Government is building are self-contained suction hydraulic dredges, capable of working in a seaway. They will not only do the maintenance work which is spoken of above more cheaply than the contractor's dredges, but they will enable it to be done at times when it would be utterly impossible for the contractor's dredges to work. The delay in opening the harbors will be greatly reduced and commerce greatly aided by their work. This point is especially urged, that it is not only economy which the Government seeks in the possession of these dredges, but the possibility of doing promptly work which otherwise must either remain undone or must be accomplished only after a long delay. The question at issue, therefore, is not simply whether the work can be done more cheaply by the contractors or by the United States, but whether or not certain desirable work shall be done at all within a reasonable time. As examples of the excessive cost of this emergency dredging, bids were asked in the spring of 1902 for certain emergency dredging at Fairport, Ashtabula, and Conneaut. The bids ranged from 27 to 38 cents, the lowest being, 32 cents at Fairport, 30 cents at Ashtabula, and 27 cents at Conneaut. The time of completion was sixty-one days from beginning work at Fairport and Ashtabula, the time limits being identical, though coming from different bidders. With a seagoing suction dredge, such as is now available for Lake Erie, it is thought that this entire work could have been accomplished in a few days and at a fraction of the actual cost. While, owing to the unavoidable delays, the *Burton* has not yet worked in Lake Erie harbors to any extent, yet it might be stated that at the conclusion of her thirty days' working trial in the Delaware River she was removing 6,000 cubic yards of material per day, at a cost of about 3 cents per cubic yard.

In the harbors on the eastern shore of Lake Michigan, at which a large amount of dredging is necessary each spring, the following prices are given:

From—	Average price per cubic yard.	Total expended.
	Cents.	
1896 to 1898	12.9	$97,255
1899 to 1900	15.63	65,708
1901 to 1902	16.67	78,227
1903 to 1904	16.5	45,888

The bids of last spring were 17.5 cents per cubic yard, and recent bids received for emergency dredging in Grand Haven Harbor were at the rate of 21 cents per cubic yard. It is confidently believed that this dredging could be done more quickly and economically by a Government dredge built especially for such work, and that the average price with such a dredge would not exceed from 8 to 10 cents per cubic yard. While the dredges built by the Government have been intended mainly for the maintenance work in exposed places where the contractors' dredges can not work to advantage, yet it should not be lost sight of that the possession of such machines is in the nature of insurance against excessive prices for any dredging which they are capable of performing, and they can and would be used for original work as well as for maintenance in case it should be evident that the Government would derive advantage from such use.

Mr. GROSVENOR. Mr. Chairman, I feel bound to present certain facts that have come to my knowledge. I do not represent anybody and I am not the mouthpiece of anybody, but I am about as anxious as the gentleman from Michigan [Mr. BISHOP] to get at what is right in this matter. I have some information here, or rather some telegrams that come from people who seem to be interested in the matter, and I will ask the Clerk to read two telegrams which I send to the Clerk's desk. Then I shall give the gentleman from Michigan a few figures which he can reconcile with his statements if he can.

The Clerk read as follows:

DETROIT, MICH., *February 9, 1905.*

Hon. C. H. GROSVENOR,
House of Representatives, Washington, D. C.:

In behalf of 150,000 marine and transport workers on the Great Lakes, I am authorized to ask that you use your influence to defeat the amendment to the river and harbor bill for transferring a dredge to the easterly shore of Lake Michigan.

DANIEL J. KEEFE,
President I. L. M. & T. A.

DETROIT, MICH., *February 9, 1905.*

Hon. C. H. GROSVENOR, *Member of Congress,*
House of Representatives, Washington, D. C.:

I am requested by the general executive board of the organization that I represent to wire you protesting against the amendment being adopted to the river and harbor bill which provides bringing Government dredge on Lake Michigan.

T. J. DOLAN, Jr.,
General Secretary and Treasurer
International Brotherhood of Steam Shovel and Dredgemen.

Mr. GROSVENOR. Mr. Chairman, I hold in my hand the statement of the case of this dredging work, giving in actual figures and not in mere statements of exaggerated amounts.

The price of dredging in the Great Lakes is continually decreasing. When the first deep-water channel was contracted for, General Poe's estimate for the work was $3,500,000, and it was let for less than $1,500,000.

That far I state within my personal knowledge, for I was a member of the Committee on Rivers and Harbors at the time.

At Duluth and Superior, when the continuous contract for deepening those harbors was under consideration, the Government engineer's estimate was about $3,100,000, and the contractors did the work for $2,000,000. At Toledo, when the continuous contract was let, the work was bid in by the contractors at 8¼ cents per cubic yard.

The Government having a dredge there, placed it on the same work, giving it the choice digging and shorter distances to move the material, and, according to the engineer's own report, it cost them 13½ cents per cubic yard. Last year the work for making a new channel at St. Clair Flats was let for 8¼ cents per cubic yard.

Now, if there is any mistake about that, the records of the Engineer's Department will show whether that contract is now in existence and running at St. Clair Flats at 8¼ cents per cubic yard. I do not know.

Mr. MINOR. Mr. Chairman, I would like to ask the gentleman from Ohio where he gets all this information that he is reading?

Mr. GROSVENOR. It comes to me from Daniel J. Keefe, president International Longshoreman, Marine, and Transport Workers' Association; T. J. Dolan, jr., general secretary International Brotherhood of Steam Shovel and Dredge Men; James Walsh, president Licensed Tugmen's Protective Association; Archie Valiquet, grand president Tug Linemen and Firemen's Protective Association of the Great Lakes; James O'Neill, grand president International Brotherhood of Dredge Deck Hands, Firemen, and Scowmen; Thomas McNichols, secretary Piledrivers' Protective Association.

Mr. Chairman, I do not know anything about these facts, except those I have asserted upon my own knowledge, but I have seen fit to present the efforts of these laboring people and their representatives to have a fair hearing in the House.

By unanimous consent, I will insert these communications in my remarks.

The papers referred to are as follows:

WASHINGTON, D. C., *February 21, 1905.*

DEAR SIR: We, the undersigned, representing 200,000 marine workers on the Great Lakes, respectfully call your attention to the paragraph on page 52 of the pending river and harbor bill authorizing and directing the Secretary of War to transfer to Lake Michigan a Government dredge.

We object to this paragraph, for the reason that the private dredge owner pays a higher wage scale than the Government and employs union men, and at the same time does the work at less cost than the Government can possibly do the same.

We respectfully ask that you carefully read the attached brief, which fully explains the situation and gives a few of the many reasons why we object to and protest against the paragraph in the river and harbor bill referred to.

Respectfully,

DANIEL J. KEEFE,
President International Longshoreman, Marine and Transport Workers' Association.
T. J. DOLAN, Jr.,
General Secretary International Brotherhood of Steam Shovel and Dredgemen.
JAMES WALSH,
Grand President Licensed Tugmen's Protective Association.
ARCHIE VALIQUET,
Grand President Tug Linemen and Firemen's Protective Association of the Great Lakes.
JAMES O'NEILL,
Grand President International Brotherhood of Dredge Deckhands, Firemen, and Scowmen.
THOMAS MCNICHOLS,
Secretary Piledrivers' Protective Association.

We protest against the sending of this Government dredge to Lake Michigan for the following reasons:

Two years ago all the men employed by dredging contractors organized themselves into different labor associations. The contractors, realizing that labor organizations had become a condition in business that must be met and studied, the same as the elements, finance, or any other condition, organized under the name of the Great Lakes Tug and Dredge Owners' Protective Association for the sole purpose of dealing with the above-mentioned labor organizations, and appointed a representative to meet those of the laborers. We were met on a level by this organization, and have received more benefits as a result than any other labor organization, which clearly demonstrates that capital and labor can work in harmony.

Two years ago Congress authorized the building of two hydraulic dredges; one for Lake Erie and one for Grand River, Lake Michigan. These dredges were to be built with money taken from the appropriations for different harbors. Instead of confining themselves to these two dredges, the Engineer Department built three. One of them is now on Grand River, Lake Michigan, and one on Lake Erie, the latter having arrived there late last fall. The third dredge, the one the engineers built without authority of Congress, is now on the Atlantic coast, and there is a paragraph on page 52 of the pending river and harbor bill authorizing and directing the Secretary of War to send this dredge to Lake Michigan.

The Government has on Lake Michigan at the present time, three or four dredges, and on Lake Erie two dredges. On each of these lakes the Government has one hydraulic dredge; the others are dipper dredges. These hydraulic dredges were built for so-called "emergency work," and the engineers' own estimate of the cost of operating these dredges is at least $60,000 per year each. If the same amount of money was expended by contract there never would be any emergency work.

The large hydraulic dredges for Lake Michigan and Lake Erie have not been sufficiently tried to show whether or not they are practicable. Men who have been in the business since river and harbor improvements have been going on on the Great Lakes have grave doubts as to whether these dredges will accomplish what the engineers claim, and it would be advisable, in our judgment, to give the hydraulic dredges now on the Lakes an opportunity to prove their availability for the work before sending any more similar dredges to those localities.

The argument used in favor of these hydraulic dredges that they will work well in a seaway is not well taken in this instance, for the reason that the storms on the Great Lakes create altogether a different sea than on the ocean, and we are convinced that these hydraulic dredges will not do the work as satisfactorily as will the ordinary dipper dredge.

The price of dredging on the Great Lakes is continually decreasing. When the first deep-water channel was contracted for, General Poe's estimate for the work was $3,500,000, and it was let for less than $1,500,000. At Duluth and Superior, when the continuous contract for deepening those harbors was under consideration, the Government engineers' estimate was about $3,100,000 and the contractors did the work for about $2,000,000. At Toledo when the continuous contract was let, the work was bid in by the contractors at 8¼ cents per cubic yard. The Government having a dredge there, placed it on the same work, giving it the choice digging and shorter distances to move the material and, according to the engineers' own report, it cost them 13½ cents per cubic yard. Last year the work for making a new channel at St. Clair Flats was let for 8¼ cents per cubic yard.

From this it will be seen that the dredging work on the Great Lakes is being done at a less cost than in any place in the country.

With regard to the so-called "emergency work," it would be better to do it by contract, because if more than one harbor should shoal at the same time machines could be placed at each harbor and the work done with a great deal more dispatch than the Government could do it with one dredge. The contractors have been trying for some time to get the engineers to anticipate this so-called "emergency work" in order that they might so distribute their dredges to do work quickly and at reasonable figures.

There are now being built on Lake Michigan by dredging contractors two of the largest dredges in this country, if not in the world, and any dredging that is necessary can certainly be taken care of properly and without loss of time. As a matter of fact, there has never been a season without idle dredges on the Lakes.

By an amendment in the Senate to the river and harbor bill of last year the engineers were prohibited from building dredges without a specific appropriation therefor, but this amendment had to read that it should not apply to dredges already ordered, which were then building.

The dredging contractors are all men who have grown up in this business, most of them from employees to owners, and are practical, energetic men who can certainly manage that kind of work better than the Government.

On the Great Lakes these contractors have five large hydraulic dredges which can only be used to any advantage on certain kinds of work. As a matter of fact, they are but little used. Experience has taught them that the material to be dredged on the Great Lakes can be excavated more economically with the dipper dredge.

We, the employees, have spent our lives operating the dredges now used by the contractors and we do not think it fair that the Government should send dredges to the Great Lakes to compete with men who have large sums of money invested, which will result in a reduction in our wages and in the number of men employed.

We most earnestly hope that you may see your way clear to aid in having the objectionable paragraph referred to stricken from the river and harbor bill. By so doing you will help to promote our interests and maintain the harmony which now exists in our case between capital and labor.

Mr. BISHOP. Mr. Chairman, I ask unanimous consent that I may have three minutes within which to reply.

The CHAIRMAN. The gentleman from Michigan asks unanimous consent that he may be allowed three minutes. Is there objection?

There was no objection.

Mr. BISHOP. Mr. Chairman, I received a like circular purporting to come from the laboring organizations on the Great Lakes, speaking in the same language. One of those men whose name is signed to that circular letter told me in the lobby of this House that is was inspired and presented to them by the dredge owners.

Mr. MINOR. Of course it is. That is the truth of it.

Mr. BISHOP. There is a fish known as the "cuttlefish," which surrounds itself with a dark mass in order to screen itself from its enemies. The dredge owners on the Great Lakes have formed their combination and are now seeking to hide behind the labor organizations to screen themselves from the eyes of the world. [Applause.]

Mr. BUTLER of Pennsylvania. How about those figures?

Mr. BISHOP. I took my figures from those of last year and the year before and the year before, furnished by the Engineer Department of this Government. I would say, further, that my friend when he speaks from his own knowledge as a member of the River and Harbor Committee is somewhat ancient in his figures, as he was a member of that committee about ten or more years ago.

Mr. GROSVENOR. Oh, I have given the figures of the present contract at Toledo.

Mr. BISHOP. I admit that at times where there is competition and a place for competition the dredge men have reduced their figures from 16 cents to 8 cents, but as soon as that contract is done and there is not outside competition then it goes back to 16 and 20 and 24 cents just for dredging sand. That is the condition. Whether we meet the demands of the combination of dredge owners by sustaining them or sustaining economy and sustaining the commerce of the country is a question wholly for the House. [Applause.]

Mr. TAWNEY. Mr. Chairman, just one word in reply to the gentleman from Michigan. I wish to say, in supporting the amendment offered by the gentleman from Illinois, I am neither the mouthpiece of the dredger companies on the Great Lakes nor am I the mouthpiece of the railroad companies whose railroads terminate at the harbors on Lake Michigan, who would be benefited, no doubt, by the operation of this Government dredge at Government expense, which the gentleman from Michigan is advocating. My reason for favoring this was stated at the outset, that the War Department upon its own motion constructed this dredge, and having constructed it in that manner they now come to Congress and ask us to perform the administrative function of saying where it is to be sent to be used. As a matter of principle, as a matter of precedent, I say we ought not to adopt this proposition. The first thing you know some one who is dissatisfied with the material selected by the Department for the construction of a public building will come to Congress and ask us to direct the kind of material which shall be used in the construction of public buildings. Now, Mr. Chairman, it is upon that ground that I am opposed to this proposition. I can admit all that the gentleman from Michigan says in regard to the necessity for this and yet be entirely consistent in voting to strike out this provision, because the War Department has the power, under the statement of your own chairman, and as every Member of this House knows, to send this dredge to Lake Michigan or anywhere else it may see fit to send it. Let the responsibility rest with the Department that has the power and whose duty it is to exercise this discretion and not permit this branch of the Government to be made the vehicle of relieving the Executive Departments from a responsibility exclusively theirs.

Mr. BURGESS. Mr. Chairman, I do not care to take a granite or sandstone view of the dredge question. We will have time enough later on for that question. It occurs to me with all this controversy we lose sight of the real question before the House. It is not a question of building a dredge or operating a dredge in competition with labor organizations. The dredge is built; it exists; it belongs to the Government; it must be operated somewhere, and is now being operated in Boston Harbor. Now, so far as labor competition and the labor question is concerned it seems to be a mere question as to whether labor in one section or in another section shall be affected by the operation of this dredge. This dredge was built out of Government funds and belongs to the lake to which it is directed it shall go by this provision in this bill, and it is right; it ought to go there and everybody knows it. Those who oppose it, whether they oppose it from an administrative point of view or not, the real reason is, they want to avoid competition there. Now, what is there about competition? Shall the hands of the Government be tied in a matter in which the facts show that the public interests and the needs of commerce will be subserved by having this dredge there to go at once when an emergency arises to protect the harbors of the lake in the exit of commerce that has accumulated there? That is the real purpose for which this dredge was constructed and that is the purpose and point of this provision in the bill now, and that is all there is to it. It will be time enough when the proposition is brought before Congress—and, in my judgment, it never will be—to go into the general plan of doing Government work by dredges everywhere, to talk about the labor question and the question of the Government doing work that ought to be done by private individuals and all that.

This is not the time or the question for discussion now. The simple proposition is merely that the dredge has been constructed, it belongs to the fund pertaining to this lake, and this bill directs it to be put there, so that it may be used by those whose funds constructed it upon the emergency work where it is needed. And that is all there is to the question.

Mr. BURTON. Mr. Chairman, I ask for a vote.

Mr. BOUTELL. Mr. Chairman, the pending amendment is the amendment offered by the gentleman from Indiana [Mr. ZENOR]. I trust that the vote on that amendment will be taken and disposed of.

Mr. BURTON. If the gentleman from Indiana [Mr. ZENOR] does not withdraw it, I suppose a vote will have to be taken upon it.

The CHAIRMAN. The gentleman from Ohio [Mr. BURTON] made the point of order that the amendment of the gentleman from Indiana [Mr. ZENOR] was not germane.

Mr. BURTON. Mr. Chairman, I do not know that I understood exactly what the amendment was. As I understand it, it was——

The CHAIRMAN. The amendment offered by the gentleman from Indiana [Mr. ZENOR] was to strike out the words "Lake Michigan" and insert the words "Ohio River."

Mr. BURTON. It may be germane, but I think it is hardly sensible.

The CHAIRMAN. In the opinion of the Chair the amendment is clearly germane, and as it takes precedence of the other motion, the Chair will put the amendment.

Mr. ZENOR. Mr. Chairman, I will withdraw the amendment.

The CHAIRMAN. The gentleman from Indiana [Mr. ZENOR] withdraws his amendment, and the motion recurs to the amendment of the gentleman from Illinois [Mr. BOUTELL].

Mr. BOUTELL. Mr. Chairman, if not entitled to it under the order of the procedure, I would ask the indulgence of the committee for a few moments.

Mr. BURTON. Mr. Chairman, I have no objection. Of course, I would like to have the debate brought to a close as soon as possible.

Mr. BOUTELL. I will only consume a few moments.

Mr. Chairman, I do not think we should add any further word to this discussion. It is a very simple proposition. It is so simple and the motives behind it are so clear that I can not but be surprised at the remarks of the gentleman from Michigan [Mr. BISHOP]. I may say that it is the first time in a considerable service in this House that I have ever heard the motives of any Member of this body so needlessly, so unkindly, and so untruthfully aspersed as were the motives of those who are supporting this amendment aspersed by the gentleman from Michigan [Mr. BISHOP]. So far as I am concerned, I do not propose to reply in any way to his accusations, for I deem no reply necessary to such hasty words. The Members of this House are quite well known to each other and they need no defense. He did, however, undertake to reflect upon the motives of the gentleman from whom I received all of my information in reference to this matter.

I am not acquainted with any of the dredgers on the Great Lakes. I do not have the honor of the acquaintance of anyone who owns or operates a dredge. So far as I know, I have received no word from anyone who is the owner or an operator of a dredge. I received my information not from printed circulars or from letters.

I received the information upon which my motion was based from a gentleman whom I am glad to call my friend, my constituent, Mr. T. J. Dolan, jr., the head of the steam shovelers and dredgers of the United States. I have known Mr. Dolan for many years. He and his family have been neighbors in my own ward. They have been friends of mine at home, respected by all who know them. The reflection upon his motives by the gentleman from Michigan was unjustified. My attention to this matter was called by Mr. Dolan the day before yesterday, and my investigation was based upon what he said, and solely upon what he said, and, in my opinion, Mr. Chairman, my amendment ought to prevail. I trust that it will receive the support of this committee.

Now, just one moment as to the actual facts in this case. There is now in Lake Michigan one Government dredge. There is at some other point on the Great Lakes another Government dredge. There are private dredges——

Mr. BISHOP. Will the gentleman yield?

Mr. BOUTELL. Under the circumstances, I must decline to yield. There are private dredges capable of doing whatever business the Government needs. Under these circumstances we find in this bill, in these three lines, a provision directing—mark you that word, "directing"—the Secretary of War to move a dredge to Lake Michigan. From where? It does not appear in the bill; but upon inquiry during the argument we find that a dredge was constructed for use upon Lake Michigan at Sparrows Point, Md., and has been there or on the Atlantic coast since 1902.

If the Secretary of War had the power to construct a dredger for use on Lake Michigan at so remote a point as Sparrows Point, Md., surely within his discretion he has the power to place it in the place for which it was constructed. The motion to strike out these lines simply leaves the one dredger on Lake Michigan, and one Government dredge on the other lakes, and leaves this third dredge where it was built, and where I submit, gentlemen, it ought to stay, on the Atlantic coast.

Mr. BURTON. Just one word. I think it would rather relieve the Secretary of War of embarrassment than otherwise. It would be necessary for him to give hearings to the opposing parties if we should not act. I am quite well satisfied there is no objection on his part. I had a conversation with him on the subject. I will say frankly to the committee that it is probable that no order will be made by the Secretary unless this action is taken.

Just one word in answer to my colleague, the gentleman from Ohio [Mr. GROSVENOR]. He instanced the fact that work was done on the Lakes and at other places at much less than the estimates made by the Government engineers and uses that as an argument to the effect that work can be more cheaply done by private dredgers than by the Government. The absolute

fallacy of that is shown by the fact that these estimates were based on the price of dredging by private dredgers at a time when no Government dredges were in sight at all. The reason for the lower price was that the amount of work increased very materially, and the contract was so large a one that lower prices were obtained.

Now, Mr. Chairman, I ask for a vote.

The CHAIRMAN. The question is on the motion of the gentleman from Illinois, to strike out the paragraph beginning at line 12, extending to line 15, on page 52.

The question was taken; and the chairman announced that the noes appeared to have it.

Mr. BOUTELL. Division, Mr. Chairman.

The committee divided; and there were—ayes 31, noes 112.

So the motion was rejected.

The Clerk read as follows:

Menominee River, Michigan and Wisconsin: The Secretary of War is hereby authorized to make such modifications of the existing project as may seem best to save expense and subserve the interests of commerce.

Mr. BURTON. I desire to offer a verbal amendment there, Mr. Chairman.

The Clerk read as follows:

Page 55, line 6, after the word "Menominee," insert the words "harbor and."

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

Improving harbor at Manitowoc, Wis.: For maintenance, $110,000.

Mr. COOPER of Wisconsin. I would like to ask the chairman of the committee how it happens that $110,000 is necessary for the maintenance of a harbor like that at Manitowoc?

Mr. BURTON. It is to replace decayed piers or in the breakwater. They have been giving some trouble.

Mr. COOPER of Wisconsin. The breakwater was constructed only two or three years ago.

Mr. BURTON. The piers are there and they were there before that, and these are necessary repairs.

The Clerk read as follows:

Improving Sturgeon Bay and Lake Michigan Ship Canal, Wisconsin, and harbor of refuge connected therewith: The Secretary of War is hereby directed to ascertain and determine whether for the purpose of completing the project submitted in House Document No. 117, Fifty-sixth Congress, second session, it is necessary to remove, relocate, or change the bridge across said canal at the city of Sturgeon Bay; and if so, whether and to what extent the owners thereof have acquired vested or other rights in its present location, so as to entitle them to damages by such removal, relocation, or change, and in case the said Secretary of War shall determine that such removal, relocation, or change is necessary to complete said project, and that the said owners have acquired vested or other rights in the present location of said bridge, he is hereby authorized and directed to acquire, by condemnation or otherwise, such property as may be necessary, and the sum of $50,000, or so much thereof as may be necessary, is hereby appropriated for that purpose.

Mr. BURTON. I desire to offer a formal amendment.

The Clerk read as follows:

Page 57, line 6, strike out the words "said canal" and insert in lieu thereof "Sturgeon Bay."

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

Improving Mississippi River between Missouri River and St. Paul, Minn.: A contract or contracts may be entered into by the Secretary of War for such materials and work as may be necessary to prosecute said improvement, to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate $300,000, exclusive of the amounts heretofore appropriated, which amount may be expended during the year beginning July 1, 1906, and the sum of $11,500 may be expended from amounts now or hereafter available for this improvement for the purpose of completing the harbor of refuge on the east shore of Lake Pepin, Minnesota.

Mr. BURTON. Mr. Chairman, I desire to offer an amendment providing for an estimate of the cost of securing a channel 6 feet deep in that part of the river.

The CHAIRMAN. The gentleman from Ohio offers an amendment which the Clerk will report.

The Clerk read as follows:

On page 61, at the end of line 18, strike out the period and insert a comma, and add the words:

"And the Secretary of War may cause an estimate to be made of the cost of securing a channel 6 feet deep in that portion of the river above described."

The amendment was agreed to.

The Clerk read as follows:

Improving Missouri River: General improvement by snagging and maintenance of open-channel work, $150,000, of which amount $90,000 may be expended between the mouth and Sioux City, Iowa; $10,000 for improvements at Hermann, Mo., and $50,000 above Sioux City, Iowa.

Mr. CURTIS. I offer an amendment to come in lines 22 and 23 on page 64.

The CHAIRMAN. The gentleman from Kansas offers an amendment, which the Clerk will report.

The Clerk read as follows:

On page 64, in lines 22 and 23, strike out the words "one hundred and fifty thousand dollars" and insert in lieu thereof the following words:

"Two hundred thousand dollars, of which amount $50,000 shall be expended to complete the work of riprapping and improving the bank of said river at or near the city of St. Joseph, on the Kansas side."

Mr. CURTIS. Mr. Chairman, I want to state that this amendment simply increases the appropriation $50,000.

The Government has already expended a good many thousand dollars in improving the Missouri River at St. Joseph and that neighborhood; but during the last few years they have refused to expend any further money at that point. The vast amount of work done there is now in danger of being destroyed, because the water is working in around the riprapping, and we are reliably informed by the engineers that $50,000 expended there now will complete that work and protect the property in and about St. Joseph.

I ask for this improvement on the Kansas side because the work is completed on the Missouri side, and if this work is not done on the Kansas side, about 8 miles of Kansas territory is liable to be added to the State of Missouri. Naturally we prefer to keep all Kansas property on our side. I hope the House will agree to this amendment.

Mr. BURTON. Mr. Chairman, I do not think anything more than a brief discussion on this point is necessary. In the last two or three bills we have discussed at great length these propositions for the improvement of the banks of the Missouri River, and numerous votes have been taken on the subject.

The Committee on Rivers and Harbors have adopted the policy, and this Committee of the Whole or this House, as you may choose to call it, has approved it, that we shall not make appropriations for objects of this kind.

Mr CURTIS. May I interrupt the gentleman?

Mr. BURTON. Certainly.

Mr. CURTIS. I hope the chairman will not make the statement that the House has approved it. The appropriation bill was so worded a couple of years ago that a point of order was sustained against an amendment similar to the one I have offered to-day, but there was no vote of the House. There was simply a sustaining of the point of order by the Chairman of the committee and not a vote by the House.

Mr. BURTON. I adhere to the statement I made, and the gentleman will agree with me. I recall the point of order very well. The gentleman from Kansas offered an amendment to the sundry civil bill, putting on an amount for this same improvement. I myself made the point of order that it did not belong to that bill, that it belonged to this bill, if it belonged to any. In support of my prior statement I will say that both in the bill of 1901, which failed, and in that of 1902 we discussed at great length the question of appropriations for the Missouri River, and decided against them. If the action of the House is in question, I would state that after full discussion in the committee the House approved the bill recommended by the Committee of the Whole.

This is but one of probably thirty projects along the Missouri River. If we do anything for this we must do something for Omaha, and we must do something for Kansas City, where the exigency is much greater.

Another thing I would say is that this is clearly something which private property owners ought to do. When I say that, I can not ignore the fact that in past years the Government has expended probably about a million of dollars right around in the neighborhood of St. Joseph on a similar class of work.

Mr. CURTIS. Right there, would not this $50,000, if expended, complete the work that has already been begun by the Government at St. Joseph on the Kansas side?

Mr. BURTON. It would complete the work that was originally laid out. If we have made an error in the past, that is no reason why we should follow it. The river and harbor act of 1902 asked for a survey in this locality and other localities. I read briefly from the report, in Part II of the Engineers' Report, page 2333, right on the point the gentleman asks about, of the incompleteness of the work:

Having in mind the fact that some of the work upon which large sums have been expended under the late Missouri River Commission in prosecution of its plan for a systematic improvement of the river is incomplete, and that all of it is naturally subject to deterioration or loss, consideration has been given to the advisability of completing or maintaining any of such works. It is obvious that no benefits worth the cost would follow the maintenance of short improved reaches, disconnected with each other or with the mouth of the river. This being the case, it follows that it is inadvisable to maintain, by continuing expenditures, works that have been built for the rectification of such reaches. And the Board believes this to be true, even if, due to changes that can not all be now foreseen, the systematic improvement of the Missouri is at some unknown future time to be resumed. Of the nature of additions to or maintenance of works heretofore executed are the

improvements contemplated in the act at St. Joseph and Wilhoite. The Board does not consider works at these points advisable.

The gentleman from Kansas has been very strenuous in presenting the claim on repeated occasions. I think he has done his full duty, but I trust the committee will vote down the amendment. [Laughter.]

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kansas.

The question was taken, and the amendment was rejected.

Mr. CURTIS. Mr. Chairman, I now offer the following amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 65, after the word "Iowa," in line 2, add the following: "Improving the Kansas River: For improving the Kansas River by straightening, deepening, dredging, and riprapping said river, and building levees, and making such other improvements as may be necessary to protect the property along said river from floods, overflows, and other damages, $500,000, said improvements to be made under the direction of the Secretary of War."

Mr. BURTON. Mr. Chairman, I trust that amendment will be voted down. It would involve a total expenditure of $10,000,000.

Mr. CURTIS. I only ask for five hundred thousand.

Mr. BURTON. It is a very excellent entering wedge, and if the gentleman got that I can forsee how, in his enthusiasm, he would come back here and say that we ought to give another $500,000.

Mr. CURTIS. Mr. Chairman, as the chairman of the committee has said so much, I want to say to the House that the people living on the Kansas side in 1903 went through one of the greatest floods in the history of the United States.

A MEMBER. You all came out alive.

Mr. CURTIS. No; we did not. Hundreds of lives were lost in that flood and millions of property destroyed. I have no words at my command sufficient to describe the great suffering of the people who lived along the Kansas River during that flood. It was the greatest flood in the history of this country, and these people living along that river for 200 miles have ever since that time tried to rebuild their property. The flood did such damage to the banks that it is almost impossible for them to restore said banks by a local taxation. In some of the counties they have issued levy scrip to improve the river, but there are localities where the benefit district is so small that they can not bear the burden.

All I ask is that you appropriate $500,000, so as to restore the banks to the condition they were in prior to that great flood. As they are now, any ordinary spring rise of water will come over the banks and destroy the property. I venture to say, gentlemen of the House, that if the House had been in session when that flood of 1903 occurred this House would have appropriated a million dollars and not said one word about it. This may be an entering wedge, as the gentleman says; but I say to you that you have got just as good a right to spend money on the Kansas River as you have on the Mississippi or the Missouri or any other river in this country. I hope this amendment will be agreed to by this House.

Mr. BURTON. Mr. Chairman, no one can deny the very great suffering to which the people of the Kaw River were subjected, and I want to say for them that they have been plucky and tried to repair the damage and not allowed themselves to be overwhelmed by the calamity. Another thing I want to say to their credit is that when they came to Congress and appeared before the River and Harbor Committee, and intimation was given to them that it was not a subject that we could take up, they received that statement in a spirit of fairness rather than resentment. They did not, as is sometimes the case, go and take it out in abusing the committee and misrepresenting them.

But this proposition is simply one that we can not think of. It would involve an expenditure of $10,000,000 before we got through with it, and it would be a precedent that we shall, by Government appropriation, protect land from overflow, regulate the regimen of the rivers, so that damage will not be caused by the floods. It would apply not merely to the Kansas or Kaw River, but to every other river in the United States.

Mr. CURTIS. Is it not true that Congress has helped the people wherever they have been visited with great disasters—for instance, Galveston and Mount Pelee—that Congress has helped when appealed to?

Mr. BURTON. There have been cases, such as furnishing tents and furnishing food and money, but those do not make a precedent sufficient to justify us in taking up a proposition of this very great magnitude.

Mr. COWHERD. Mr. Chairman, I foresee that the gentleman from Kansas will find what all other gentlemen have, that it is impossible to amend this bill, however meritorious may be the proposition he has to offer; but I want to say just a word in support of the amendment which he offers. Now, Mr. Chairman, in a great many places in this bill I see where it provides for locks and dams in order to store the water and furnish navigation for ships to go down the stream on the water we have stored. If they will store all the water that goes down the Kansas River in one of these floods, they can float the United States Navy without any trouble almost from its source to its mouth. [Laughter.]

The gentleman was right in stating that this was one of the greatest disasters that has struck this country. In the city which I have the honor to represent, in connection with the city across the line, represented by my friend the gentleman from Kansas [Mr. BOWERSOCK], there were more than 3,000 dwelling houses alone that were either totally or partially destroyed. There was more than $25,000,000 worth of property, to say nothing of the contingent damage to business, that was absolutely wiped out of existence. Gentlemen talk about these appropriations being for interstate commerce. Every railroad that reaches the Southwest has its terminal in that little valley between those two cities, and the commerce of four States was blocked there for two weeks by that enormous flood. Now, this is a river that is navigable in law. Once the Kansas legislature attempted to exercise control over it, and the courts of the United States denied it the right. It is a river that the Government holds in its hands, that the State can not control, and I submit that it is the duty of this House, as has been well said by the gentleman from Kansas [Mr. CURTIS], to give us this aid, even if this is, as the chairman of the committee has said, in part for the preservation of property. It is no more for the preservation of property than a part of the appropriations along the Mississippi. It is true you have navigation there also, but it is equally true when you call upon the people of that country to put up more than 50 per cent of the cost of the levees that we do it on the ground that it is a protection to property, and a large number of the millions that have been expended were expended to protect the rich alluvial bottom lands of the Mississippi from damage by flood and overflow. I submit this is equally meritorious.

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Kansas.

The question was taken, and the amendment was rejected.

Mr. BARTHOLDT. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

On page 64, line 23, after the word "and," strike out "fifty" and insert "sixty."

On page 65, line 1, after the word "Missouri," insert the following: "For maintenance of the channel at Columbia Bottom, $5,000, and for maintenance of the channel at Gumbo, Mo., $5,000."

Mr. BARTHOLDT. Mr. Chairman, the effect of this amendment will be to increase the total appropriation for the Missouri River $10,000. It is evident that it is the policy of the Committee on Rivers and Harbors to abandon the great Missouri River altogether, and in offering this amendment I desire to call attention to that fact, so that the Members of this House, as well as the people of the Missouri Valley, may fully understand it. The total appropriation for this river is $150,000, and this amount merely emphasizes the truth of my statement. I realize perfectly that it is useless at this time to discuss the general policy of the committee.

The reason which they assign, as I understand it, for their failure to properly provide for the Missouri is the lack of traffic upon that river; but how, I submit, can navigation be improved—how can the commerce on that river be increased unless you make the necessary appropriations for the most needed improvements? My amendment covers two points, both located in the Congressional district which I have the honor to represent. At those points the river has cut through and practically made new channels and left an insufficiency of water in either the new or the old channel for navigation purposes.

This amount of $10,000 would correct this and would limit the river to its original channel, thereby not only benefiting navigation, but incidentally protecting the richest farm lands in the whole State of Missouri, lands which are now being swept away to the extent of thousands of acres. The amount asked for in my amendment is not based upon my own estimate or upon the estimate of other laymen, but it is recommended by river engineers who were sent out by the War Department to make an investigation and a report upon the situation. I trust that my amendment will prevail.

Mr. BURTON. Mr. Chairman, a point of order would, I think, lie to this amendment. While this bill is of a very general nature and not subject to usual rules, there is, at least, this rule, which we have observed in the making up of the

bill, that when a project is suggested for which there is no recommendation, for which no survey has been made, and concerning which there is not even information, we can not put it in the bill; but irrespective of that, let us waive the point of order——

Mr. BARTHOLDT. Mr. Chairman, if the gentleman will permit me, the reports on these two points are now in the hands of the Chief of Engineers, who, upon my suggestion, had sent out two men, one to each of the two points, and their reports are on file in the Department, and show that $5,000 in each case will be sufficient to make the necessary improvements.

Mr. BURTON. I would state that we have very strictly observed the rule that no information obtained in that way gives status on this bill; that there must be the preliminary step of the ordering of a survey by Congress and not the mere sending in of information from a local engineer, because if you threw the door open to that class of recommendations then, as I stated just now in relation to different points on the river, favoritism would prevail. Now, this is but one, Mr. Chairman, of a very great number of cases on the Missouri River. We will take it up when we must take it up, and I think we have settled the question after long discussion. It is a pretty large undertaking to take care of the different channels which the Missouri will follow. If you spend anything on projects such as this, to be consistent and fair you must spend tens of millions to improve the river. It is said we have abandoned it. We have not. We have appropriated here a sum which, in proportion to the commerce of the river, is far greater than that for the average of streams in the United States. I do not like to disappoint the gentleman or his constituents, but we will be entering upon very dangerous ground if even in the sum of $5,000 we should make appropriation for such an item. I ask for a vote.

Mr. BARTHOLDT. Mr. Chairman, will the chairman of the committee answer another question? Would it not be possible to authorize, or will the chairman of the committee consent to an authorization of a survey and an estimate of those two points? I repeat, the improvement is not required for the purpose of protection of land but for the absolute necessity of navigation, because the river has cut through and made a new channel and neither channel is now navigable.

Mr. BURTON. At this late time, and what seems to me like a doubtful case, I should not be willing to do that. When propositions have been made for a survey and for an examination and report the committee has followed virtually the rule that if there has been any survey or examination within ten years another one should not be made. In case of an exigency like that which the gentleman named I would state to him that there is no insuperable objection to an allotment of money from this appropriation for that purpose. I do not want to have anyone understand what I say will have any effect upon the Department, but I say that I do not see there is any insuperable objection to their taking the money under the general appropriation.

Mr. BARTHOLDT. Under the terms of this provision here the War Department would have authority to spend part of the general appropriation for those points?

Mr. BURTON. That is my opinion about it, although I do not wish gentlemen to rely upon that opinion. I do not know enough about it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri.

The question was taken, and the amendment was rejected.

Mr. COWHERD. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The gentleman from Missouri offers an amendment, which the Clerk will report.

The Clerk read as follows:

Improving harbor at Kansas City, Mo.: Two hundred thousand dollars, to be expended in removing obstructions in the Kansas River from the mouth to Argentine, Kans., including riprapping around the piers of the bridge and piers used in false work as well as the bridge trusses thrown into the river and the bars formed thereby.

Mr. COWHERD. If the Clerk will send the amendment to me I will try to read it, if I can.

The CHAIRMAN. The gentleman from Missouri will read it for the information of the committee.

Mr. COWHERD. Mr. Chairman, this is an amendment asking for an appropriation to improve the harbor on the Missouri at Kansas City, including the mouth of the Kaw. Now, something has been said in regard to the destruction done by the great flood of 1903 at that place. I want to call the attention of the House to this condition of affairs that exists there to-day. There were about nineteen bridges across that river in a space there of some 9 or 10 miles. Some of these bridges had been authorized under acts of Congress. They all ought to have been constructed under authority of the Secretary of War, because the river was a navigable river under the law as it stood; yet neither the Secretary of War nor any of the authorities of the Government had paid any attention whatever to them, so that the bridges not only were constructed low, but the piers were not sent down to bed rock, and the riprapping was thrown in around the piers, forming practically dikes across the bed of the stream, and this was one of the things which caused the great damage. When that flood came and these bridges were thrown over, nearly all being steel structures, the bridge and bridge trusses particularly fell into the bed of the stream and lodged there and formed great bars across the river and lie there to-day, forming obstructions in the bed of that stream.

The situation is such to-day that any ordinary flood that comes down the Kaw River, such as we have every spring, is bound to be the cause of millions of dollars in damage in that valley; and, as I said before, the valley is filled not only with the terminals of all the great railroad systems centering there, but with the heavy freight business, the warehouses, and the great agricultural-implement houses that supply the trade of that section of the country. I submit, Mr. Chairman, that this damage was caused by the neglect of the Government, and that the Government ought to appropriate the money to at least put the river back in the shape it was before the damage was done.

Mr. BAKER. Let us hear the amendment.

Mr. COWHERD. The amendment provides that $200,000 be expended in moving obstructions from the Kansas River from its mouth to Argentine, Kans., including riprapping around the piers of the bridge, piles around any false work, as well as the bridge trusses thrown into the river, and bars formed thereby.

Mr. BURTON. I think I can suggest a way to the gentleman from Missouri [Mr. COWHERD] to improve that harbor, as he calls it, and that is for the owners of the property abutting on the stream, who have been pushing out the banks until the river is a third or a quarter as wide as it should be, to take out their encroachments and restore the stream to its original condition.

Mr. COWHERD. I think the gentleman from Ohio [Mr. BURTON] will admit if that stream was double its former width, with the condition that exists in the channel to-day, it would not carry the flood water.

Mr. BURTON. If that is the case, it is a calamity that can not be guarded against.

Mr. COWHERD. It can be guarded against by giving the river the right to scour as nature provided.

Mr. CURTIS. Mr. Chairman, I would like to suggest to the chairman of the committee that as there is opposition to the transferring a dredge from Boston to the Great Lakes, and they do not seem to need the dredge at Boston, an amendment might be put in to send the dredge up to Kansas City.

Mr. BURTON. I will say to the gentleman from Kansas [Mr. CURTIS] that it is such a tiny stream it would be like a whale floundering around in a bucket.

Mr. CURTIS. We will use it if you will send it up.

Mr. BURTON. What would be the result if the Government entered on this improvement? It would have to acquire land that has been obtained by infringing on the river and pay a price which I have heard placed at $25,000 an acre. Another way to improve that harbor would be to raise the level of the bridges that were built, many of them, without the authority of the United States, and which obstruct very much the passage of the flood water.

Mr. COWHERD. If that is the only objection of the gentleman, I will amend it so as to provide that the citizens of that community shall provide this right of way that he speaks of.

Mr. BURTON. That would obviate a part of the difficulty.

Mr. COWHERD. Will the gentleman from Ohio [Mr. BURTON] accept the amendment if I will make that change?

Mr. BURTON. I think the gentleman from Missouri [Mr. COWHERD] better clean out the stream first and see how it works. We will think of it when that time comes.

Mr. COWHERD. That is what we want; and if the gentleman will let the Government help us clean out the stream, we will provide the rest.

Mr. BURTON. You want to clean out the stream yourself, and when you have done your part come to us. I do not see any precedent by which it can be done. It is on the same line as the amendment of the gentleman from Kansas [Mr. CURTIS], which has already been voted upon. The amount in the bill would be only the beginning of an immense work, to which this expenditure would be a mere bagatelle.

Mr. COWHERD. I desire to say just a word on that amount being a bagatelle. The gentleman from Ohio [Mr. BURTON] has spoken of a permanent improvement of waterway that would cost a great deal of money; but I submit if that river was cleaned out at its mouth—and this appropriation would do it—

the stream would be put back in the condition it was in prior to the flood and prior to the time that these railroad bridges were built there by the Government's neglect, and that is a large part of the trouble that we suffer from. And then we would not be in any danger from floods, at least in no more danger than we had been for fifty years, and we have stood there for fifty years without any great danger until this condition arose. As it is now, even last year, with I do not know just how many feet of water in the river, but with a comparatively small general rise and spring flood, great damage was done again in these bottoms.

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Missouri [Mr. COWHERD].

The question was taken; and the amendment was rejected.

The Clerk read as follows:

Improving Napa River and Petaluma Creek, California: Continuing improvement and for maintenance, $3,000.

Mr. BELL of California. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Line 9, page 67, strike out the word "three" and insert the word "six."

Mr. BELL of California. Mr. Chairman, there are two reasons why I feel a great deal of reluctance in submitting any amendment to this bill. The first is that the State of California has received as liberal treatment at the hands of the River and Harbor Committee as we could expect at this session of Congress. The second is, I think, that the man who can break into this river and harbor bill and get through a single amendment increasing the appropriations will be entitled to a prize. However, I believe that there are circumstances connected with these two streams that would warrant the chairman of this great committee in conceding this amendment.

These streams, Petaluma Creek and Napa River, are 30 miles apart. Heretofore in each river and harbor bill they have been allowed $3,000 apiece. In this bill only $3,000 is allowed for both. Now, that comes from the fact that the engineer in charge of the California work in his report for the year ending June 30, 1904, said he had $3,134 to the credit of Petaluma Creek, and that it would be sufficient for the ensuing year. But after the Committee on Rivers and Harbors had published their various items of appropriation, we then received a report from Colonel Heuer, of California, stating that there were only $240 left to the credit of this stream, and at least $3,000 would be required for the next two years. We are therefore not asking for anything that is not recommended by the War Department.

The towns on these streams have each a population of five or six thousand. The tonnage each year is about 50,000 tons, according to the report of the War Department, though considerable more in fact; but these waterways are regulators of the railroad freight rates from those two communities. Three thousand dollars will be ample for Napa River, but there will be absolutely no money for Petaluma Creek for the next two years if the whole of this should be used on the stream at Napa. Petaluma is a city of great commercial importance. A steamer plies regularly every day between Petaluma and San Francisco. It receives a large amount of freight from the valley of Sonoma, the greatest wine section in the United States. An electric road has just been built through Sonoma County, with a terminus at Petaluma. This will largely increase the traffic on the creek. If we can keep this stream open, it will continue to regulate the freight rate not only from Petaluma but from a number of other towns to San Francisco.

I urged this appropriation before the Committee on Rivers and Harbors, but was told that the recent recommendation of the War Department could not be considered. They said it was the custom of the committee to consult only the last annual report of the War Department, which in this case is the report for the year ending June 30, 1904. But this is an emergency case, and I believe that there ought to be no disposition on the part of the chairman of the committee to cut off the trade center at Petaluma without an appropriation for the next two years. The amount asked is a mere bagatelle. I do not think it can be used as a precedent here for further amendments to the bill. Congress adopted projects for these two streams several year's ago, and I am simply asking for money to continue the work. There have been $60,000, I think, spent upon Petaluma Creek in recent years. Now, why not give it the same sum it received in the river and harbor bill of 1902?

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. BELL of California. I ask for two minutes more.

The CHAIRMAN. The gentleman from California asks that his time may be extended for two minutes. Is there objection? [After a pause.] The Chair hears none.

Mr. BELL of California. I realize that this is a year of economy. I hear such a cry of economy on every side that perhaps when I get through with a Washington experience of two years I will become economical myself. Economy is all right in its place, but as we do not know when we are going to have another river and harbor bill we ought to provide for the commercial needs of the country.

If this bill passes without some provision for Petaluma Creek for the next two years, it can not continue the project that has been adopted for it. I do not see any reason why if this amendment is put in at this time that it will set any precedent for other amendments. Petaluma Creek ought to be given this consideration, and I ask the chairman not to oppose the adoption of this amendment.

Mr. BURTON. Mr. Chairman, the gentleman knows that personally I would be glad if this amendment could be agreed to, but there is just as much objection to a small appropriation like this as to a much larger appropriation. These two streams are comparatively small, but both of some importance. I have been upon each of them and know the use made of them.

One thing that the gentleman seems to overlook is this, that at the close of the last fiscal year, June 30, 1904, there was a balance of $6,466 to the credit of these two streams. In the preceding year there was expended the sum of $209 only. At the date of the last report that we have there was on hand to the credit of Petaluma Creek $245, and to the credit of the Napa River $4,854.38. Now, I think if we had enforced the idea of economy with a very great degree of strictness we might have omitted any appropriation here at all. The gentleman should bear in mind that the $4,854, under the grouping adopted here, can be transferred from the Napa River to Petaluma Creek, and there is every indication that the gentleman is quite as well provided for, if not better provided for, than in the bill of 1902, which, as I stated yesterday, carried nearly twice as much as this bill.

Mr. BELL of California. If the gentleman will permit me, does it not appear from the latest report of Colonel Heuer that here a month ago there was only $240 to the credit of Petaluma Creek and that we ought to have $1,500 for each of the next two years, or $3,000 for the two years? I have asked for the report, but was unable to get it to-day.

Mr. BURTON. I would say in reply that the amount named is the estimate of the local engineer, but we frequently cut that not only in two, but cut it down to a third or a fourth. We have done so throughout this bill.

Mr. BELL of California. Now, I will ask the gentleman if it is not true that the engineer in charge at San Francisco had last fall expended all the money to the credit of the Napa River and was compelled to call upon the Chief of Engineers of the War Department for a portion of the emergency fund which was granted to us, the sum of $4,500?

Mr. BURTON. For which stream?

Mr. BELL of California. And that that is to be expended upon contracts soon to be let for Napa River. If the chairman believes that these sums will be ample, why, of course, that is a very good reason for not allowing this appropriation; but I contend that, from the reports of the engineers themselves, this sum will not be ample, and that Petaluma Creek ought to have its usual allotment of $3,000.

Mr. BURTON. I was not aware that any allotment had been made for this stream. If so, you would be in just that much better condition.

I want to say, further, that it is hardly fair to other projects in the country for which appropriations have been recommended in this bill on the basis of the reports filed June 30 last, or thereabouts, to pick out any special case and make an appropriation on the basis of a letter written in November, December, or January. If we did that it would be impossible to frame a bill. That is, on the very day of presenting it here it would be necessary to raise items. If something has happened since that time these rivers are only in the same position as other streams of the country.

Mr. BELL of California. That is true, but we have the exact knowledge now of what is needed, and I contend that this work can not be done that the engineer wants to do unless this sum is increased to $6,000.

Mr. BURTON. I think as generous provision is made for it as for any stream of the kind.

Mr. Chairman, I ask for a vote.

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from California.

The amendment was rejected.

The Clerk read as follows:

Improving Willamette River above Portland and Yamhill River, Oregon: Continuing improvement and for maintenance, $50,000.

Mr. FRENCH. Mr. Chairman, I earnestly invite the attention of the House of Representatives to the need of the Columbia, Snake, and Clearwater rivers for further aid by the Federal Government for the purpose of improving their channels that they may be of the highest commercial value to the country tributary to them.

I have urged that $25,000 be appropriated for the improvement of the Snake River between Lewiston, Idaho, and Pittsburg Landing, Oreg. By act of June 13, 1902, $25,000 was appropriated for such improvement. It was soon apparent to the War Department that a dredge boat would be necessary, and the most of the appropriation was expended for that purpose. The dredge boat thus constructed will not only be of use between Lewiston and Pittsburg Landing, but also between Lewiston and Riparia and on the Clearwater River above Lewiston. The construction of the boat, however, practically consumed the appropriation.

It would seem from this that the reasons that appealed to Congress when the appropriation of 1902 was made still exist, and, in fact, are now authenticated by the War Department in the construction of a boat to clear the river.

I have urged that $10,000 be appropriated for the improvement of the Snake River between Lewiston, Idaho, and Riparia, Wash. Appropriations have heretofore been made and much valuable work has been done. On July 1, 1904, there was an available balance for this project of $42,113.01, with uncompleted contracts covering most of this balance, amounting to $31,277.50, and leaving almost $11,000 for further improvements.

It seems to be the opinion of the Chief of Engineers of the United States Army in Langfitt's report for 1904, page 665, that $10,000 additional can profitably be expended in the fiscal year ending June 30, 1906.

I have urged that $25,000 be appropriated for improving the Clearwater River above Lewiston. Improvements costing $37,646.09 have been made in the past for the improvement of this river and many obstructions have been removed. By the expenditure of a reasonable amount upon the Clearwater River I am convinced that it would be capable of low and high water navigation, and of immense value for barge navigation.

I have also joined with the delegations from Washington and Oregon in urging the tremendous importance of the Celilo Canal in the Columbia River and in asking for an appropriation of $750,000 therefor and a continuing contract for the balance of the work. The right of way for this canal has been practically secured by the State of Oregon, and as an evidence of the great interest in this project I call attention to the fact that the last legislature of the State of Oregon appropriated $165,000 for the construction and operation of a portage railroad around Celilo and The Dalles, this portage railroad to be used till the Celilo Canal shall have been completed. The amount appropriated was recently found to be about $40,000 less than a sum sufficient for the construction of the work, and the Open River Association has called for a subscription of the amount required—that is, $40,000. I do not doubt but that this amount will be raised by public subscription. I mention this as an instance of the great interest the people of the Northwest feel in this project and its importance to the States of Oregon, Washington, and Idaho.

In urging all the above appropriations I would briefly cite a few general reasons why they should be made:

Only a little over a half century ago a great American statesman said, while speaking upon the Oregon question: "The St. Croix River, which flows between Maine and Canada, is a hundred times more valuable than the Columbia River is or ever will be." That statement was made within the memory of a score of Members of this body, and yet to-day in that territory, and drained by the Columbia River, are the great States of Idaho, Washington, and Oregon, and one-half the area of these great States is in immediate proximity to the Columbia River and her tributaries.

The area of tillable land within the counties within close proximity to the rivers is 10,000,000 acres, of which about 4,500,000 acres are being cultivated, and much more would be were freight rates lower. During the last ten years this region has produced from 35,000,000 to 60,000,000 bushels of grain annually, about nine-tenths of which was wheat and one-tenth oats, barley, rye, and other grains. The same counties have produced annually for years almost 100,000 horses and cattle and about one-half million head of sheep and hogs. They produced last year, for shipment, $3,252,450 worth of fruits and vegetables, about $3,000,000 worth of hay and $7,000,000 worth of dairy products. They have produced about $2,000,000 worth of wool and hides annually for years and immense wealth of minerals. The Cœur d'Alene mines alone in 1904 produced about $14,000,000 worth of ore. Vast copper mines await better transportation facilities and are contiguous to the Snake River, between Lewiston and Pittsburg Landing. It is estimated that the white pine in northern Idaho alone would scale 2,700,000,000 feet, and it covers 270,000 acres of land. It is said by lumbermen to be the finest body of white pine in the United States today. In eastern Oregon there is a vast forest of yellow pine, which, it is estimated, would scale 2,500,000,000 feet, and which covers 250,000 acres. Tributary to these rivers, in Idaho, Oregon, and Washington, are other tracts of valuable timber awaiting the means to reach the markets of the world. Last year 75,000 carloads of lumber were shipped from this region. Besides this there are many other products that I have left unmentioned, because I have wanted to be brief—products which are of vast importance to the people of the Northwest.

The opening up of these rivers to navigation would in a very short time save in freight rates the amount of the expense that would be incurred.

By way of illustration: It costs about 14 cents per bushel to ship wheat to the coast markets from the counties tributary to these rivers. The distance is from 200 to 500 miles, and the rate per bushel per 100 miles is from 4 to 5 cents. On the Mississippi River, between St. Louis and New Orleans, the rate per bushel per 100 miles is a little less than 1 cent. In other words, from three to four times as much is paid for freight as would need to be paid could we have water transportation. Could the freight rates be reduced 10 cents per bushel, the wheat producer would still be paying greater rates than he would pay for freighting on the Mississippi River. Could the rates be reduced to one-half only of that, or 5 cents per bushel, and I believe they could be by reasonable improvement of the Columbia, Snake, and Clearwater rivers, it would save to the farmers every year the amount we have asked for in this appropriation.

We ship to Portland alone about 12,000,000 or 14,000,000 bushels of wheat every year. Could we save 5 cents per bushel, it would mean a saving every year of $600,000 or $700,000 to the wheat producers of this vast inland empire. Could we save a proportionate amount on all our other products and on the freight that is brought from the coast points for home consumption, the benefit would be almost as great again.

This vast inland empire will support an immense population. Already that population is increasing at a rate equal to almost 10 per cent per year, and the greatest burden connected with further increase is the excessive rate that is charged by railroad companies for hauling freight. What we want most of all to aid us in our development is water communication with the outside world.

The Clerk read as follows:

Improving Tacoma Harbor, Washington: For improvement of the Puyallup waterway by dredging a channel 500 feet in width and 3,650 feet in length from its northern end, and to a depth of 28 feet at extreme low water, in accordance with the report submitted in House Document No. 520, Fifty-eighth Congress, second session, $40,000: *Provided*, That a contract or contracts may be entered into by the Secretary of War for such materials and work as may be necessary to complete said project, to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate $200,000 exclusive of the amounts herein appropriated: *Provided further*, That the United States shall be under no expense for the construction of bulkheads, groins, or filling; and before any portion of this appropriation shall be expended, or any contract let for this improvement, suitable provision shall be made, to be approved by the Secretary of War, that in the prosecution and completion of the work of dredging said channel the cost and charges for the construction of necessary bulkheads and groins, or for necessary filling, will be furnished upon the demand of the United States engineer in charge, and the design and location of said bulkheads and groins shall be subject to his supervision; and all necessary filling shall be made in accordance with the plans and specifications furnished by said engineer: *And provided further*, That no expenditure shall be made under this appropriation unless provision satisfactory to the Secretary of War is made for the permanent maintenance of said project, when completed, without expense to the United States.

Mr. BURTON. Mr. Chairman, I have an amendment to offer. This is an appropriation of a thousand dollars for gauging the waters of the Columbia River and was left out of the bill by an error of the printer.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 71, after line 13, add "For gauging waters of the Columbia River, measuring tidal river volume, $1,000."

The question was taken; and the amendment was agreed to.

The Clerk read as follows:

There is hereby granted to the Nome Improvement Company, a corporation organized under the laws of the State of Washington, the right to dredge Snake River, which enters Bering Sea at or near Nome, Alaska, for a distance of not exceeding 5,000 feet from the mouth thereof, and to extend such channel seaward not beyond a point where

the water is 12 feet deep, and to construct jetties on both sides of the channel so dredged, and bulkheads at the outer end thereof, in accordance with plans to be approved by the Secretary of War, with a view to making said Snake River available for harbor purposes for vessels drawing not less than 6 feet of water, and providing an entrance thereto.

Mr. BAKER. Mr. Chairman, I move to strike out all of lines 23, 24, and 25 on page 72 and lines 1 to 9, inclusive, on page 73.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 72 strike out lines 23, 24, and 25, and on page 73 strike out lines 1 to 9.

Mr. BAKER. Mr. Chairman, I do this because it seems to me that the principle of the provision in this paragraph is a vicious one—that of conferring upon a private corporation a Government function, for that, in brief, is what it is.

Mr. MANN. Will the gentleman from New York yield to me?

Mr. BAKER. Certainly.

Mr. MANN. Let me say to the gentleman from New York that the paragraph he has moved to strike out is not, in my opinion, subject to a point of order; but that the other paragraphs in the bill relating to this same subject-matter are subject to a point of order, and it had been my intention to reserve the point of order until an explanation could be made, and unless a satisfactory explanation should be made to make the point of order against the provisions.

Mr. BAKER. The gentleman does not want me to make an explanation?

Mr. MANN. Oh, no; I simply wish to say to the gentleman that I think the easiest way to get at it is on a point of order to the other paragraphs.

Mr. BAKER. Well, Mr. Chairman, I of course had no idea that the gentleman from Illinois [Mr. MANN] proposed to raise a point of order to the succeeding provision. If I understand him, he is going to make the point of order against it that it is new legislation. Whatever may be the objection of the gentleman from Illinois to the other paragraphs, they are probably not the objections which I have—that the whole proceeding is a retrograde step. I claim that if the commerce of the Snake River, as to which I know nothing, is of such a volume as to warrant the expenditure of money to improve it in the way that this Nome Improvement Company is to be given the right to improve it, it should be done by the Government.

Time and again I have contended on this floor against the granting of governmental functions to private individuals or corporations, but always without avail.

This provision, instead of being progressive, instead of being in harmony with the present tendency of the people to oppose the granting of governmental powers, is retrogressive. It is going back to the days when the highways were farmed out to private corporations called "turnpike companies."

Everybody knows how evil were the effects. Everybody knows how injurious and what obstacles those so-called "highways" were to the real commerce of the country. Everybody knows that these turnpikes were run, not for the benefit of the commerce that went over them, but for the benefit of the turnpike company, just the same as is now the case with the turnpike companies called street-railway companies, that control our city streets, and the turnpike companies called railroad companies, that control the great steam highways of the country, which are operated not for the benefit of the traffic, not for the benefit of the passengers or the property that are transported over them, but for the benefit of the franchise exploiters who capitalize these exclusive privileges and sell enormous amounts of "water" to the innocent and gullible public of the United States.

Now, the same principle is involved in this provision and doubtless these gentlemen will capitalize the privilege to tax the commerce of the Snake River and sell stock therein to the public. You are going to confer a special privilege, a franchise to levy a tax on the commerce of the Snake River, upon a private company. That is what is involved in this proposition. Another thing, the further provision in this bill, as to which I presume the gentleman from Illinois [Mr. MANN] will raise the point of order, gives this company the right to the land reclaimed. No one knows how much that land is going to be worth. Why, you may be conferring on this company, if the commerce in this Snake River shall in the years to come be large—you may be conferring extremely valuable land by giving that company the right to build these jetties out into the stream, probably reclaiming thousands and thousands of acres. No one can tell the value of this privilege now.

Of course, if the principle for which I alone on this floor contend were to be put in operation, if the principle of the single tax were applied, it would not make any difference whether a private company possessed the right or not, although the people would then be too intelligent to grant such a privilege as this, because we, the people of the United States, would then exercise the taxing power and would come back at these men and say, "You have a valuable privilege, viz, the power to levy tribute on the commerce of this country; that privilege is worth so many thousands or tens of thousands of dollars a year; please pay that amount into the public Treasury."

Of course, if that principle—and that, in brief, is the principle underlying what we call the "single tax"—were applied there wouldn't be any Nome Improvement Company lobbying for the right to build jetties on the Snake River and collect toll upon its commerce. The only reason such companies apply for these special privileges is that they expect to obtain very large returns for what money they expend.

The CHAIRMAN. The time of the gentleman has expired.

Mr. BAKER. Mr. Chairman, I would like to have two minutes more.

Mr. BURTON. How much more time does the gentleman require?

Mr. BAKER. I would like to have five minutes, though I ask for but two.

Mr. BURTON. I shall object to more than two minutes.

The CHAIRMAN. The gentleman from New York asks unanimous consent that he may proceed for two minutes. Is there objection?

Mr. MACON. Mr. Chairman, much as I would like to hear the gentleman talk, I want to see this bill pass. I object.

The CHAIRMAN. Objection is made.

Mr. BURTON. Mr. Chairman, there is a degree of absurdity in seeking to enforce any general principles relating to franchises in a location like this. This is very remote, and it does not seem to the committee, with the safeguards and conditions provided, that there is any danger of any company acquiring franchises of any very great value.

Mr. BAKER. Mr. Chairman, will the gentleman yield for a question?

Mr. BURTON. In a few minutes. These rates of toll, etc., may be revised, modified, or changed by the Secretary of War whenever he becomes satisfied that they are unreasonable or oppressive. All native Indians and Eskimos shall have the right of free ingress and egress through such channel and jetties to and from Snake River with their boats, provisions, and personal effects.

The said improvement company shall have the right to occupy and use land by it reclaimed on each side of these jetties and channels constructed by it. Now, I do not see any reason why they should not have the right to own that which they themselves have made. Nothing contained in the bill shall be construed as limiting the rights of any State which may be hereafter organized from said Territory of Alaska to assert title to tide lands, so that laws, such as those in effect in the State of Washington, can be enforced if this Territory is ever made a State. This bill provides further:

That the United States may, upon notice to said company of not less than one year, take possession of and acquire full title to all harbor or channel improvements constructed and rights in land reclaimed by said Nome Improvement Company under authority hereof, upon payment to said company of the reasonable value thereof, excluding the value of the franchise: *Provided further*, That the work of improvement herein described shall be begun within one year from the date of approval of this act: *Provided further*, That if after the lapse of two years from date of approval of this act the said improvement company shall, at any time during the season of navigation, permit any portion of said channel between the jetties, including that portion of the river improved by it, for three consecutive months to be of less depth than 6 feet at mean low tide, for a full width of 50 feet, then all rights of said company as herein determined shall cease, and the harbor improvements constructed, including bulkheads, jetties, and rights in reclaimed lands, shall become the property of the United States without recompense to the company: *Provided further*, That no exclusive privileges to dredge in Snake River as an incident to mining are herein conferred; and the said improvement company shall assume all liability for damages that may arise as the result of work undertaken by it under the authority of this act.

It was suggested by someone that they were seeking to get possession of a franchise so as to engage in gold mining. The act further provides that it shall not be held to authorize the infringement or impairment of the legal rights of any person, company, or corporation. I do not think the gentlemen of this committee will find any franchise granted in a thickly populated State or municipality which is more carefully hedged about than is this one away in remote Alaska. Just one word further. Every year it appears there has been a loss of life there and a very considerable loss of property, and it seems to me this committee should act favorably upon this provision.

We sometimes forecast what may happen, and I fancy this will be put on in the Senate if the point of order lies to it and we do not incorporate this franchise in the bill. As I stated yesterday, it was with some hesitancy that this committee took up this subject at all, but we were very much influenced by the

fact that two Senators who visited the locality urged it strongly. We took the provision as it passed the Senate, worked it over, and added many provisions and conditions and then reported it in the form it appears in here.

Mr. BAKER. I understood the chairman of the committee would yield to me for a question.

The CHAIRMAN. Does the gentleman from Ohio yield for a question?

Mr. BURTON. Yes.

Mr. BAKER. Surely the chairman of the committee will at least concede this, that if this company is influencial enough to induce this body, the law-making body of the nation, made up of 388 men, to legislate in their interest, as I claim, in this way, they are likely to have just as much influence with the Secretary of War; and, further, is it not also true that, taking it as a whole, when special privileges are granted, it becomes practically impossible to bring influence upon the Secretary of War to secure their nullification?

Mr. BURTON. That objection would apply to everything we do here.

Mr. BAKER. I am talking about granting privileges. I am not speaking about——

Mr. BURTON. I think the gentleman is giving the strongest argument against municipal ownership that is possible.

Mr. BAKER. Why?

Mr. BURTON. If you can not trust the Secretary of War——

Mr. BAKER. My dear sir, do you suppose that I trust the Secretary of War against 388 men, like my friend who——

Mr. BURTON. Then, how can you trust those at the head of municipal ownership? However, I do not care to engage further in this dialogue.

Mr. JONES of Washington. I want to suggest that there is no commerce on Snake River now, as the gentleman from New York seems to think, and not likely to be, and this improvement is not for the commerce of Snake River, but really to form a sort of harbor of refuge, you might say, for the safe landing of goods coming in from the sea.

Mr. BAKER. If there is no commerce there and the vessels can not expect any tolls, are these men philanthropists?

Mr. JONES of Washington. They collect tolls upon goods shipped into Nome, goods shipped from the ocean, but it does not come down Snake River. It is not the commerce of Snake River at all, but the situation at this point is this, that vessels taking supplies to the city of Nome have to anchor out from the shore a mile or two miles and those goods have to be lightered in.

Mr. BAKER. And with this improvement they expect this commerce to go up the river and collect tolls?

Mr. JONES of Washington. Going into the mouth of the river. I want to suggest to the gentleman from New York that the goods shipped there after these improvements are made can be landed just the same as they are now. They do not have to go into the river, and whenever there is no stormy weather the chances are they will not go into the river, and it seems to me this franchise is hedged about with such restrictions that it is sufficiently guarded.

Mr. MANN. Is the gentleman able to inform us whether there is gold in the spoil that will be excavated when this harbor is deepened?

Mr. JONES of Washington. I do not know whether there will be or not. It was claimed by some when this bill was up before that this was for mining privileges. Now, there has not been any particular dredging in there for gold, or until now; if it is in there it will appear by dredging.

Mr. MANN. Has there been any authority for anyone to dredge in those waters?

Mr. JONES of Washington. I do not know whether there was any authority granted or not. There was an application I know for dredging along the shores of Nome, and I presume if they had any idea there was gold in the river they would dredge there too, because that would be the easiest point to dredge.

Mr. MANN. I will say to the gentleman from Ohio [Mr. BURTON] I do not know how true the information may be or how much, in fact, there may be, but I have been informed that the soil or sand or the dredge material at this place contains a very large amount of gold, and that there was a considerable demand for the privilege of making this improvement because of the gold, without regard to tolls.

Mr. JONES of Washington. Mr. Chairman, I have not heard anything about such a demand.

Mr. BURTON. I will say to the gentleman from Washington [Mr. JONES], if he will excuse me, I did hear such a report, and we endeavored to prevent that. I came to the conclusion it was rather those who were making that assertion who were seeking the spoils than those who were seeking this franchise.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. BAKER].

The question was taken; and the Chair announced that the noes seemed to have it.

On a division (demanded by Mr. BAKER) there were—ayes 2, nays 59.

So the amendment was rejected.

The Clerk read as follows:

Upon the completion of the dredging of said Snake River and the construction of the bulkheads and jetties, so as to form a channel from the ocean into Snake River not less than 50 feet wide and 6 feet deep at mean low tide, the said Nome Improvement Company shall have the right, during the time it may maintain the channel aforesaid, to collect as toll on freight and passengers entering or leaving the mouth of the jetties so constructed, as follows: On all freight carried in or out, $1 per ton; passengers, 25 cents each; horses and cattle, $1 per head; hogs and sheep, 25 cents each: *Provided, however*, That these rates of toll and any wharfage rates charged or imposed by the said company may be revised, modified, or changed by the Secretary of War whenever he becomes satisfied that the same are unreasonable or oppressive: *Provided further*, That all native Indians and Eskimos shall have the right of free ingress and egress through said channel and jetties to and from Snake River with their boats, provisions, and personal effects.

Mr. BAKER. Mr. Chairman——

Mr. MANN. Mr. Chairman, I make a point of order upon that.

The CHAIRMAN. The Chair recognizes the gentleman from New York [Mr. BAKER].

Mr. BURTON. Mr. Chairman, I think this provision here is clearly in order.

Mr. BAKER. Mr. Chairman, I raise the point of order that there is no point of order before the House.

The CHAIRMAN. If the gentleman from Ohio [Mr. BURTON] will pardon the Chair, the gentleman from New York——

Mr. BAKER. The Chair has recognized me.

The CHAIRMAN. The Chair recognized the gentleman from New York [Mr. BAKER] for the purpose of making a motion.

Mr. BURTON. I do not want to object if the gentleman secured prior recognition.

The CHAIRMAN. The Chair will say to the gentleman from New York [Mr. BAKER] that if it is not his intention to make a point of order he will recognize the gentleman from Illinois [Mr. MANN] for that purpose.

Mr. BAKER. Mr. Chairman, I desire to make a motion.

Mr. MANN. Mr. Chairman, I desire to make a point of order upon the paragraph just read.

Mr. BAKER. Mr. Chairman, I move to strike out in line 18 the words "one dollar" and substitute the words "fifty cents."

The CHAIRMAN. The point of order made by the gentleman from Illinois [Mr. MANN] takes precedence of the motion to amend, and, if insisted upon, the Chair must recognize the gentleman making it. The gentleman from Illinois [Mr. MANN] is recognized.

Mr. MANN. Mr. Chairman, this is a bill which is reported originally by the Committee on Rivers and Harbors, not a bill which has been referred to that committee by the House, and anything in the bill which they have not authority to report as a privileged matter under the rules is subject to a point of order. Under the rules they are permitted to report at any time bills relating to the improvement of rivers and harbors. This paragraph has nothing whatever to do with the improvement of either a river or a harbor. It is a paragraph granting a franchise to a company and authorizing the company to collect tolls on freights and passengers, and is not related to the improvement of the river and harbor at Nome at all. It contains a large number of provisions in reference to wharfage rates, not one of which, I contend, is within the jurisdiction of the committee to report in this bill.

Mr. BURTON. Mr. Chairman, this paragraph, it seems to me, in the broad sense of the term does pertain to the improvement of rivers and harbors. It is an improvement of a harbor by providing a way for landing. That which the committee can do directly they can do indirectly; that is, if they can go ahead and ask that the money of the Government should be appropriated for doing certain work they can authorize a company to do that work, and when they have done that they can make the restrictions and terms to provide the rates of toll.

I will say that a similar provision has already been included in this bill without any point of order being raised, and there are similar provisions—for instance, one for a harbor company on the coast of Texas, adopted many years ago, and another one, I think, for one at the mouth of the Brazos.

The CHAIRMAN. The Chair will suggest to the gentleman from Ohio [Mr. BURTON] that the point of order relates to the jurisdiction of the Committee on Rivers and Harbors.

Mr. BURTON. Mr. Chairman, I will ask on what paragraph the gentleman from Illinois [Mr. MANN] raises the point of order.

Mr. MANN. Mr. Chairman, I raised the point of order to the paragraph commencing on line 9, page 73. I did not make a point of order on the provision authorizing the improvement of the harbor.

Mr. BURTON. Why, Mr. Chairman, if you leave that in you leave in the most objectionable feature of the whole, that first paragraph, the one that grants the franchise. That has been passed here by the committee without any——

Mr. MANN. Mr. Chairman, that grants the permission to improve the harbor, but does not grant the permission to collect the toll on passengers. I have no objection to their deepening the harbor. What I object to is permitting men to collect toll on every bit of freight and on every passenger that enters the harbor.

Mr. BAKER rose.

Mr. BURTON. Mr. Chairman, I would suggest either one of these gentlemen, the gentleman from New York [Mr. BAKER] or the gentleman from Illinois [Mr. MANN], at a time.

The CHAIRMAN. The Chair would like to hear from the gentleman from Ohio [Mr. BURTON] upon the question of jurisdiction, and whether anything has been referred to the Committee on Rivers and Harbors upon which this report can be based.

Mr. BURTON. The Senate bill came to us with this report. That is all.

The CHAIRMAN. A Senate bill referred to the House Committee on Rivers and Harbors?

Mr. BURTON. The bill which had passed the Senate came to the House and was referred to the Committee on Rivers and Harbors—bill S. 3844—and the committee filed as a separate measure at the last session a report upon this Senate bill providing a substitute.

Mr. HULL. Will the gentleman yield to me for a question? Does the gentleman contend that it is in order in any measure referred to a committee on a subject they have reported a separate bill upon that would make it in order on an appropriation bill? The fact of reference to the committee did give them jurisdiction over the subject-matter, and they made a report on it as a separate measure or as a part of the river and harbor bill. Would it not have to be reported as a separate measure and passed on by the House before giving the Committee on Rivers and Harbors the right to put it on the appropriation bill?

Mr. BURTON. This is not an appropriation, the appropriation is merely incidental.

Mr. HULL. Has not the subject, however, passed out of the jurisdiction of the committee entirely when they reported it to the House?

Mr. BURTON. I would state there was a similar incident several years ago. A bill was introduced regulating the flow of water for the power canal at Sault Ste. Marie. That was referred to the Committee on Rivers and Harbors and brought it into the jurisdiction of the committee—and in that case more than in this there would be objection to its incorporation in the river and harbor bill, because an effort was made to pass it by unanimous consent and objection was made.

The Committee on Rivers and Harbors afterwards incorporated the provision of that bill in the regular river and harbor bill, and it passed as a part of the act of 1902.

Mr. HULL. But no point of order was raised.

Mr. BURTON. There the precedent is in favor of this.

Mr. HULL. But no point of order was raised.

Mr. BURTON. I think not.

The CHAIRMAN. The question is upon the point of order raised by the gentleman from Illinois. In the opinion of the Chair, the fact having been established by the statement of the gentleman from Ohio that this legislation contained in the Senate bill was referred to the Committee on Rivers and Harbors, leads the Chair to believe that that committee has acquired jurisdiction, and the point of order is not well taken.

Mr. MANN. Mr. Chairman, before the Chairman rules upon that may I call the attention of the Chair to the fact that this bill is a privileged bill under the rule—a bill which they can call up as a privileged matter under the rule with a right to report it at any time? Now, clearly, the Committee on Rivers and Harbors, if it had a Senate bill referred to it—and which it has already reported, by the way, and which is within the jurisdiction of that committee—clearly that bill was not subject to be called up at any time.

That bill would go on the Union Calendar, or whatever calendar it goes onto, and be subject to the rules. Now, giving the committee this jurisdiction to report at any time upon one kind of a proposition would not enable it to insert in the bill which it reports some other proposition which is not privileged and have that considered in that bill.

Mr. BURGESS. Mr. Chairman, on the question of jurisdiction it would seem clear that the Committee on Rivers and Harbors ought to have the right to report on this sort of proposition, regardless of technicality of a certain point that may be raised with reference to the making of a harbor. That ought to admit the jurisdiction of the committee on this sort of legislation. What is it? This is merely to construct a harbor at a certain place. The rest of it are mere conditions upon which that work is to be constructed and carried on. That is all there is to the proposition.

Mr. HULL. I have nothing to say as to the merits of the proposition one way or the other; but Mr. Chairman, the mere fact that the committee has jurisdiction of this subject would not give it the right to report it in an appropration bill, which has the absolute right to be called up under the rules and brought up for consideration at any time under the rules. Having jurisdiction does not make a subject-matter in order on an appropriation bill.

Mr. BURTON. Will the gentleman yield to me for a question?

Mr. HULL. Certainly.

Mr. BURTON. Is the gentleman aware of the fact that there are a number of decisions in this House, beginning with Speaker Carlisle, to the effect that this is not a general appropriation bill?

We have included in it a great deal of matter for the dispotion of wrecks, for the regulation of the dumping of rubbish in rivers, and the surveys for which we provide are not strictly appropriations at all. The bill is not in any sense a general appropriation bill. Does not that fact do away with the force and point which the gentleman from Iowa has mentioned?

Mr. HULL. Why, Mr. Chairman, my understanding is that the surveys are part of the duty of the committee in estimating for appropriations.

When it comes to any question not directly affected by the provision of the rules of the House, and it can call it up at any time for consideration regardless of objections, it seems to me that the same rule will apply to it as to any other appropriation committee.

The CHAIRMAN. The Chair will call the attention of the gentleman from Iowa to the rule which says that the bills may be reported at any time—clearly.

Mr. HULL. The bill may be reported; but general legislation can not be incorporated in this bill any more than in any other. I am not opposed to the general desirability of this legislation. I am opposing the method of legislation.

It does strike me that when you give to one committee of the House the right to incorporate general legislation on an appropriation bill, simply because they have jurisdiction of the subject, that would open the doors wide to every other committee under the same rule.

The CHAIRMAN. No; the River and Harbor Committee sustains an entirely different standing under the rules from any general appropriation committee, and as this is clearly——

Mr. HULL. Not in general legislation, in my judgment.

The CHAIRMAN. This is clearly a provision coming from the River and Harbor Committee, and if the committee has jurisdiction of the subject-matter, they may report it to the House.

Mr. HULL. Yes; report it to the House, but not incorporate the provisions in the privileged bill.

Mr. MANN. I wish the Chair would notice that the provision against which I made the point of order is not a provision to improve the river at all. That is a former provision in the bill, on which I did not make the point of order.

The CHAIRMAN. That is a question of fact, however.

Mr. MANN. Why, the reading of the provision settles that. It says:

> Upon the completion of the dredging of said Snake River.

The improvement of the river is completed. This provision does not have any effect at all until the improvement is completed.

The CHAIRMAN. Surely the gentleman from Illinois will not contend that the money appropriated makes the second condition operative?

Mr. MANN. There is no money appropriated here at all. No money is appropriated for this improvement.

Mr. MAHON. It is just a charter to a company.

Mr. MANN. Yes; it is simply a franchise to a company.

The CHAIRMAN. The gentleman from Illinois is wrong. The tolls provided for by this section are intended to be for the improvement.

Mr. LIND. Mr. Chairman——

The CHAIRMAN. The Chair will hear the gentleman from Minnesota.

Mr. LIND. I think this discussion is entirely beside the point. I want to call the attention of the Chair to page 483 of the Digest, which reads:

A public bill having been reported by a committee and referred to the Committee of the Whole House for consideration, a point of order may not be raised in the Committee of the Whole as to the jurisdiction of the committee making the report.

That has always been the rule of the House. This is a Senate bill, as I understand it, referred to the Committee on Rivers and Harbors, which has reported back the provisions of that bill.

Mr. MANN. If the gentleman will pardon me, this bill is H. R. 18809, which was never referred to the Committee on Rivers and Harbors at all.

Mr. LIND. But this particular provision is predicated on a Senate bill which was referred to the Committee on Rivers and Harbors and reported back as a part of this bill.

Now, the bill itself as such is privileged, is in order, and this particular section under the paragraph just read is here with equal propriety.

The CHAIRMAN. The Chair will state to the gentleman from Minnesota that the provision which he reads evidently has application to the smaller bills, but clearly no committee having jurisdiction of appropriations can report anything to the House that it has not acquired original jurisdiction over.

Mr. LIND. But the Chair just remarked a moment ago that this is not an appropriation.

The CHAIRMAN. I think the gentleman from Minnesota misunderstood the Chair. This has a little wider scope than a general appropriation bill, and a rider that would be subject to a point of order if attached to a general appropriation bill operating to change existing law might not suffer the same fate on this bill.

Mr. LIND. Now, in respect to that wider scope, it has jurisdiction. In respect of this particular matter it likewise has jurisdiction, because it is predicated upon a Senate bill that was properly referred to the committee, and is now reported back as a part of the bill of which it has original jurisdiction.

The CHAIRMAN. But in the matter of new legislation this bill is in a very different position than a general appropriation bill.

Mr. LAWRENCE. Mr. Chairman, it seems to me there can be no question but that the attitude of the gentleman from Illinois [Mr. MANN] is correct; that if the Committee on Rivers and Harbors has no jurisdiction over the subject-matter of this paragraph it would be subject to the point of order.

I wish to be entirely frank with the Chair, and I call attention to the ruling on page 643 of the Manual, which says that points of order having been reserved to the bill, a paragraph including matter of which the River and Harbor Committee has no jurisdiction may be ruled out in the Committee of the Whole.

So that the question is whether the Committee on Rivers and Harbors has jurisdiction over the subject-matter of this paragraph. I think very clearly that the committee has such jurisdiction. The jurisdiction of the Committee on Rivers and Harbors is determined by section 8 of Rule XI. By that rule all matters relating to the improvement of rivers and harbors shall be referred to the Committee on Rivers and Harbors.

Now, I think the jurisdiction of the committee as to the subject-matter of this paragraph is clearly established by the rule to which I have referred. In addition to that, it seems to me that the Chair, in determining the question of jurisdiction, should consider what the custom of the House has been in referring subjects to the different committees. As a matter of fact, this very provision was referred to the Committee on Rivers and Harbors by the House, and so it is very clearly within its jurisdiction. I think the paragraph in question is within the jurisdiction of the committee under the general rule. However that may be, it certainly is within its jurisdiction, because by action of the House itself the matter was formally referred to the Committee on Rivers and Harbors.

Of course the Chair is familiar with the fact that this is not a general appropriation bill, and consequently the objection as to its being new legislation can not be sustained.

Mr. FITZGERALD. Mr. Chairman, I desire to call the attention of the Chair to the fact that this is not a provision for the improvement of a river, but is clearly a regulation of commerce on a river. This paragraph provides that upon the completion of this work the company shall have the right to collect certain tolls, and there is no requirement that the tolls shall be applied to the maintenance of the river. A right is given to collect tolls; that is a regulation of commerce. The right continues so long as the river shall be maintained in a certain condition.

I wish to call the attention of the Chair to the fact that even if the Senate bill to which the chairman has called attention had been referred to his committee and had been reported back to the House that the right to raise the question whether it was a proper reference would not be waived and could not arise until the bill was reached for consideration.

The CHAIRMAN. The gentleman from New York must admit that the language of the paragraph complained of would initiate a river improvement.

Mr. FITZGERALD. On the contrary, it specifically states that this legislation shall not be effective until the improvement has been completed.

Mr. MANN. Mr. Chairman, the rules provide that the Committe on Rivers and Harbors shall have leave to report at any time bills for improvement of rivers and harbors. It is not a question whether the committee had jurisdiction of this subject-matter or not. The question is whether it has jurisdiction to report it in this privileged bill. The Committee on Military Affairs has jurisdiction to remove a charge of desertion, but that does not give the committee the right to report a bill removing the charge of desertion in an appropriation bill.

Now, each section must stand by itself. I did not make the point of order on the provision providing for improvement of this harbor, because I did not think it would lie. I have no doubt that the committee has jurisdiction to report here in the river and harbor bill a provision permitting a private person or a private company to dredge out a harbor, but the sections must stand by themselves.

This is not a permission to dredge the harbor. The chairman may say it is a part of the compensation, but the compensation must be in the section if it is a part of the compensation. It may have been the intention of the committee to make it in that way, but the bill is not drawn in that way. These items in the bill are considered and must be considered by themselves. This item provides that on completion of the improvement they shall have the right to exercise what is ordinarily called "franchise rights."

Mr. LACEY. Mr. Chairman, I call attention to the fact that there is only one proposition embraced here, and that is the granting of a franchise to a company, and it is all a part of one proposition. There are no separate paragraphs. Either it will have to stand as a whole or go out as a whole. It is not divided into sections.

Mr. BAKER. Oh, no; you can let them improve the river, but they won't do it.

Mr. LACEY. It involves granting an organization to a company and a franchise to that company, and it should all go out or none of it should go out.

The CHAIRMAN. The only appropriation for the improvement of this river is very apparent from the language used in the bill. The Chair does not think that the gentleman from Illinois can oblige the Chair to disassociate the two paragraphs, and when considered as a whole, with the explanation of fact, the committee has jurisdiction of the subject-matter and it is properly in this bill. The Chair therefore overrules the point of order made by the gentleman from Illinois.

Mr. BAKER. Mr. Chairman, I move to strike out, in line 18, the words "one dollar" and substitute therefor the words "one cent." Mr. Chairman, with all due deference to the ruling of the Chair, I contend that this is a regulation of commerce; that it is conferring upon a private company the right to tax the commerce of this country, so far as it exists upon the Snake River.

I contend that the effect of it is just as vicious in principle as if a private company in the city of New York, which I have the honor in part to represent on this floor, should have the right to dredge, say, Newtown Creek or Gowanus Canal, and there should be inserted in this bill a provision conferring upon them for such an improvement the right to collect tolls upon commerce coming to the city of New York which frequents those waterways.

The legislation is vicious in principle. No one knows what is involved in this bill. No one, not even the projectors of this enterprise, those who are begging for this franchise on this floor, can possibly tell how much money is going to be made out of this thing. It is a vicious principle. It is, as I said before, getting back to the old turnpike days where private corporations were given the right to levy toll upon the traffic proceeding over these highways. It will inevitably result in the same thing. It will result in building up private fortunes in the exercise of a governmental function.

The principle is vicious. It makes no difference if it is true, as the chairman of the Committee on Rivers and Harbors has contended, that this is a section remote from the United States, and that it is of very little value. You can always be sure of this, that no individual or private company will apply for a fran-

chise to do something that it is not sure is going to bring it in very large rewards over and above any prospective expenditures.

Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. Consent has already been given.

Mr. BAKER. No, that has nothing to do with it, Mr. Chairman. I ask unanimous consent in customary form.

The CHAIRMAN. The Chair will submit the request.

Mr. MANN. Mr. Chairman, I would like to know whether it is consent to extend remarks on this bill or not?

The CHAIRMAN. The Chair will submit the request in customary form.

Mr. MAHON. I object.

The CHAIRMAN. Objection is made.

Mr. BAKER. Very well; I shall reserve the right to object myself.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York.

The question was taken; and the amendment was rejected.

The Clerk read as follows:

The said improvement company shall have the right to occupy and use land by it reclaimed on each side of its said jetties and channels constructed by it where such land is not at the time of approval of this act legally held or owned by any person, company, or corporation: *Provided*, That nothing herein contained shall be construed as limiting the rights of any State which may be hereafter organized from said Territory of Alaska to assert title to tide lands: *Provided further*, That the United States may, upon notice to said company of not less than one year, take possession of and acquire full title to all such harbor or channel improvements constructed and rights in land reclaimed by said Nome Improvement Company under authority hereof, upon payment to said company of the reasonable value thereof, excluding the value of the franchise: *Provided further*, That the work of improvement herein described shall be begun within one year from the date of approval of this act: *Provided further*, That if after the lapse of two years from date of approval of this act the said improvement company shall, at any time during the season of navigation, permit any portion of said channel between the jetties, including that portion of the river improved by it, for three consecutive months to be of less depth than 6 feet at mean low tide, for a full width of 50 feet, then all rights of said company as herein determined shall cease, and the harbor improvements constructed, including bulkheads, jetties, and rights in reclaimed lands, shall become the property of the United States without recompense to the company: *Provided further*, That no exclusive privileges to dredge in Snake River as an incident to mining are herein conferred; and the said improvement company shall assume all liability for damages that may arise as the result of work undertaken by it under the authority of this act: *Provided further*, That this act shall not be held to authorize the infringement or impairment of the legal rights of any person, company, or corporation: *And provided further*, That said harbor, when duly constructed, shall, under uniform regulations to be adopted by said company, and approved by the Secretary of War, be free to such vessels as may be able to enter the same as a harbor or refuge in stress of weather.

Mr. BURTON. Mr. Chairman, I move to amend, on line 17, page 75, by striking out the word "or" and inserting the word "of."

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Ohio.

The amendment was agreed to.

The Clerk read as follows:

Congress reserves the right to alter, amend, or repeal any of the provisions of this act in so far as it relates to this franchise.

Mr. LACEY. Mr. Chairman, before passing over this paragraph I would like to make an inquiry of the gentleman from Ohio. I notice a provision here that nothing herein contained shall be construed as limiting the rights of any State which may be hereafter organized from said territory of Alaska to assert title to tide lands and that they have the right adjacent to the stream.

Now, there has been a special reservation in Alaska of 60 feet along the border of all streams and harbors. I would like to ask the gentleman whether he thinks it is necessary or proper to insert a provision so that that reservation shall not be interfered with by this grant?

Mr. BURTON. I should not think so, because it seems to me that while that point is a novel one to me—and I am not familiar with the land laws, and for that reason hesitated about putting in this provision—that proviso beginning on line 8 and running to line 11 covers that sufficiently.

Mr. LACEY. No; that is only the question of shore rights, which is reserved to all the States.

Mr. BURTON. What is the other kind of land to which the gentleman refers?

Mr. LACEY. In the act of 1898 there is a provision specially reserving on all the shores of Alaska, on the streams and bays, 60 feet from high tide as a roadway.

Mr. BURTON. Sixty feet which way from high tide?

Mr. LACEY. Inland. That is for a roadway and is expressly reserved. We have a bill which went on the Calendar yesterday from the Public Land Committee involving the question of giving some additional rights to an Alaska railway company at Resurrection Bay. The Department of the Interior in reporting on that bill called special attention to this 60-foot proposition, and objected to the bill unless an amendment was put in preserving this 60-foot roadway.

This question would seem to be involved also in the harbor at Nome, whether the 60-foot frontage there reserved to the public for a roadway ought not to be reserved even as against the owners of this franchise.

Mr. BURTON. I think not. I would not object at all if the gentleman would frame or have framed an amendment so that we could have time to examine it; but, for instance, this is land that is located on both sides of the channel, excavated from the sea or from the river, and I do not see how that can interfere with the operation of the law giving 60 feet to the Territory except at the junction point of the river and the sea, and not even there.

The Clerk read down to section 4, page 79.

Mr. MAHON. Mr. Chairman, I make the point of order on that whole section. The Committee on Rivers and Harbors have no jurisdiction.

The CHAIRMAN. Will the gentleman reserve the point and permit the section to be read?

Mr. BURTON. On what section is that? I did not understand.

The CHAIRMAN. Does the Chair understand the gentleman from Pennsylvania to make the point of order against section 3?

Mr. MAHON. To section 4.

The CHAIRMAN. Will the gentleman withhold it and let the Clerk read the section?

The Clerk read as follows:

SEC. 4. That the supervisor of the harbor of New York, designated as provided in section 5 of the act approved June 29, 1888, entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City, by dumping or otherwise, and to punish and prevent such offenses," is hereby authorized to make and issue, from time to time, regulations with respect to steam vessels or tugs towing barges, or other water craft, within the limits of that part of the harbor of New York and adjacent waters lying south or below a line projected eastwardly and westwardly through the southerly end of Governors Island and the southerly end of Liberty Island, prescribing the length of tows, the length of the towing lines connecting said steam vessels or tugs with their tows, the length of the lines connecting the individual barges or other water craft constituting a tow, and the number of barges or other water craft which may constitute a tow, either alongside or astern, and the arrangement of such barges or other water craft, and the mode of making up tows, and the said supervisor is hereby authorized to make and issue from time to time regulations with respect to steam vessels and tugs towing barges or other water craft within said limits, limiting such vessels or tows to certain waters, or parts of certain channels thereof, in his discretion. Such regulations when so made and issued shall have the force of law and any violation thereof shall be unlawful; and the owner and master, or person acting in the capacity of master, of any towing vessel, or any other person or persons violating any of said regulations shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $250 nor less than $50, or by imprisonment for not more than six months nor less than one month, or by both such fine and imprisonment, in the discretion of the court. The said supervisor of the harbor and the inspectors and deputy inspectors appointed by him shall have the authority to take into custody, with or without process, any person or persons who may violate any of the aforesaid regulations: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of the supervisor or his inspectors or deputy inspectors, or either of them: *And provided further*, That whenever such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offense alleged against him, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States.

Mr. FITZGERALD. I make the point of order against that whole section, Mr. Chairman.

The CHAIRMAN. The gentleman from Pennsylvania has made the point of order.

Mr. MAHON. It is in the gentleman's district, and if he desires to make the point of order he can do so.

Mr. BURTON. I would like to have some agreement limiting the time of discussion on this point of order. I am perfectly willing to leave this with the Chair, but if we are going to continue any considerable time in discussion on this point of order I think the committee would desire to rise, and I shall make a motion to that effect.

Mr. MAHON. I think the point of order is clear.

Mr. BURTON. Does the gentleman from New York desire to be heard; and if so, how much time?

Mr. FITZGERALD. I think five minutes is all I care to have on the point of order. I raise this point of order first on the ground that the committee has no jurisdiction of the subject-matter; secondly, that the matter contained in the paragraph is not germane to this bill and that it is not germane to the act that it proposes to amend. It is not a provision for the improvement of a river or harbor. It is to regulate towing in a harbor. It is a regulation of commerce. It can in no wise be said to be either an improvement or a preservation of a public work upon a river and harbor.

In addition to that I desire to call the attention of the Chair to this fact, that the act which is proposed to be amended was never referred to the Committee on Rivers and Harbors but was reported from the Committee on Commerce in the Fiftieth Congress.

At that time a Senate bill came to the House and was referred to the Committee on Commerce and was reported from that committee. Mr. Cox, at that time a Member of the House, called attention to the fact that a House bill had been reported from the Committee on Commerce and that this, a similar bill—that is, a bill giving the supervisor of the harbor of New York power to prevent injurious deposits in the harbor of New York—had been placed upon a river and harbor bill and eliminated, because it was incongruous upon such a bill. The act which it is proposed to amend by this provision is an act to prevent deposits of an injurious nature in the harbor of New York. This proposed amendment to regulate towing and to provide penalties for violations of regulations to be made can in no sense be said to be germane to the matter contained in that act. It is not germane to the matter contained in this bill, and I submit that it is not properly in order upon this bill.

The CHAIRMAN. The Chair would like to hear from the gentleman from Ohio upon the question of jurisdiction.

Mr. BURTON. On the question of jurisdiction the gentleman from New York is right in stating this act was originally a separate act. I really was not aware from what committee it came. I have very considerable doubt, I will say frankly, Mr. Chairman, as to whether this provision is in order here. The boundary line between the jurisdiction of the Committee on Rivers and Harbors and other committees is a hazy one. I would simply say, however, that the improvement of rivers and harbors is not restricted merely to the building of dikes and dredging of channels and the removals of obstacles, but it is necessary that it be exercised in order to make that work effective, to provide for the prevention of deposits of refuge, and so in the river and harbor act of 1899 a number of provisions were included.

For instance, there was one to the effect that it should be unlawful to either discharge or deposit out of any ship, barge, etc., or mill, any refuse matter which shall float or be washed into any navigable water. Then it was provided that no piers, wharves, bulkheads, or other works shall be extended or deposits made in harbors; that it shall not be lawful to build or commence the building of any wharf, dolphin, boom, weir, etc., until harbor lines are established, and that it shall not be lawful to construct or to commence the construction of any bridge, dam, dike, or causeway over or in any port, haven, roadstead, harbor, canal, etc.

There are a number of similar provisions. Here is one which is nearer to this than any other, contained in section 15 of the act of 1899, to the effect that it shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessel or craft.

That is exactly in line with this provision, and I submit—and I do not wish to take the position of a partisan as regards this section—it is one that is important to be decided, and decided to the effect that the improvement of rivers and harbors includes such steps as are necessary to make those improvements effective.

Now, this is not a regulation of commerce, as stated by the gentleman from New York [Mr. FITZGERALD], but it is keeping a class of craft out of those harbors which would otherwise render them such that they could not be used. The object is not to regulate commerce at all. The Government has certain channels. Barges are using them, and these barges and tows are 100 feet or 500 feet or a thousand feet long; and this provision is to compel them to keep out of those channels which the Government is improving and over which this committee has jurisdiction.

It is true there is some water there of sufficient natural depth where we have not provided for an improvement. If we observe any other rule in the case of a channel, say, 5 miles long, where there is alternately deep and shallow water, and we had to dredge out where it was shallow, a narrow construction would limit the jurisdiction of this committee to the jurisdiction merely over the shallow places, leaving the deep places to the jurisdiction of some other committee.

Mr. SCUDDER rose.

Mr. BURTON. I will yield to the gentleman from New York [Mr. SCUDDER].

Mr. SCUDDER. Mr. Chairman, I would like to ask the chairman of the committee [Mr. BURTON] whether, as a matter of fact, this provision is not virtually a police regulation?

Mr. BURTON. I should say so, with reference to keeping the harbors clear.

Mr. MANN. Mr. Chairman, may I ask the gentleman from Ohio [Mr. BURTON] a question?

Mr. BURTON. One moment. I will state a further thing. The act to which the gentleman from New York [Mr. FITZGERALD] refers, to which this was an amendment, was primarily to prevent deposits in the harbor.

Mr. FITZGERALD. I will say to the gentleman from Ohio [Mr. BURTON] that it came from the Committee on Harbors and not from the Committee on Rivers and Harbors.

Mr. BURTON. In 1888.

Mr. MANN. As I understand it, the Government is now constructing a 40-foot channel in New York Harbor. Is this section designed for the purpose of permitting the use of that channel by some of the vessels and forbidding the use of it by the other craft?

Mr. BURTON. Oh, no; not by any means.

Mr. MANN. During the construction?

Mr. BURTON. If there is any mistake about that provision, it is my own, because when the bill was sent in here from the War Department including all channels, I suggested that there might be some shallow channels or others off the main lines of travel by which these barges could go without interference with the commerce, and it was not necessary to subject those to regulations.

Mr. MANN. The reason I asked the gentleman from Ohio [Mr. BURTON] the question was that it had been stated before the Interstate and Foreign Commerce Committee in the consideration of light-house matters that the new channel would be opened, a thousand feet wide and 30 feet deep——

Mr. BURTON. Two thousand feet wide when it is finished.

Mr. MANN. And 35 feet in depth, and within two and one-half years' time, and would then be used by the trans-Atlantic liners, but would not be permitted to be used by the ordinary smaller vessels, because it would not be possible to accommodate everything in the new channel while they were working there. And I wish to know whether this was designed to carry out that purpose.

Mr. BURTON. I will say "no" to the gentleman from Illinois [Mr. MANN]. I should say it would be merely regulation.

I would state further in this connection that it was referred to us, and we took care of the subject of the removal of wrecks. There is a further provision in section 15 to the effect that whenever a vessel, raft, or other craft is wrecked or sunk in a navigable channel or otherwise it shall be the duty of the owner of such craft to immediately mark it by buoy or beacon.

All these sections point to the idea that it is part of the duty of the River and Harbor Committee not only to provide for channels and keep them open, but for all classes of obstruction. And there is a further provision in section 16 to the effect that every master, pilot, or engineer acting in such capacity, respectively, on any boat or vessel that shall knowingly engage in towing any scow, boat, or vessel loaded with material specified in section 13 of the act, outside of channels specified by the Secretary of War, shall be subject to a penalty, and it seems to me this provision comes more nearly to that prohibition than it comes to any regulation of commerce.

I am willing to submit the question to the Chair. I am inclined to think it is in order.

The CHAIRMAN. The Chair is in perfect accord with the suggestion of the gentleman from Ohio, that the Committee on Rivers and Harbors has very wide jurisdiction; but this is a provision which relates to the regulation of a harbor. The Committee on Rivers and Harbors, as well as the Committee on Merchant Marine and Fisheries, was created out of the Committee on Interstate and Foreign Commerce; and the question whether the jurisdiction set forth in this paragraph passed to the Committee on Rivers and Harbors is a question which the Chair must determine. Clearly this point of order is well taken, as the paragraph referred to appertains entirely to the regulations of a harbor; upon which matters the Interstate Commerce Committee has exclusive jurisdiction.

Therefore the Chair sustains the point of order.

The Clerk proceeded to read section 5.

Mr. BURTON. Mr. Chairman, I ask unanimous consent to substitute for that section another which I will ask to have read, the reading of the section stricken out being dispensed with.

The CHAIRMAN. The gentleman from Ohio offers a substitute for section 5, and asks unanimous consent to dispense with the reading of the original text. Is there objection? [After a pause.] The Chair hears none.

Mr. MANN. Mr. Chairman, before that is done, I wish to reserve a point of order on the section, and I want it also to apply to the substitute.

The CHAIRMAN. The point of order is reserved.

The Clerk read as follows:

Strike out all of pages 81, 82, 83, and 84. Strike out section 5 and insert in lieu thereof the following:

Mr. BURTON (interrupting the reading). I will state briefly, in order that gentlemen may understand the situation, that this amendment is made up of that part beginning with the words "and the Secretary," on line 25, page 82. We thought it best on further consideration not to include that portion of section 13.

The Clerk proceeded to read the substitute, as follows:

Pages 81, 82, 83, and 84. Strike out section 5 and insert in lieu thereof the following:

"SEC. 5. That section 13 of the river and harbor act of March 3, 1899, entitled 'An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes,' is hereby amended by adding thereto the following:

"The Secretary of War is hereby authorized and empowered to prescribe regulations to govern the transportation and dumping into any navigable water, or waters adjacent thereto, of dredgings, earth, garbage, and other refuse materials of every kind or description, whenever in his judgment such regulations are required in the interest of navigation. Such regulations shall be posted in conspicuous and appropriate places for the information of the public; and every person or corporation which shall violate the said regulations, or any of them, shall be deemed guilty of a misdemeanor and shall be subject to the penalties prescribed in section 16 of the river and harbor act of March 3, 1899, for violation of the provisions of section 13 of the said act: *Provided*, That any regulations made in pursuance hereof may be enforced as provided in section 17 of the aforesaid act of March 3, 1899, the provisions whereof are hereby made applicable to the said regulations: *Provided further*, That this section shall not apply to any waters within the jurisdictional boundaries of any State which are now or may hereafter be used for the cultivation of oysters under the laws of such State except navigable channels which have been or may hereafter be improved by the United States, or to be designated as navigable channels by competent authority, and in making such improvements of channels the material dredged shall not be deposited upon any ground in use in accordance with the laws of such State for the cultivation of oysters, except in compliance with said laws: *Provided, however*, That such State has statutes in force regulating under suitable penalties the depositing of material in the waters of such State: *And provided further*, That any expense necessary in executing this section may be paid from funds available for the improvement of the harbor or waterway for which regulations may be prescribed, and in case no such funds are available the said expense may be paid from appropriations made by Congress for examinations, surveys, and contingencies of rivers and harbors."

Mr. SCUDDER. I move to strike out the last word. I do this for the purpose of asking the chairman a question.

Mr. GAINES of West Virginia. Will the gentleman yield to me for a moment?

Mr. BURTON. I desire to know before any discussion is entered upon whether the point of order will be insisted upon.

Mr. MANN. I desire to reserve the point of order pending an explanation.

Mr. GAINES of West Virginia. I want to ask whether the chairman of the committee would not move that the committee rise, and let us see this amendment in the RECORD in the morning?

Mr. BURTON. I will say to the gentleman from West Virginia if there are to be many more points of order raised and discussed it will be necessary to move to rise. I do not think this will detain the committee long. The main object of this amendment is to strengthen section 13, under which the penalties were not sufficient. It was found impossible to secure convictions, and it has been thought desirable——

Mr. SCUDDER. If the gentleman will permit me.

Mr. BURTON. I prefer to speak with some continuity.

It is found necessary to provide regulations such, for instance, as to the time within which dumping scows shall go out to deposit their material. It is now the practice in Boston and in other harbors to carry garbage and refuse out to sea at night. It is impossible to follow those boats and detect violations of the law. A provision was sent in here to the effect that each boat should be marked with a letter which would be legible, and another to the effect that they should only dump material in the daytime, making these provisions substantive law. The committee thought it best to omit that and give only the right to make general regulations. There is another provision on the point of the oyster industry, which reads as follows:

That this section shall not apply to any waters within the jurisdictional boundaries of any State which are now or may hereafter be used for the cultivation of oysters under the laws of such State, except navigable channels which have been or may hereafter be improved by the United States, or to be designated as navigable channels by competent authority, and in making such improvements of channels the material dredged shall not be deposited upon any ground in use in accordance with the laws of such State for the cultivation of oysters, except in compliance with said laws.

If the gentleman desires a further explanation I will say that it was found that in the State of Connecticut recently there was a situation which the gentleman from that State [Mr. HILL] understands better than I do.

I trust I have stated the object of the law with sufficient fullness. Does the gentleman from Illinois desire to insist upon the point of order?

Mr. MANN. I withdraw the point of order.

Mr. LAWRENCE. I should like to say, briefly, that I hope this provision will not be resisted. The Government has constructed in Boston Harbor a 30-foot channel to the sea via Broad Sound, but pilots have been very averse to using that channel because of the dumping of refuse and other material in the channel. I am in receipt of a communication from the Boston Chamber of Commerce, urging that the Congress take some action to prevent this. The authorities there have been absolutely unable to control the situation under the law as it now exists, and they would have liked a system of harbor patrol such as is had in New York Harbor.

The provision now under consideration does not go as far as that, but I think it will insure satisfactory enforcement of the law. It is certainly in the interest of the Government that the channel, which it has constructed at such great expense, should be maintained. I hope there will be no objection to the adoption of this section of the bill.

Mr. SCUDDER. Mr. Chairman, I should like to ask the chairman of the committee a question for information. I should like to know whether the amendment which he has caused to be read takes the place of section 13, on page 81 of the bill, or whether section 13, on page 81, still remains in the bill?

Mr. BURTON. Section 13 still remains a part of the act passed in 1899. The amendment is merely an addition, to make that section more effective.

Mr. SCUDDER. If the gentleman will kindly indulge me, I should like to know whether the wording of the existing law is in all respects the wording in this section 13, from its inception down to line 25 on the following page.

Mr. BURTON. That is correct; the present law, which is not modified or changed in phraseology, is that beginning with line 18 on page 81, and extending to and including line 24 on page 82. On reconsideration, it seemed best to the committee not to include that in the provisions of this bill.

Mr. SCUDDER. I should like to state that there are one or two amendments between line 18 on page 81 and line 24 on page 82, which I think should be made to perfect this measure.

Mr. BURTON. I will state to the gentleman from New York that that could not be done except, of course, by introducing a bill to that effect. That statute is not in question here.

Mr. SCUDDER. It is reenacted.

Mr. BURTON. No; it is not reenacted by the amendment.

Mr. SCUDDER. I understand you have not dropped it out, but that you are continuing it in.

Mr. BURTON. That continues, I said, in the act of 1899 unmodified, but it will not be a part of this bill, whether this amendment is adopted or not.

Mr. SCUDDER. This amendment which you have just offered drops out this part of section 13.

Mr. BURTON. Drops it out from this bill, but it is still the existing law.

Mr. SCUDDER. I wanted to know whether it went out of this bill or not.

Mr. BURTON. It goes out of this bill.

Mr. JONES of Virginia. Mr. Chairman, I trust the gentleman from Ohio, the distinguished chairman of this committee [Mr. BURTON], will not insist upon certain words that have been inserted in the amendment which he offers now as a substitute.

Mr. BURTON. If the gentleman will read those words—or I can read them myself—I think we can make short work of that. Mr. Chairman, I desire to strike out from the proposed amendment the following words:

Provided, however, That such State has statutes in force regulating, under suitable penalties, the depositing of materials in the waters of such State.

I do not think this Government ought to inquire whether there are statutes in this State or that pertaining to a particular subject, or to ascertain that before it acts. If there is no objection, I ask that these words be omitted from the amendment.

Mr. JONES of Virginia. That is satisfactory to me.

The CHAIRMAN. Does the gentleman from Ohio ask to modify the amendment in the way he has stated?

Mr. BURTON. Yes.

Mr. JONES of Virginia. I understand the gentleman from Ohio asks to modify his amendment as he has stated, and that is entirely satisfactory to me.

Mr. GAINES of West Virginia. Mr. Chairman, I hope the chairman of the committee will move that the committee do now rise and let this go over until to-morrow, so that we can see what the language of this amendment means. I have had some experience with this statute in a practical way. Section 13, under which the gentleman says no conviction has been had,

is so awkwardly worded that nobody could draw an indictment and it would be a good thing to modify it and perfect it. Any lawyer reading it will see that it specifies where the person must stand and throw things into a navigable stream or place them so that they will drift into the stream, and it is because it holds the pleader to these things which are difficult to allege and still more difficult to prove and which shuts off the range and scope of the evidence is the reason that no conviction has been had.

Now I hope the matter may go over until to-morrow, until we can look at the provision. Nobody can interpret a long penal statute like this by hearing it read.

Mr. BURTON. Section 13 remains as it is.

Mr. GAINES of West Virginia. Yes; and whether we want to vote for the amendment which does permit it to remain in the law or whether we would like to have the whole statute perfected is something I would like to see by further examination.

Mr. BURTON. I think that the gentleman from West Virginia would find that such an attempt would involve so much of an examination and time that it would not be practicable at this late time in the session.

Mr. GAINES of West Virginia. Mr. Chairman, I renew the point of order unless it can go over.

The CHAIRMAN. It is too late now to do that, for the paragraph has been under discussion. The question is on adopting the substitute offered by the gentleman from Ohio.

The question was taken; and on a division (demanded by Mr. SCUDDER) there were—ayes 67, noes 3.

So the amendment was agreed to.

The Clerk read as follows:

SEC. 6. That Cane River, in Natchitoches Parish, La., is hereby declared to be not a navigable water of the United States within the meaning of the laws enacted by Congress for the preservation and protection of such waters.

Mr. MANN. Mr. Chairman, I would like to reserve a point of order as to that section. The Committee on Interstate and Foreign Commerce has jurisdiction of bills of this character and has a good many brought before it. Possibly the River and Harbor Committee ought to have jurisdiction of it. I am not certain but that they ought to have jurisdiction of it, but there ought to be some general policy pursued.

Mr. BURTON. Mr. Chairman, I will say that in this case the gentleman from Louisiana [Mr. BREAZEALE] and other Members came to us and stated that there was a stream in that State for which appropriations had been made years ago—some twenty years ago, I think—where improvements had ceased for a very long time, and that there was no navigation, and where there were numerous highway bridges that they desired to build. It was a great hardship to come to Congress with a bill every time that they wanted to construct a bridge. It was the unanimous desire of the people, as it was represented to us, that the navigable quality be taken away by act of Congress. It was also desired that there should be prompt action, as there were several projects for bridges pending. The navigation was never more than insignificant.

Mr. MANN. Mr. Chairman, I withdraw the point of order.

The Clerk read as follows:

SEC. 9. That the unexpended balance appropriated by the act of April 28, 1904, entitled "An act providing for the restoration or maintenance of channels or of river and harbor improvements, and for other purposes," is hereby made available to apply upon the cost of improvements enumerated in this act, and no further expenditures of said unexpended balance shall be made under the provisions of said act of April 28, 1904.

Mr. BURTON. Mr. Chairman, I have an amendment to offer. In lines 16 and 22, strike out the word "unexpended" and insert the word "unallotted."

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Ohio.

The question was taken and the amendment was agreed to.

The Clerk read as follows:

Provided, That in all cases preliminary examinations as well as surveys shall be examined and reviewed by the board provided for in section 3 of the river and harbor act of June 13, 1902. Such examination and review shall be made by the said board of all examinations or surveys provided for in this act, whether contained in section 1 or section 10.

Mr. BURTON. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 86, line 24, strike out the colon after the word "ten" and insert a comma in lieu thereof, and add the following: "said board shall also, on request by resolution of the Committee on Commerce of the United States Senate or the Committee on Rivers and Harbors of the House of Representatives, examine and review surveys provided for by acts or resolution prior to the river and harbor act of June 13, 1902, and report thereon."

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

New London Harbor, with a view to obtaining a depth of 30 feet in the main entrance channel from deep water to the railroad bridge, and therefrom with a width of 400 feet to the naval station of such width and with such anchorage space as may be necessary.

Mr. BURTON. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 88, after line 13, insert:

"Connecticut River, between Hartford, Conn., and Holyoke, Mass., the Secretary of War is authorized and directed to reconvene the board of engineer officers heretofore designated under a provision of the river and harbor act, approved June 13, 1902, and which board reported upon said improvement in a report dated August 11, 1904, for the purpose of preparing and submitting an additional report on the improvement of said river by open channel work or methods other than by locks and dams."

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Ohio.

The question was taken; and the amendment was agreed to.

The Clerk read as follows:

A survey and estimate shall be made of the following portions of the above waterway, to wit: From Aransas Pass, via Turtle Cove, to Corpus Christi; and from Aransas Pass to and up the Guadalupe River to Victoria, and from Victoria to Cuero.

Mr. BURTON. Mr. Chairman, I offer the following amendment:

The Clerk read as follows:

Page 90, after line 24, insert:

"Calcasieu Lake and River, from mouth of Calcasieu Pass to the head of navigation in Calcasieu River."

The CHAIRMAN. The question is on the adoption of the amendment.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

Kennebec River, from the mouth to Gardner.

Mr. BURTON. Mr. Chairman, I offer the following amendment, in order to correct the spelling of a word.

The Clerk read as follows:

Page 91, line 9, strike out the word "Gardner" and insert in lieu thereof the word "Gardiner."

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Ohio.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

Penobscot River at Bangor.

Mr. BURTON. Mr. Chairman, I offer another amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

After line 10, page 91, insert:

"South branch of Penobscot River, at and near Frankfort."

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Ohio.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

Center Harbor, Brooklin, with a view to the construction of a breakwater.

Mr. BURTON. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 91, line 12, after the word "breakwater," insert the words "and the removal of ledge."

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Ohio.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

Beverly Harbor, with a view to obtaining a channel 200 feet wide and 18 feet deep.

Mr. BURTON. Mr. Chairman, I desire to move to amend, in lines 19 and 20, by striking out all the words after "Beverly Harbor," leaving it simply "Beverly Harbor," without the descriptive material.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Lines 19 and 20, strike out all after the words "Beverly Harbor."

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Ohio.

The question was taken; and the amendment was agreed to.

The Clerk read as follows:

Essex River, with a view to obtaining a channel 6 feet deep to the highway bridge at Essex.

Mr. BURTON. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 92, lines 3 and 4, strike out all after the word "river;" so that it will read "Essex River."

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Ohio.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

Lake Minnetonka, for the purpose of charting only.

Mr. BURTON. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The gentleman from Ohio offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 93, line 4, insert before the words "Lake Minnetonka" the words "survey of."

The question was taken; and the amendment was agreed to.

Mr. BURTON. Now, Mr. Chairman, I offer the amendment suggested by the gentleman from Minnesota [Mr. STEENERSON].

The CHAIRMAN. The gentleman from Ohio offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 93, after line 4, insert:
"Minnesota and Dakota: Red River north from Fargo to the international boundary line."

The question was taken; and the amendment was agreed to.

The Clerk read as follows:

Wolf and Jordan rivers, with a view to the removal of bars at the mouths thereof.

Mr. BURTON. I offer the following amendment.

The CHAIRMAN. The gentleman from Ohio offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 13, after line 12, insert "Tallahatchie River from the mouth of Cold River to Batesville.

The question was taken; and the amendment was agreed to.

Mr. BOWERS. Mr. Chairman, I desire to offer an amendment.

The CHAIRMAN. The gentleman from Mississippi offers an amendment which the Clerk will report.

The Clerk read as follows:

At end of line 12, page 93, insert the following:
"Ship Island and Gulfport, Miss., of the anchorage basin at Gulfport, Miss., and the channel leading therefrom to the roadstead at Ship Island and the pass between Ship and Cat islands, Mississippi, with a view to deepening the same to meet the demands of commerce."

Mr. BOWERS. Mr. Chairman, I ask the attention of the committee while I proceed as briefly as possible to present the reasons which impel me to offer this amendment asking for a survey of the harbor at Gulfport, and of the bar on the outside thereof, and of the channel between the harbor and the bar.

For many years the far greater part of the exports from Mississippi were loaded in the sheltered waters behind Ship Island and in what is known as the harbor of that island. All of the products of that State which move by water were lightered from the streams and shore either to Ship Island or Horn Island, and there loaded upon the vessels. Ship Island was and is much the deeper anchorage, and, as the result of this condition, was and is the favored point of anchorage.

By the river and harbor bill of 1900 an appropriation of $150,000 was made for the purpose of dredging a channel 300 feet wide from Ship Island to the shore at Gulfport, together with an anchorage basin half a mile long by a quarter of a mile wide. This work has progressed to the completion of the channel and of the greater part of the anchorage basin, and instead of a depth of 19 feet the contractor has dredged the whole channel and a great part of the anchorage basin to a depth of 24 feet.

In 1902, and while the work was in progress, the channel and basin was first put to use, and during that year 19,035,252 feet of lumber, of the value of $356,000 at the ship's side, was exported from Gulfport. It required to carry this tonnage 21 vessels, the average draft of which was about 16 feet.

In 1903, 111 vessels cleared from Gulfport, carrying approximately 106,000,000 feet of lumber, of the value of $1,665,000, the heaviest draft being 22 feet. In 1904 there cleared from this port 244 vessels carrying, in round numbers, 228,000,000 feet of lumber, 64,000 barrels of resin, 250,000 barrels of turpentine, of the aggregate value of $3,350,000, the maximum draft being 24 feet.

The total inbound commerce of this port for the year 1904, by both rail and water, was 370,259 tons, valued at $12,228,782.20, the outbound commerce being 68,283 tons, valued at $6,139,872.70, making a total of 438,542 tons, of the value of $18,368,755.

These figures will give some idea of the growth and importance of the port, which has been open for three years and through which the greater part of the export and coastwise commerce of the State of Mississippi moves. This place is important not only for the commerce which originates there and which moves directly through it, but because, the anchorage basin being perfectly sheltered and protected so as to permit of loading both from the piers and the water at all times, cargoes from the whole Mississippi coast east and west are there accumulated and loaded. Ship Island is entirely abandoned because of the superior facilities at Gulfport, and all of the business formerly done at that point, together with this vast and remarkable increase, is done here.

Perhaps the most remarkable feature of the situation is the fact that this great improvement has been effected up to this time without cost to the Government, and when the anchorage basin, now nearly completed, has been finished the United States will pay $150,000 for work which has cost the contractor in round figures $1,800,000. In other words, a great harbor and bar has been constructed practically by private means and private enterprise and at a cost to the Government of less than 10 per cent of the actual expense of doing the work.

I venture to say that the history of river and harbor legislation in this body and of river and harbor improvement in America will present no parallel to this remarkable public spirit and achievement. The figures which I have given not only show the remarkable increase in business which have followed this work, but give earnest of a greater increase in the future. I append to this a statement of the shipment of wood goods out of Gulfport for the years 1901 to 1904, inclusive, which shows the relative importance of this with the other Gulf ports.

Having wrought this improvement with their own means, and practically without governmental aid, the people of that section and of the State of Mississippi—for the whole State is of necessity interested in the development of this port—now ask this body for a survey of the harbor and passages thereto with a view of ascertaining what, if any, further work is required by the demands of their rapidly increasing trade.

The experience of those engaged in the shipping business is that the most advantageous charters can be obtained only for the deeper draft vessels, and they are compelled to decline advantageous charters and to pay rates of freight which are considerably in excess of what should be charged if their facilities were such as to accommodate the deeper and larger ships. This to my mind is a complete answer to any suggestions that the harbor at that point is deep enough and that no other facilities are needed, and in the consideration of this matter we must not lose sight of the fact that no money has been spent at this point and practically none appropriated, but that such results as have been obtained are the product of private enterprises.

It is generally understood that the policy of the Committee on Rivers and Harbors is, wherever possible, to require the States and localities to bear their proportion of public improvement. Tried by this rule, this survey should be ordered. The large amount expended at this point certainly entitles us to a survey and a report as to whether any further work ought to be done. If the facilities are sufficient the report of the engineers will so disclose and no unnecessary expense will be incurred, because a survey can be made at a trifling expense of a few hundred dollars. If they are not sufficient, and we who know insist that they are not, then the fact that all that has been accomplished has been by our labor, and the expenditure of our money certainly entitles us to demand of the Government to take hold of the enterprise and contribute to our improvement in proportion to the appropriations that have been made for other localities.

Mr. BURTON. I do not think this amendment should be adopted. It is a rather peculiar case. Some $200,000 was appropriated and on authorization in 1899, of which a hundred and fifty thousand dollars was to be paid provided certain results were secured. Also $10,000 per annum for maintenance for five years thereafter. It seems to me that we have dealt very generously by that locality. They have already a depth that is far greater—I will not say far greater, but greater—than most of the ports with an equal amount of commerce and of equal importance.

The question was taken, and the amendment was rejected.

The Clerk read as follows:

Passaic River to Newark, with a view to providing increased depth and width.

Mr. BURTON. Mr. Chairman, I desire to offer an amendment at that point.

The CHAIRMAN. The gentleman from Ohio offers an amendment, which the Clerk will report.

The Clerk read as follows:

Strike out in line 1, page 94, the following:
"Passaic River to Newark" and insert in lieu thereof the following:
"Newark Bay to Passaic River from Staten Island Sound to the Montclair and Greenwood Lake Railroad bridge."

Mr. HUGHES of New Jersey. Mr. Chairman, I would like to ask the gentleman from Ohio if he would have any objection

to changing that so as to read "up through Newark Bay to the city of Passaic."

Mr. BURTON. I will say to the gentleman from New Jersey that I should not feel like consenting to that for this reason, that in the year 1900 a very elaborate survey was made from the uppermost limit of this whole project.

The Mount Clair railroad bridge to Passaic and up to Paterson, involving an expensive project costing something over a million dollars was recommended, but the Committee on Rivers and Harbors never adopted the recommendation of the engineer force.

Mr. HUGHES of New Jersey. I understand that, Mr. Chairman, but——

Mr. BURTON. The difficulty lies there not in the absence of the survey but from the fact that Congress has never adopted the project. It would be entirely useless to make a resurvey now, because a very elaborate survey has already been made.

Mr. HUGHES of New Jersey. I am referring to a subject entirely different to the matter referred to by the gentleman from Ohio.

Mr. BURTON. I beg pardon.

Mr. HUGHES of New Jersey. The city of Passaic has always been included in surveys, and any general work done under the appropriation for Newark continues up the river as far as Passaic.

I have two propositions in which I am interested, and I have seen the gentleman from Ohio on both of them. This is a particular proposition. This bill contains a new departure. As I understand it, navigation has always existed up as far as the city of Passaic, and all surveys and appropriations including the city of Newark have been extended up as far as the city of Passaic.

Mr. BURTON. I will say to the gentleman from New Jersey [Mr. HUGHES] that I do not understand that Passaic has been included of late years. We adopted in 1902 a project for Newark which proved entirely inadequate, and this is for an extension of that project. I see no connection between it and a channel to Passaic, which, so far as affording a basis for making appropriations is concerned, is already provided for by elaborate surveys.

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Ohio [Mr. BURTON].

The question was taken; and the amendment was agreed to.

The Clerk read as follows:

Bay Ridge channel, with a view to the construction of a breakwater opposite the wharves.

Mr. SCUDDER. Mr. Chairman, I desire to offer an amendment which I send to the Clerk's desk.

The Clerk read as follows:

Page 94, at end of line 11, insert: "Wading River, Suffolk County, with a view to the construction of a breakwater."

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. SCUDDER].

Mr. SCUDDER. Mr. Chairman, I offer an amendment which I send to the Clerk's desk.

The Clerk read as follows:

Page 94, at the end of line 14, insert:
"Lloyds Harbor, New York, with a view to its connection with Cold Spring Harbor by a canal to be of a depth of not less than 12 feet and of a width of at least 200 feet."

Mr. SCUDDER. Mr. Chairman, Lloyds Harbor is about 2½ miles long and varies in width from one-eighth to one-half mile. It extends westwardly from Huntington Bay, Suffolk County, N. Y., on the north shore of Long Island, and is an arm of that bay. Lloyds Harbor is separated from Cold Spring Harbor or Bay by a low beach from 100 to 200 feet wide when the tide is up. The purpose of my amendment is to authorize a survey, plans, and estimates for the cutting of a channel through this beach, and also deepening the channel of Lloyds Harbor so as to connect the waters of Huntington Bay with the waters of Cold Spring Bay by the construction of an inland channel, to the end that the exposed passage around Lloyds Neck may be avoided and the distance or trips between Huntington, Northport, and other localities and New York City may be very considerably shortened. This improvement is petitioned for by all the people of the sections affected; it is earnestly desired and it is believed will pay for itself in time. It has been estimated that upward of 300,000 tons of freight per year will be taken through this channel if it is constructed.

Approximately one-half this commerce is carried in sail vessels and one-half in steamers or vessels in tow. One steamboat makes regular trips between New York City and Huntington, and another between New York City and Northport. These vessels would use a channel through Cold Spring Bay and Lloyds Harbor; it would somewhat shorten their trips.

The large steamers of the Long Island Sound lines, which sometimes come into Huntington Bay for shelter when the weather is very rough, would come in by way of Lloyds Harbor and Cold Spring Bay if the channel were opened, avoiding, in eastbound trips, the rough passage around Lloyds Neck.

I hope the amendment will be accepted.

The question was taken, and the amendment was rejected.

The Clerk read as follows:

Buffalo Breakwater, with a view to ascertaining what modifications, if any, are required.

Mr. SCUDDER. Mr. Chairman, I desire to offer an amendment which I send to the Clerk's desk.

The Clerk read as follows:

Page 94, at the end of line 13, insert:
"Threemile Harbor, with a view to its connection with Gardners Bay by a channel of a depth of not less than 12 feet and of a width of at least 200 feet."

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from New York [Mr. SCUDDER].

Mr. SCUDDER. Mr. Chairman, Three-mile Harbor, thus called because situated about 3 miles from the towns of East Hampton and Amagansett, at the east end of Long Island, is about 1 mile long and from half a mile to three-quarters of a mile wide. The depth of water over all this area is 12 feet at low water, and the shores are mostly of high land. At the mouth of its inlet there is a sandy flat, which prevents vessels drawing more than 3 feet of water from entering the harbor. It is believed that by driving piles on each side of the channel through this inlet and at its mouth, and thereby confining the current to a narrow space, that a depth of 10 feet at high water could be had and maintained at a small expense. The sand flat at the mouth of the harbor is caused by the drifting of sand along the shore of Gardiners Bay in heavy easterly gales.

This would be prevented by the driving of piles on the easterly side of the channel. Another line of piles driven on the westerly side of the channel, it is believed, on account of the strong current at this point, would have the effect to keep the channel clear.

It has been estimated that the cost of piling and dredging would not exceed the sum of $12,000. There is plenty of wood suitable for piles in the immediate neighborhood. This should tend to reduce the cost of the work.

The advantages derivable from making this harbor navigable for larger vessels than now can enter it, on account of the bar across its inlet, are as follows:

It would afford a harbor for torpedo boats. The United States Government has built fortifications at Gull Island and Plum Island, in Long Island Sound, and "Three Mile Harbor" would be a safe and convenient harbor for torpedo boats, especially in the winter season.

It also would be useful as a harbor of refuge to vessels engaged in the coasting trade and in the business of fishing, particularly for those which pass through Long Island Sound and Gardiners Bay.

It would enable vessels to load at docks with wood and merchandise which at present are obliged to load by means of scows and small boats while lying off at some distance from the shore.

It would give employment to many persons as boatmen and fishermen. Many residents of that neighborhood are now engaged in the menhaden fishery.

If the channel should be improved as proposed it would be a fine harbor for steamboats, schooners, sailboats, etc., and enable many persons to obtain employment on them.

A careful inspection of this harbor will show that the moderate sum of money required to improve it would prove of great benefit to the country as well as to the residents of the east end of Long Island, who are desirous that something should be done to improve a long-neglected waterway capable of development. I annex a resolution of the board of supervisors of Suffolk County, N. Y., which joins in the petition for this improvement.

By careful inquiry it has been found that the present freighting interests of the immediate locality aggregate 10,000 tons per annum. Large tracts of hard wood and timber are to be found convenient for shipping from this harbor if made accessible. The timber as well as the lands are now comparatively worthless. This trade would aggregate 2,500 tons per annum.

The number of people who would be benefited by the improvement of Threemile Harbor is about 2,000. The residents of the towns of East Hampton and Amagansett are very desirous that the harbor should be improved.

I hope the amendment will pass.

Resolved, That in the opinion of this board the petition to Congress for an appropriation to connect the body of deep water in this county, known as Threemile Harbor, with the open sea by a navigable channel is of general importance and worthy of favorable action, inasmuch as such a channel would open a much-needed refuge and anchorage to vessels in windy and stormy weather.

I certify that the above resolution was duly adopted by the Suffolk County board of supervisors this 25th day of November, 1904.

JOHN H. HAGEN, *Clerk*.

The Clerk read as follows:

Clayton Harbor.

Mr. SCUDDER. Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

Page 94, at the end of line 14, insert:

"Lloyds Harbor, New York, with a view to its connection with Cold Spring Harbor by a canal to be of a depth of not less than 12 feet and of a width of at least 200 feet."

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. SCUDDER].

The question was taken, and the amendment was rejected.

The Clerk read as follows:

St. Lawrence River at or near the Thousand Islands Park.

Mr. SCUDDER. Mr. Chairman, I desire to offer an amendment which I send to the Clerk's desk.

The Clerk read as follows:

Page 94, at end of line 16, insert:

"Greenport Harbor, with a view to the dredging of Sterling Basin within the limit of established harbor lines to a uniform depth of 8 feet at mean low water."

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from New York [Mr. SCUDDER].

Mr. SCUDDER. Mr. Chairman, the purpose of this amendment is to authorize the making of a survey and the submittal of estimates for the improvement of Sterling Basin at Greenport, Suffolk County, N. Y., by dredging the same within established harbor lines to the uniform depth of 8 feet of water at mean low tide.

Greenport Harbor has been recognized by the Federal Government as worthy of development. The improvement contemplated by the amendment now before the committee has for its object the perfecting of the work already done, and will result in great benefits to the people of that community. Operations were carried on by the Government at this locality between the years 1882 and 1893, the original project of improvement, adopted in 1882, providing for the construction of a riprap breakwater to be 3 feet above mean high-water level, with a top width of 5 feet, and to extend from Joshua Point 1,700 feet in a southeasterly course, with the view of arresting drifting sand, checking the erosion of the point, and increasing the sheltered area. The estimated cost was $46,000.

In 1890, after 1,570 feet of breakwater had been constructed, the project was modified to provide for increasing the height of the structure from 3 feet to 5 feet in lieu of a further increase in length, and the application of the balance of the original estimate of cost toward dredging and enlarging the anchorage basin. All the work under the modified project was completed in September, 1893, and the full amount of the estimate has been appropriated.

In addition to the above a preliminary examination of Greenport Harbor was made under the direction of the Chief of Engineers' Office in compliance with the requirements of the river and harbor act of August 18, 1894, and report thereon had.

In submitting to the Secretary of War the report of this examination, the Chief of Engineers concurred in the opinion of the local officer that the harbor was worthy of further improvement by the Government, with the object in view of deepening the anchorage ground in Sterling Basin and widening and deepening its approaches, and it was stated by the Chief of Engineers that no survey was necessary for preparing plans and estimates of cost of the desired improvement, the data then at hand being sufficient for the purpose.

Congress has never authorized this additional work at Greenport. I am not prepared to say that a new survey is needed now; I believe it is not needed. Under, however, the terms of section 2 of the river and harbor act of March 3, 1899, the Chief of Engineers is not permitted to furnish, in the absence of Congressional action, an estimate of cost of the improvement. That section provides that—

No preliminary examinations, survey, project, or estimate for new works other than those designated in this or some prior act or resolution shall be made.

Due to this provision of law, Mr. Chairman, I offer my amendment in the present form, though believing its adoption will not entail any cost upon the Government unless the work of improvement be undertaken upon the receipt of the Engineer's report and estimate.

The improvement now desired would benefit commerce, but it is more particularly desirable in order to provide a place where yachts, fishing steamers, and small sailing vessels can lie up in safety during winter months and be ready and convenient for overhauling, repairing, and fitting out in spring. Sterling Basin improved as contemplated by the amendment could and would be used as a harbor of refuge.

Mr. Chairman, the business of fitting out and repairing pleasure boats and small steamers has assumed considerable proportions in Greenport; it is increasing yearly, notwithstanding the inadequacy of this basin for winter quarters. The fact that successive Congresses have made appropriations for the improvement of this harbor is proof that it has been regarded as worthy of improvement heretofore, and it is more worthy now, due to the growth and development of the surrounding country.

The freight annually received at Greenport by water is estimated at not less than 210,000 tons. The report of the surveyor of customs of the port of Greenport showing the balance of tonnage for the quarter ending December 31, 1903, the last report I have received, bespeaks the growing importance of this harbor. I hope the chairman of the committee [Mr. BURTON] will refrain from opposing the adoption of the amendment.

Abstract showing the balance of tonnage for the quarter ending December 31, 1903.

	Number of vessels.	Tonnage.
Permanent enrollments:		
Sail	32	2,618
Steam	43	5,725
Temporary enrollments, sail	2	193
License under 20 tons:		
Sail, coasting trade	35	307
Sail, fisheries	65	500
Steam, coasting trade	12	137
Steam, fisheries	18	233
Total vessels engaged in trade	207	9,713
Permanent enrollments:		
Sail	2	122
Steam	2	267
Temporary enrollment, sail	1	28
License under 20 tons:		
Sail	14	127
Steam	6	93
Total number of vessels	232	10,350

Respectfully submitted.

JOHN A. BASSAREAR,
Surveyor of Customs.

GREENPORT, N. Y.

The question was taken, and the amendment was rejected.

The Clerk read as follows:

Mouth of Black River.

Mr. SCUDDER. I offer an amendment.

The Clerk read as follows:

Page 94, line 17, at its end, insert:

"Hortons Point, with a view to the construction of a breakwater for the purpose of assuring a harbor of refuge at that point on Long Island Sound."

Mr. SCUDDER. Mr. Chairman, this improvement, the construction of a breakwater at Hortons Point, for the purpose of establishing a harbor of refuge, differs from most others of its kind in that it is advocated almost wholly on general humanitarian grounds, and only in a secondary sense for the advantages it will bring to the locality where located.

If a harbor that will shelter vessels plying up and down the Sound in time of storm or head wind can be built at Hortons Point, its benefits to shipping and commerce will be incalculable and should be obvious to all acquainted with Sound traffic.

The natural conditions which exist at this point warrant the belief that a harbor of refuge there could be made at comparatively small cost and yet afford a sufficient shelter for vessels of considerable draft, and in numbers as large as ordinarily would be likely to assemble for such a purpose at any one time.

The prime requisite for securing such a safe anchorage during storms or head winds is a breakwater both long and high enough to break the force of the waves and to enable vessels to lie behind it and ride to their moorings with safety.

The foundation for such a breakwater exists to-day at this point in a natural bar or sand bed found there, stretching from west to east some 2½ miles or more, and rising to an average height of about 7 feet below the surface, between which bar

and mainland is an ample area and a depth of water sufficient to float a large fleet of the vessels commonly navigating the Sound.

The entrance to this shelter from the Sound is at the east end of this bar. It is wide and easy of approach and exit.

The construction of the proposed breakwater, assuming this bar to be what mariners affirm it is—a firm, durable, and practically unyielding bed of sand—would seem to be easy, and, relatively, not too costly. Stone from nearby Connecticut and much from the Long Island shore itself can be procured and utilized for making a riprap structure able to resist the impact of any gale likely to prevail on the Sound.

The fact that there is now no harbor on the Long Island shore from Orient Point (it might even be said from New London) to Port Jefferson Bay, a distance in the former case of about 45 and in the latter of about 75 miles, emphasizes the necessity for the proposed harbor at Hortons Point, provided it can be secured, as it is assumed it can, at a reasonable outlay of public money.

An official statement from the Superintendent of the United States Life-Saving Service, based on wreck reports filed in his office, shows that in the twenty years from July 1, 1882, to June 30, 1902, inclusive, there were fifty-five casualties between Plum Gut and Huntington Harbor, with the following statistical data:

Property involved, vessels and cargoes, $691,000; property lost, vessels and cargoes, $175,975; lives lost, 3; vessels totally lost, 23.

It is impossible to even approximately estimate the value of the property liable to be affected or the saving of time that might be made by vessels passing up and down the Sound, when caught in thick weather or head winds, were they afforded a harbor of refuge at Hortons Point. The importance of providing such a harbor as that contemplated by my amendment is emphasized by the statement which I append. I hope the amendment will be adopted. Hortons Point, in addition to the reasons already given, would be a good place for the establishment of a harbor of refuge, because it is a prominent and well-marked headland well known to navigators, and already is lighted.

Statement of wrecks and casualties which have occurred from Plum Gut to Huntington Harbor, Long Island Sound, as shown by reports on file in the office of the Life-Saving Service, Treasury Department, from July 1, 1882, to June 30, 1902, inclusive—twenty years.

Date.	Rig and name of vessel.	Locality.	Property involved, vessels and cargoes.	Property lost, vessels and cargoes.	Lives lost.	Vessels totally lost.
1883.						
July 6	Sch. Circle	Plum Gut	$3,225	$200		
Nov. 12	Sch. Falcon	Old Field Point, 1½ miles SE. of.	1,650	600		
1884.						
Feb. 10	Sch. Hattie V. Kelsey.	Hortons Point	12,500	1,500		
Mar. 30	Sch. Francis Coffin.	Sands Point	2,000	1,000		
30	Sch. Isola	Mattituck Beach	3,000	3,000		1
30	Sch. General Howard.	Luces Landing	3,500	2,700		
1886.						
Jan. 9	Sch. Bessie Morris.	Orient Beach	16,000	6,000		
10	Sch. Sea Bird	Bating Hollow	4,800	2,800		
July 1	Br. sp. Marabout.	Rocky Point	(a)	(b)		
July 31	Sch. Uncle Joe	Sands Point	$1,175	$500		1
Sept. 6	Str. Edward G. Burgess.	Rocky Point	18,000	1,500		
Dec. 5	Sch. Allen Gurney.	Rocky Point, 11 miles E. of Port Jefferson.	3,600	1,000		
1888.						
Mar. 13	St. sp. Wilkesbarre.	Wading River	75,000	31,000		
July 11	Sch. George Law.	Orient, W. end Browns Hills.	300	300		1
Oct. 28	St. yht. Magnet	Orient Point	3,500	100		
Dec. 22	Bge. Josephine G. Collyer.	Bet. Mount Misery and Money Hollow.	2,000	200		
1889.						
Feb. 13	Sch. Active	Bating Hollow	1,000	1,000		1
May 22	Sch. Ella Jane	Woodhulls Ldg., near Miller's place.	1,525	1,500		1
Oct. 4	Sloop Globe	Woodville Landing.	1,750	1,500		1
4	Sch Sharpshooter.	Hallocks Landing	2,750	600		
Oct. 13	Slp. Lillie	Old Field Light, 1 mile inside.	(a)	None.		
Oct. 14	Slp. Ellen B	Browns Hills	1,085	1,085		1

a Unknown. b Slight.

Statement of wrecks and casualties which have occurred from Plum Gut to Huntington Harbor, Long Island Sound, etc.—Continued.

Date.	Rig and name of vessel.	Locality.	Property involved, vessels and cargoes.	Property lost, vessels and cargoes.	Lives lost.	Vessels totally lost.
1890.						
Mar. 6	Sch. Susan	Sands Point (below).	$2,855	$2,855		1
May 6	Sch. Plow Boy	Duck Pond Point	3,500	200		
1891.						
Apr. 17	St. yht. Norma	Hortons Point, 2 miles E. of.	(a)	(b)		
1892.						
Mar. 18	Sch. Robert Morgan.	Sands Point	26,000	1,800		
Sept. 19	Sch. Nelson	Mount Sinai	800	600		1
1893.						
Oct. 16	Sch. Mary A. Rice.	Sands Point	13,600	5,200		
Dec. 5	Brit. bg. Solario.	Mattituck Beach	3,000	3,000		1
1894.						
Apr. 27	Sch. Helen Mar	Old Field Point Rocks.	16,000	1,450		
Dec. 27	Str. Tuckahoe	Sands Point	8,000	2,500		
1896.						
Feb. 8	Sch. Henry J. Scudder.	Oyster Pond Point.	4,480	4,380		1
Dec 2	Sch. Gen. Wm. H. French.	Hortons Point	1,600	1,600		1
1897.						
Mar. 10	Br. bk. Athlon	Rocky Point, 1½ miles ENE.	78,000	No dam.		
Oct. 17	Slp. Simons Banks.	Port Jefferson Harbor, ent. to.	(a)	(a)		
1898.						
July 8	Bge. Sherlock Austin.	Orient Point	$8,000	$8,000		1
8	Bge. Alfred W. Budlong.	do	6,500	6,500		1
8	Str. Sterling	Rocky Point, ¼ mile W. of.	1,800	No dam.		
Nov. 27	Bge. Macauley	Hortons Point, 4 miles W. of.	10,000	10,000		1
27	Bge. Navesink	Hortons Point, 5 miles W. of.	6,500	6,500		1
27	Bge. Thomaston.	Millers Beach, 4 miles E. of Old Field Point.	20,000	4,995		
27	Bge. Kalmia	do	29,000	4,495		
27	Bge. Schuylkill.	do	17,570	9,000		
27	St. yht. Kisal	Port Jefferson Harbor.	15,000	7,000		
27	Sch. Observer	do	380	380		1
27	Bge. Escort	Hortons Point	6,000	6,000		1
27	Sch. Hard Chance.	Old Field Point	3,000	3,000	3	1
Nov. 28	Sch. E. W. Stetson.	Luce Landing	10,000	9,500		
1899.						
Oct. 16	Sch. S. O. Co. No. 81.	Rocky Point, W. of Race Rock.	197,000	13,000		
16	Str. O. L. Hallenbeck.	Rocky Point	30,000	1,500		
Dec. 30	Sch. Rabboni	Hortons Point, 2 miles W. of.	2,275	2,275		1
1900.						
Oct. 8	Sch. Gertrude	Old Field Point	580	580		1
Nov. 9	Slp. Sarah L. Pearsall.	Port Jefferson Harbor, E. of.	600	600		1
Dec. 9	Yht. Rosina	Hortons Point	10,000	500		
1901.						
Nov. 12	Sch. E. Brush	Rocky Point, Hallocks Landing.	650	500		1
	Total		691,000	175,975	3	23

a Unknown. b Slight.

Summary.—Fifty-five casualties have occurred between Plum Gut and Huntington Harbor during twenty years from July 1, 1882, to June 30, 1902: Number of disasters, 55; vessels totally lost, 23; lives lost 3; property involved, vessels and cargoes, $691,000; property lost, vessels and cargoes, $175,975. Rigs of vessels damaged or lost: Sloops, 5; schooners, 29; brig, 1; bark, 1; ship, 1; barges, 9; steamers, 4; steamship, 1; steam yachts, 3; yacht, 1. The greatest number of disasters in one storm was on November 27 and 28, 1898, when 6 barges, 3 schooners, and 1 schooner yacht were wrecked.

The question was taken; and the amendment was rejected.

MESSAGE FROM THE SENATE.

The committee informally rose; and Mr. GROSVENOR having taken the chair as Speaker pro tempore, a message from the Senate, by Mr. MITCHELL, one of its secretaries, announced that the Senate had passed bill of the following title; in which the concurrence of the House of Representatives was requested:

S. 6846. An act to reinstate Kenneth McAlpine as a lieutenant in the Navy.

The message also announced that the Senate had passed with amendments bills of the following titles; in which the concurrence of the House of Representatives was requested:

H. R. 2531. An act to divide Washington into two judicial districts; and

H. R. 16986. An act to provide for the government of the Canal Zone, the construction of the Panama Canal, and for other purposes.

The message also announced that the Senate had passed without amendment bill of the following title:

H. R. 18279. An act to authorize the Secretary of the Interior to accept the conveyance from the State of Nebraska of certain described lands and granting to said State other lands in lieu thereof, and for other purposes.

The message also announced that the Senate had passed the following resolution; in which the concurrence of the House of Representatives was requested:

Senate concurrent resolution 105.

Resolved by the Senate (the House of Representatives concurring), That there be printed and bound of the proceedings in Congress upon the acceptance of the statue of the late Frances E. Willard, presented by the State of Illinois, 16,500 copies, of which 5,000 shall be for the use of the Senate, 10,000 for the use of the House of Representatives, and the remaining 1,500 shall be for the use and distribution by the governor of the State of Illinois; and the Secretary of the Treasury is hereby directed to have printed an engraving of said statue to accompany said proceedings; said engraving to be paid for out of the appropriation for the Bureau of Engraving and Printing.

RIVER AND HARBOR APPROPRIATION BILL.

The committee resumed its session.

The Clerk read as follows:

Fire Island Inlet, with a view to the construction of a breakwater.

Mr. SCUDDER. I offer an amendment, Mr. Chairman.

The Clerk read as follows:

Page 94, after line 18, insert:

"The waterways abutting the shores of Long Island, with a view to the construction of a channel connecting the several inland bays surrounding Long Island for the purpose of providing an inland waterway from the Sound to New York Harbor by way of Peconic Bay and Great South Bay."

Mr. SCUDDER. Mr. Chairman, the amendment which I have offered has for its purpose the obtaining of an authoritative opinion upon the feasibility of a project deeply interesting the constituency I have the honor to represent. This project has not been considered deliberately by the Committee on Rivers and Harbors. This being a lean year, I have felt it the part of wisdom to refrain from urging unduly at this time before the committee an enterprise which of necessity must entail considerable expense, particularly as the committee has made it clear to Members that new projects could not be looked upon with favor this year.

For the purpose, however, of stimulating the efforts of my constituents, and also to encourage them in their determination to command a recognition by the Congress commensurate with the importance of Long Island and its resources, rather than with any undue confidence in my ability to induce the House to depart from its rule not to amend in any important degree the bill now under discussion, I offer and ask a hearing on my amendment, which, if passed and followed hereafter by a favorable report of the Chief of Engineers, would result in the construction of an inland waterway or canal from Long Island Sound through Mattituck Inlet and Harbor, to and down the James River into Great Peconic Bay; thence across said Peconic Bay to and through Shinnecock Canal into and eastward down through Shinnecock Bay to and through Quogue Canal, Quantuck Bay, West Hampton Bay, Moriches Bay into Bellport Bay and the Great South Bay; thence westward the length of said Great South Bay to and through South Oyster Bay, Great channel, East Bay, Merrick Bay, Baldwin Bay, and Middle Bay; thence to and through Hog Island channel, Broad channel, to East Rockaway Inlet; thence by Hicks Beach, north of Black Beach, to and through the Bay of Far Rockaway, across the sand flats separating Far Rockaway and Edgemere, to Jamaica Bay; thence still westward by way of Beach channel, in Jamaica Bay, past Barren Island to and through Sheepshead Bay and Creek into Gravesend Bay and New York Harbor. The canal to be not less than 200 feet wide and 10 feet deep at mean low water.

The importance of utilizing the inland waters of Long Island should have but to be brought to the attention of the Congress to be fully appreciated. These great stretches of water, 100 miles in length, to-day of comparative small importance, yet possessing all the elements to commend their consideration, must continue in their unproductive state unless some policy is established whereby their utilization can be had. Unless the Federal Government interfere slow development can be expected along the great stretch on the south shore of Long Island. The average depth throughout the length of these bays is sufficient to carry considerable traffic, and the traffic would be there to-day were it not for the fact that here and there shoal places exist which prevent a continuous route. This is particularly true between Great South Bay and Shinnecock Bay, a distance of about 6 miles, where considerable work is needed to make a flow of water sufficient to carry fair-sized vessels. The policy of the Federal Government, as well as of the State government, heretofore has been narrow in its scope. While now and then small appropriations have been made for the dredging of creeks and channels and the cutting of sluiceways, short canals and inlets, the broader policy of adapting these inland bays for commercial uses has been wholly neglected.

In a measure this has been due to the failure of all the communities interested to unite on any definite plan. The oyster men have asked for one thing, the fishermen for another, the sportsmen for another, and each village has worked more or less against its sister lest the latter's success jeopardize an interest nearer home; at length all have agreed that the solution of the problem rests with the Federal Government, possessed of jurisdiction over navigable waters and the power to lay out an intelligent plan of improvement whereby these waterways can be opened and made serviceable for the transportation of freight, thereby adding to the commercial importance as well as the growth and development of Long Island. It is doubtful whether the Federal Government could find a locality where an equally large territory and equally extensive waterways, as fruitful in resources, can be developed at so small a cost.

Already the Federal Government has undertaken the improvement of Mattituck Harbor. It is true there will have to be considerable digging done to connect the head of this harbor with the Peconic Bay, but once the latter is reached the greatest obstacle in the way of the proposed improvement will have been overcome.

The great Peconic Bay, lying on the eastern end of the island, is deep enough for all purposes and needs no improvement whatsoever; but its connection with Shinnecock Bay is by a narrow canal which at times is very shoal and unnavigable, and will have to be deepened to 10 feet throughout and widened to 100 feet.

The Shinnecock Bay, through its main channels, is from 6 to 8 feet in depth and requires but little dredging until the point near East Quogue or the westerly end of Shinnecock Bay is reached, at which point the water shoals up at the narrow canal cut through by the State of New York. This canal, connecting Shinnecock Bay and Quantock Bay, at present is neither wide enough nor deep enough to permit other than very small boats to pass through. It, too, will have to be widened to 100 feet and dredged to a depth of 10 feet. Quantock Bay is extremely shallow in all its parts and needs considerable dredging for a half mile or more. The Great South Bay is a great sheet of water some 50 miles long, which stretches westward to Babylon, from which point westward to Gravesend Bay at New York Harbor the several bays are more or less connected to-day, and while considerable digging and dredging will be necessary to put the canal through, the value of the improvement will increase as New York Harbor is approached.

One of the desirable objects of the deepening and widening of the connections between the Great South Bay and Shinnecock Bay will be to cause a circulation of water there, which will induce fish to run the length of the Great South Bay as well as from and into the Great Peconic Bay, this will give employment in the fish industry to more men than present conditions permit to engage in it profitably. It also will increase the production of oysters, which need at all times a certain amount of salt water for their best development. Upon the fish and oyster industries the native residents of this section largely depend for their livelihood. In view of the present stagnant condition of the water, their livelihood for years past has been precarious. The important feature of having these waters made navigable for large craft is that freight will be moved over them at a low cost, affording to the south side of Long Island an opportunity for development heretofore denied it. The shores of all these bays are generally about 2 miles from the nearest railroad station. This long haul unduly increases the cost of transportation.

The bulk of the population on the south side of Long Island resides along the shore of these bays. If building material, food products, and other necessaries could be brought by water in time, the saving to the people would more than meet the ex-

penditure of money necessary to bring about the improvement sought by this amendment.

Mr. Chairman, Long Island has a future. The inauguration of a policy of intelligent appreciation of this garden spot of the country, this island in midocean, would hasten what nature intended Long Island to be—an abode of health, comfort, prosperity, and development.

The suggested improvement will be far-reaching in its benefits to that locality, both to values and to health, the promotion of its commerce will be of lasting benefit to the nation and to the State. All considered, the cost will be trifling as compared with the benefits to be derived. Estimates of the cost of this improvement are necessary for an intelligent consideration of the subject. With that object in view this amendment is offered, to the end that upon the plans, surveys, estimates, and recommendations of the engineers the advisability of proceeding with this work may be determined by the Congress.

Mr. Chairman, Long Island possesses the coast line of the State of New York almost in its entirety. It is the place to which New York City looks for its supply of garden truck, shellfish, and many other utilities. It is also the relaxation ground of thousands of New York's population, and it is the natural defense of the city of New York against foreign attack in time of war.

Notwithstanding its location in the shadow of the metropolis, Long Island has never had a commercial development, because it has no through line of railroad, and manufacturing enterprises are loath to settle where transportation is dependent upon one corporation.

It is not probable that the Long Island Railroad has ever earned a dividend; nor is it probable that the Long Island Railroad can afford to run any better than it is running, and yet, notwithstanding this fact, if Long Island waste lands are to be brought into the market for development and identification with manufacturing interests, there must be found other means of transportation from the point of production to the point of distribution than the railroad.

I have often felt that the refusal of the Federal Government to undertake many improvements petitioned for by Long Islanders has been due to the fact that the Congress has considered them as purely local or municipal, ripe subjects for village or town treatment, and not worthy Federal consideration.

On the other hand, if as a matter of fact, for purposes of defense as well as for purposes of the promotion of commerce, an inland waterway could be established connecting the Sound at Mattituck with the Great Peconic Bay, and this latter with Shinnecock Bay through Shinnecock Canal, and Shinnecock Bay with the several bays on the south side of the island down to Jamaica Bay, Sheepshead Bay, and then on to Gravesend Bay, it would be but a question of time when each one of the villages on the south side would be duly connected by channels from their wharves, tapping this main channel, and water transportation with the metropolis would be assured all the communities bordering these bays. This larger enterprise will carry with it the smaller ones.

The present war between Russia and Japan has demonstrated how important a factor the smaller vessels of the Navy are, both in the matter of defense as well as attack. Such a canal as that contemplated by this amendment, extending from the harbor of New York the length of Long Island to the Sound would enable the smaller craft of the Navy to hide behind the sand dunes by Fire Island and the other bars and beaches to the south of the mainland of the island would enable them to make sorties to intercept an approaching enemy and would afford them a safe retreat from pursuit if necessary.

Strategetically such a waterway could not but have great value. Even a hasty examination of the chart shows that comparatively little digging would have to be done to connect those several bays.

This is a work which need not be undertaken all at once. It can and perhaps should be done gradually. It has the concerted harmonious support of the several communities of Long Island and of all allied interests, and I hope will receive the favorable consideration of the Congress.

Mr. Chairman, I appreciate the Federal Government is careful to differentiate between improvements which will be purely of local benefit and improvements which will be of national benefit. The Federal Government does not seek in the first instance to build up commerce where there is none. It seeks to encourage and promote commerce where the same is already established and where the conditions seem ripe for a further development if moneys are judiciously expended in the improvement of waterways. Appropriations are also made to promote the national defenses.

Such improvements partake of a dual nature. They assist commerce in times of peace and they contribute to defense in times of war. Long Island's waterways seem particularly adapted for improvement with this dual object in view, and the particular enterprise I am now advocating seems to measure to every requirement laid down by the Congress for its guidance in the matter of giving Federal recognition and aid with a view to the development of commerce.

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. SCUDDER. Division, Mr. Chairman.

The committee divided; and there were—ayes 7, noes 50.

So the amendment was rejected.

Mr. MACON. I move to strike out the last word.

Mr. SCUDDER. I will not take up the time of the committee in offering any other amendment, but will extend my remarks in the RECORD.

Mr. MACON. As the gentleman is not offering any further amendments I do not seek recognition.

Mr. BURTON. Just one word. I believe none of the gentleman's amendments carried.

Mr. SCUDDER. None of them carried.

Mr. BURTON. Now, if the gentleman is willing to return to page 8, I have no objection to inserting the word "Mattituck" in line 24, page 8, after the word "at" and before the words "Port Jefferson."

Mr. SCUDDER. I desire to thank the gentleman. I assure him that I feel I have earned all the time I have consumed.

Mr. BURTON. A telegram received in regard to it from the Chief of Engineers gives it a certain amount of merit.

The Clerk read as follows:

NORTH CAROLINA.

Pamlico and Tar rivers, with a view to obtaining a depth of 10 feet below Washington, and 4 feet above as far as Greenville, with suitable depths.

Mr. BURTON. There is an error. I move to strike out the word "depths" and insert the word "width."

The amendment was agreed to.

The Clerk read as follows:

RHODE ISLAND.

Patuxet Cove.

Mr. BURTON. I desire to amend by inserting the letter "w;" so as to make it read "Pawtuxet."

The Clerk read as follows:

Line 21, after the letter "a" insert "w;" so as to make it read "Pawtuxet Cove."

The amendment was agreed to.

The Clerk read as follows:

TENNESSEE.

Mississippi River, from the town of Ashport, Tenn., to the highlands above overflow at or near the town of Fort Pillow, and from Ashport east to the highlands above overflow in Lauderdale County, with a view to improving navigation of said section of the river and preventing overflow.

Mr. BURTON. I desire to offer an amendment.

The amendment was read, as follows:

On page 96, after line 4, insert:
"Big Sandy River, from mouth to Big Sandy."

The amendment was agreed to.

The Clerk read as follows:

Cypress Bayou, including an examination of the falls near Little Pass.

Mr. BURTON. Mr. Chairman, I move to strike out lines 13 and 14 on page 96, as they have already been included in the body of the bill.

The amendment was agreed to.

The Clerk read as follows:

Quantico Creek.

Mr. BURTON. Mr. Chairman, I offer an amendment.

The amendment was read, as follows:

On page 96, after line 24, insert:
"Blackwater Creek."

The amendment was agreed to.

The Clerk read as follows:

Duwamish River, with a view to obtaining an increased depth.

Mr. BURTON. I move to strike out the words "with a view to obtaining an increased depth."

The amendment was read, as follows:

On page 97, line 8, after the word "river," strike out the words "with a view to obtaining an increased depth."

The amendment was agreed to.

The Clerk read as follows:

Lake Winnebago, for the purpose of charting only.

Mr. BURTON. Mr. Chairman, I offer an amendment.

The amendment was read, as follows:

On page 97, line 24, insert before the words "Lake Winnebago" the words "survey of."

The amendment was agreed to.

Mr. BURTON. Mr. Chairman, another amendment.

The amendment was read, as follows:

On page 97, after the amendment just adopted, insert:

"TERRITORY OF ALASKA.

"St. Michael Canal, with a view to straightening and otherwise improving the same."

The amendment was agreed to.

The Clerk resumed and completed the reading of the bill.

Mr. BURTON. Mr. Chairman, I move that the committee do now rise and report the bill, with the amendments thereto, to the House, with the recommendation that the same do pass.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. WM. ALDEN SMITH, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill (H. R. 18809) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, and had directed him to report the same to the House, with sundry amendments, with the recommendation that the amendments be agreed to and that the bill as amended do pass.

Mr. BURTON. I move the adoption of the amendments reported from the Committee of the Whole, and the passage of the bill, and upon that I ask the previous question.

The previous question was ordered.

The SPEAKER. Is a separate vote demanded on any amendment? If not, the votes will be taken en bloc.

The amendments were agreed to.

The bill as amended was ordered to be engrossed and read a third time; and was accordingly read the third time, and passed.

On motion of Mr. BURTON, a motion to reconsider the last vote was laid on the table.

ENROLLED BILLS SIGNED.

Mr. WACHTER, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

H. R. 1860. An act for the relief of certain enlisted men of the Twentieth Regiment of New York Volunteer Infantry;

H. R. 5498. An act to provide for circuit and district courts of the United States at Albany, Ga.;

H. R. 10558. An act referring the claim of Hannah S. Crane and others to the Court of Claims; and

H. R. 18815. An act to authorize the construction of a bridge across Red River at or near Boyce, La.

ENROLLED BILLS PRESENTED TO THE PRESIDENT FOR HIS APPROVAL.

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

H. R. 659. An act correcting the record of Harris Graffen; and

H. R. 17939. An act relating to the construction of a dam and reservoir on the Rio Grande, in New Mexico, for the impounding of the flood waters of said river for purposes of irrigation.

SENATE BILL AND RESOLUTION REFERRED.

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

S. 6846. An act to reinstate Kenneth McAlpine as a lieutenant in the Navy—to the Committee on Naval Affairs.

Senate concurrent resolution 105:

Resolved by the Senate (the House of Representatives concurring), That there be printed and bound of the proceedings in Congress upon the acceptance of the statue of the late Frances E. Willard, presented by the State of Illinois, 16,500 copies, of which 5,000 shall be for the use of the Senate, 10,000 for the use of the House of Representatives, and the remaining 1,500 shall be for the use and distribution by the governor of the State of Illinois; and the Secretary of the Treasury is hereby directed to have printed an engraving of said statue to accompany said proceedings, said engraving to be paid for out of the appropriation for the Bureau of Engraving and Printing—

to the Committee on Printing.

LAURA NEWMAN.

By unanimous consent, at the request of Mr. CRUMPACKER, leave was granted to withdraw from the files of the House, without leaving copies, the papers in the case of Laura Newman, Fifty-seventh Congress, no adverse report having been made thereon.

JAMES GROOMS.

By unanimous consent, at the request of Mr. HOPKINS, leave was granted to withdraw from the files of the House, without leaving copies, the papers in the case of James Grooms, no adverse report having been made thereon.

REPRINT OF SUNDRY CIVIL APPROPRIATION BILL.

Mr. VAN VOORHIS. Mr. Speaker, I ask unanimous consent for a reprint of the bill H. R. 18969, the sundry civil bill, and the report thereon.

The SPEAKER. The gentleman asks unanimous consent for a reprint of the sundry civil appropriation bill. Is there objection?

There was no objection.

HOUR OF MEETING ON FRIDAY AND MONDAY.

Mr. PAYNE. Mr. Speaker, I understand there are a number of Senate pension bills that have been reported from the committee, but no more House bills. To-morrow, of course, is pension day. There are also some bills from the Committee on the District of Columbia which will be in order on Monday next. I ask unanimous consent that the session to-morrow and the session Monday begin at 11 o'clock instead of 12.

The SPEAKER. Is there objection to the request of the gentleman?

There was no objection.

And then, on motion of Mr. BURTON (at 7 o'clock and 9 minutes p. m.), the House adjourned until to-morrow, Friday, February 24, 1905, at 11 o'clock a. m.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions of the following titles were severally reported from committees, delivered to the Clerk, and referred to the several Calendars therein named, as follows:

Mr. DALZELL, from the Committee on Ways and Means, to which was referred the bill of the Senate (S. 4069) to provide for the performance, temporarily, of the duties of appraisers and assistant appraisers of merchandise, reported the same with amendment, accompanied by a report (No. 4830); which said bill and report were referred to the House Calendar.

Mr. CURTIS, from the Committee on Indian Affairs, to which was referred the bill of the House (H. R. 17709) granting to the Choctaw, Oklahoma and Gulf Railroad Company the power to sell and convey to the Chicago, Rock Island and Pacific Railway Company all the railway, property, rights, franchises, and privileges of the Choctaw, Oklahoma and Gulf Railroad Company, and for other purposes, reported the same without amendment, accompanied by a report (No. 4831); which said bill and report were referred to the House Calendar.

Mr. ADAMSON, from the Committee on Interstate and Foreign Commerce, to which was referred the bill of the House (H. R. 19029) to regulate the construction of dams over navigable waters, reported the same with amendment, accompanied by a report (No. 4832); which said bill and report, together with the views of the minority, were referred to the House Calendar.

Mr. MONDELL, from the Committee on Irrigation of Arid Lands, to which was referred the bill of the House (H. R. 18528) to provide for covering into the reclamation fund certain proceeds of sales of property purchased by the reclamation fund, reported the same without amendment, accompanied by a report (No. 4833); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

He also, from the same committee, to which was referred the bill of the House H. R. 17942, reported in lieu thereof a bill (H. R. 19118) to authorize the Secretary of the Interior to construct dams across the Yellowstone River, in Montana, in connection with irrigation works, accompanied by a report (No. 4834); which said bill and report were referred to the House Calendar.

Mr. OVERSTREET, from the Committee on the Post-Office and Post-Roads, to which was referred the bill of the Senate (S. 3379) to amend section 66 of the act of June 8, 1872, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-Office Department," reported the same with amendment, accompanied by a report (No. 4835); which said bill and report were referred to the House Calendar.

He also, from the same committee, to which was referred the bill of the Senate (S. 7239) to amend section 13 of chapter 394 of the Supplement to the Revised Statutes of the United States, reported the same without amendment, accompanied by a report (No. 4836); which said bill and report were referred to the House Calendar.

Mr. BATES, from the Select Joint Committee on Disposition of Useless Papers in the Executive Departments, to which was referred Executive Documents Nos. 273 and 255, relating to dis-

position of useless papers in the Executive Departments, reported the same, accompanied by a report (No. 4837); which said executive documents and report were referred to the House Calendar.

He also, from the same committee, to which was referred Executive Document No. 595, relating to disposition of useless papers in office of the Secretary of the Treasury, reported the same, accompanied by a report (No. 4838); which said executive document and report were referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, private bills and resolutions of the following titles were severally reported from committees, delivered to the Clerk, and referred to the Committee of the Whole House, as follows:

Mr. CLAUDE KITCHIN, from the Committee on Claims, to which was referred the bill of the Senate (S. 622) for the relief of the legal representatives of Joseph Sierra, deceased, reported the same with amendment, accompanied by a report (No. 4828); which said bill and report were referred to the Private Calendar.

Mr. SULLOWAY, from the Committee on Invalid Pensions, to which was referred the bill of the Senate (S. 7077) granting a pension to Robert Catlin, reported the same with amendment, accompanied by a report (No. 4829); which said bill and report were referred to the Private Calendar.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred as follows:

By Mr. HUMPHREY of Washington: A bill (H. R. 19112) for the relief of claimants for desert lands in Franklin County, State of Washington, under desert-land entries made after May 1 and prior to June 24, 1903—to the Committee on the Public Lands.

By Mr. COWHERD: A bill (H. R. 19113) prohibiting employment of any man as locomotive engineer who has not had three years' experience as locomotive fireman or one year's experience as locomotive engineer—to the Committee on Interstate and Foreign Commerce.

By Mr. McGUIRE: A bill (H. R. 19114) to repeal a part of an act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June 30, 1905—to the Committee on the Territories.

By Mr. HOPKINS: A bill (H. R. 19115) for the erection of a public building at Winchester, Ky.—to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 19116) for the erection of a public building at Mount Sterling, Ky.—to the Committee on Public Buildings and Grounds.

By Mr. WACHTER (by request): A bill (H. R. 19117) to amend section 652 of the Code of Laws for the District of Columbia—to the Committee on the District of Columbia.

By Mr. MONDELL, from the Committee on Irrigation of Arid Lands: A bill (H. R. 19118) to authorize the Secretary of the Interior to construct dams across the Yellowstone River, in Montana, in connection with irrigation works—to the House Calendar.

By Mr. MARSHALL: A joint resolution (H. J. Res. 220) to provide that the provisos of section 30 of the act of July 24, 1897, entitled "An act to provide revenue for the Government and to encourage the industries of the United States," shall not be held to apply to paragraph 234 of said act—to the Committee on Ways and Means.

By Mr. COCHRAN of Missouri: A concurrent resolution (H. C. Res. 78) authorizing public authorities of the city of St. Joseph to place in the extension of the public building now in course of erection at said city a tablet commemorating public services of William A. Davis, deceased—to the Committee on the Post-Office and Post-Roads.

By Mr. KEHOE: A resolution (H. Res. 528) directing investigation of tobacco trusts—to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions of the following titles were introduced and severally referred as follows:

By Mr. KLUTTZ: A bill (H. R. 19119) to authorize the appointment of Acting Asst. Surg. Reuben A. Campbell, United States Navy, as an assistant surgeon in the United States Navy—to the Committee on Naval Affairs.

By Mr. KNOWLAND: A bill (H. R. 19120) to correct the military record of Charles M. Mayberry—to the Committee on Military Affairs.

By Mr. SLAYDEN: A bill (H. R. 19121) granting an increase of pension to John Nash—to the Committee on Pensions.

Also, a bill (H. R. 19122) granting an increase of pension to Samuel Moore—to the Committee on Pensions.

CHANGE OF REFERENCE.

The following papers, having been wrongly referred, were rereferred as follows:

By Mr. GUDGER: Paper to accompany bill for relief of Benjamin R. Trull—to the Committee on Military Affairs.

By Mr. SMITH of Texas: Paper to accompany bill for relief of R. G. Childress—to the Committee on Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, the following petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. BASSETT: Petition of the New York City Board of Trade and Transportation, against the bankruptcy law—to the Committee on the Judiciary.

By Mr. BATES: Petition of the Trades League of Philadelphia, Pa., favoring the pneumatic-tube system—to the Committee on the Post-Office and Post-Roads.

Also, petition of the board of directors of the Grocers and Importers' Exchange of Philadelphia, favoring the pneumatic-tube system—to the Committee on the Post-Office and Post-Roads.

Also, petition of the Philadelphia Bourse, favoring an extension of the contract time for the pneumatic-tube system for the post-office—to the Committee on the Post-Office and Post-Roads.

Also, petition of the Erie (Pa.) Ministerial Association, favoring the prohibition amendment to the statehood bill—to the Committee on the Territories.

Also, petition of the Chamber of Commerce of Erie, Pa., favoring bill H. R. 2262—to the Committee on Interstate and Foreign Commerce.

Also, petition of W. E. Morse Division, No. 611, Brotherhood of Locomotive Engineers, favoring bill H. R. 7041—to the Committee on the Judiciary.

Also, petition of citizens of Meadville, Pa., against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

Also, petition of the State Horticultural Association, Harrisburg, Pa., favoring bill H. R. 14098, to increase the national appropriation for State experiment station—to the Committee on Agriculture.

Also, petition of Elk Creek Grange, No. 997, favoring the railway-rate bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of Athens Grange, No. 304, of Centerville, Pa., favoring the railway-rate bill—to the Committee on Interstate and Foreign Commerce.

By Mr. BEIDLER: Petition of Subdivision No. 167, Brotherhood of Locomotive Engineers, favoring stringent laws relative to employment of engineers—to the Committee on Interstate and Foreign Commerce.

Also, petition of Subdivision No. 260, Brotherhood of Locomotive Engineers, of Ashtabula, Ohio, favoring stringent legislation relative to employment of engineers—to the Committee on Interstate and Foreign Commerce.

Also, petition of Subdivision No. 273, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. BROWN of Wisconsin: Petition of Langlade (Wis.) Subdivision, No. 536, Brotherhood of Locomotive Engineers, for legislation prohibiting employment of engineers with less than three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

Also, petition of Ashland (Wis.) Subdivision, No. 379, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. BURKETT: Petition of Lincoln Subdivision, No. 98, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. BURLEIGH: Petition of Alamoosook Grange, Orland, Me., against repeal of the Grout Act—to the Committee on Agriculture.

By Mr. BURLESON: Petition of Subdivision No. 636, Brotherhood of Locomotive Engineers, favoring stringent laws relative to employing engineers—to the Committee on Interstate and Foreign Commerce.

By Mr. BUTLER of Missouri: Petition of various cigarmakers of St. Louis, Mo., against reduction of tariff on Philippine cigars—to the Committee on Ways and Means.

By Mr. BUTLER of Pennsylvania: Petition of T. L. Passman et al., of Chester, Pa., favoring equitable railway rates by Government authority—to the Committee on Interstate and Foreign Commerce.

Also, petition of William W. Morton et al., of Chester, Pa., favoring equitable railway rates by Government authority—to the Committee on Interstate and Foreign Commerce.

Also, petition of George R. Malony et al., of Philadelphia, Pa., favoring Government authority for just railway rates—to the Committee on Interstate and Foreign Commerce.

By Mr. CAPRON: Petition of Messrs. Booker, Chadsey & Co., of Providence, R. I., in favor of two classes of mail matter—to the Committee on the Post-Office and Post-Roads.

Also, petition of Musicians' Protective Union No. 198, American Federation of Musicians, in favor of bill H. R. 18424—to the Committee on Labor.

By Mr. CASSINGHAM: Petition of Subdivision No. 36, Brotherhood of Locomotive Engineers, favoring stringent law relative to employment of engineers—to the Committee on Interstate and Foreign Commerce.

Also, petition of R. D. Keesey et al., of Coshocton, Ohio, favoring equitable railway rates—to the Committee on Interstate and Foreign Commerce.

By Mr. COWHERD: Petition of Great Western Subdivision, No. 502, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. CURTIS: Petition of citizens of the First district of Kansas, favoring proposed antipolygamy Constitution amendment—to the Committee on the Judiciary.

Also, petition of Topeka Trades and Labor Council, against reduction of tariff on tobacco and cigars from the Philippines—to the Committee on Ways and Means.

By Mr. DANIELS: Petition of the Chamber of Commerce of San Francisco, favoring bill S. 6291—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Chamber of Commerce of San Francisco, for bill H. R. 17707—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Chamber of Commerce of San Francisco, favoring bill H. R. 17346—to the Committee on Interstate and Foreign Commerce.

By Mr. DARRAGH: Petition of F. L. Harrington and 16 others, of Remus, Mecosta County, Mich., against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

By Mr. DRAPER: Petition of Troy Subdivision, No. 87, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

Also, petition of Greenbush Subdivision, No. 59, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

Also, petition of the New York City Board of Trade and Transportation, against repeal of the bankruptcy act—to the Committee on the Judiciary.

By Mr. DRISCOLL: Petition of citizens of Onondaga County, N. Y., favoring equitable freight rates—to the Committee on Interstate and Foreign Commerce.

By Mr. ESCH: Petition of Subdivision No. 633, Brotherhood of Locomotive Engineers, favoring stringent law relative to employment of engineers—to the Committee on Interstate and Foreign Commerce.

Also, petition of Theo L. Hopkins et al., of La Crosse, Wis., favoring a law protecting migratory birds—to the Committee on Agriculture.

By Mr. FOSTER of Vermont: Petition of the temperance mass meeting held in Wilmington, Vt., favoring prohibitive amendment to the statehood bill—to the Committee on the Territories.

Also, petition of same convention against repeal of the canteen law—to the Committee on Military Affairs.

By Mr. GARDNER of Massachusetts: Petition of 32 residents of Beverly, Mass., against religious legislation—to the Committee on the District of Columbia.

Also, petition of the Massachusetts Board of Trade, favoring repeal of the 15 per cent duty on hides—to the Committee on Ways and Means.

By Mr. HASKINS: Petition of Bellows Falls (Vt.) Subdivision, No. 106, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. HENRY of Connecticut: Petition of Hartford (Conn.) Subdivision, No. 205, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. HERMANN: Petition of citizens of Dallas, Yamhill County, and Montavilla and Blachly, Lane County, Oreg., against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

By Mr. HINSHAW: Petition of Wymore Subdivision, No. 62, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

Also, petition of Blue Valley Subdivision, No. 431, Brotherhood of Locomotive Engineers, against employment of engineers who have not had three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. HUMPHREY of Washington: Petition of W. W. Wilshire et al., for an act for the relief of claimants for desert lands in Franklin County, Wash., under desert-land entries made after May 1 and prior to June 24, 1903—to the Committee on the Public Lands.

By Mr. JACKSON of Ohio: Petition of representative of tobacco planters, manufacturers, and laborers in the Philippine Islands, against tax on tobacco imported into the United States—to the Committee on Ways and Means.

Also, petition of the Sitka Chamber of Commerce, relative to electric light and power plants in Alaska—to the Committee on the Territories.

Also, petition of Robbins's Post, No. 91, Grand Army of the Republic, of Ohio, approving bill H. R. 17751—to the Committee on Invalid Pensions.

Also, petitions of Subdivision No. 306, of Crestline; of Subdivision No. 522, and Subdivision No. 16, of Galion, Ohio, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. KNOWLAND: Resolution of the Chamber of Commerce of San Francisco, Cal., urging the construction of a light-house tender for use on the coast of California—to the Committee on Interstate and Foreign Commerce.

Also, resolution of the Chamber of Commerce of San Francisco, Cal., urging passage of bill S. 6291, to create a force of naval volunteers—to the Committee on Naval Affairs.

Also, resolution of the Chamber of Commerce of San Francisco, Cal., urging passage of bill H. R. 17707, for establishment of light-house at Makapua Point, Territory of Hawaii—to the Committee on Interstate and Foreign Commerce.

By Mr. LINDSAY: Petition of L. L. Neff's Sons, favoring two classes of mail matter only—to the Committee on the Post-Office and Post-Roads.

Also, petition of C. H. L. Smith, of Brooklyn, N. Y., favoring two classes of mail matter—to the Committee on the Post-Office and Post-Roads.

Also, resolution of the New York Board of Trade, opposing repeal of the national bankruptcy law—to the Committee on the Judiciary.

By Mr. LITTLEFIELD: Petition of 263 citizens of Maine, against repeal of the Grout oleomargarine law—to the Committee on Agriculture.

Also, petition of 222 citizens of Maine, favoring a parcels-post law—to the Committee on the Post-Office and Post-Roads.

By Mr. MAHON: Petition of Daniel Roland et al., of Huntingdon, Pa., favoring equitable railway rates—to the Committee on Interstate and Foreign Commerce.

Also, petition of Lewiston Lodge, No. 682, Brotherhood of Railway Firemen, favoring bill H. R. 7041—to the Committee on the Judiciary.

By Mr. MANN: Petition of John Player Subdivision, No. 458, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. MIERS of Indiana: Petition of Vincennes Subdivision, No. 289, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. PRINCE: Petition of citizens of Washington, D. C.; Charleston, S. C., and of Georgia, Louisiana, and Massachusetts, for appropriations to pay depositors' losses occasioned by failure of the Freedman's Saving Bank and Trust Company—to the Committee on Appropriations.

By Mr. POWERS of Massachusetts: Resolution of the Massachusetts Board of Trade, to repeal the tax of 15 per cent ad valorem on hides—to the Committee on Ways and Means.

By Mr. REEDER: Petition of citizens of Logan, Lowe, Wauneta, and Elsmore, Kans., against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

By Mr. ROBINSON of Indiana: Petition of Fort Wayne Subdivision, No. 12, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. RUPPERT: Petition of the New York Board of Trade and Transportation, against repeal of the bankruptcy law—to the Committee on the Judiciary.

By Mr. SLAYDEN: Declaration of Samuel Moore, applicant for pension—to the Committee on Pensions.

By Mr. SNOOK: Petition of Van Wert Subdivision, No. 384, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. STEPHENS of Texas: Petition of D. H. Nichols Subdivision, No. 299, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

Also, petition of citizens of Alvord, Tex., against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

By Mr. SULLIVAN of New York: Petition of the New York City Board of Trade and Transportation, against repeal of the bankruptcy law—to the Committee on the Judiciary.

By Mr. SULLOWAY: Petition of James S. Mills et al., of Freedom, N. H., favoring equitable railway rates and parcels-post law—to the Committee on Interstate and Foreign Commerce.

By Mr. THAYER: Petition of citizens of Woodstock, Gloucester, and Worcester, Mass., against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

By Mr. THOMAS of Ohio: Petition of citizens of Portage County, Ohio, favoring equitable railway rates—to the Committee on Interstate and Foreign Commerce.

By Mr. WEISSE: Petition of the Chamber of Commerce of Milwaukee, Wis., approving the Esch-Townsend bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Chamber of Commerce of Milwaukee, Wis., against trading or dealing in options—to the Committee on Interstate and Foreign Commerce.

By Mr. WILEY of Alabama: Petition of Montgomery (Ala.) Subdivision, No. 495, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

By Mr. YOUNG: Petition of the Detroit Board of Commerce, favoring enlarged powers for the Interstate Commerce Commission—to the Committee on Interstate and Foreign Commerce.

Also, petition of Gladstone Subdivision, No. 266, Brotherhood of Locomotive Engineers, against employment of engineers without three years' experience as firemen—to the Committee on Interstate and Foreign Commerce.

SENATE.

FRIDAY, *February 24, 1905.*

The Senate met at 11 o'clock a. m.

Prayer by the Chaplain, Rev. EDWARD E. HALE.

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

The PRESIDENT pro tempore. The Journal will stand approved.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had agreed to the amendment of the Senate, No. 2, to the bill (H. R. 17984) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1906, and for other purposes, with an amendment, in which it requested the concurrence of the Senate; disagrees to the residue of the amendments to the bill; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. HULL, Mr. PARKER, and Mr. SLADEN managers at the conference on the part of the House.

The message also announced that the House had passed a bill (H. R. 18809) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes; in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President pro tempore:

H. R. 1860. An act for the relief of certain enlisted men of the Twentieth Regiment of New York Volunteer Infantry;

H. R. 5498. An act to provide for circuit and district courts of the United States at Albany, Ga.;

H. R. 10558. An act referring the claim of Hannah S. Crane and others to the Court of Claims; and

H. R. 18815. An act to authorize the construction of a bridge across Red River at or near Boyce, La.

NAVAL APPROPRIATION BILL.

Mr. HALE. I should like to call up the naval appropriation bill now, and get the bill started.

The PRESIDENT pro tempore. The Senator from Maine asks unanimous consent that the Senate proceed to the consideration of the naval appropriation bill, House bill 18467.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 18467) making appropriations for the naval service for the fiscal year ending June 30, 1906, and for other purposes, which had been reported from the Committee on Naval Affairs with amendments.

Mr. HALE. I ask that the formal reading of the bill be dispensed with, and that the amendments of the committee be considered as they are reached in the reading.

The PRESIDENT pro tempore. The Senator from Maine asks that the formal reading of the bill be dispensed with, that it be read for amendment, and that the committee amendments shall first receive consideration. Is there objection? The Chair hears none, and that order is made.

Mr. LODGE. I ask the Senator from Maine to yield to me to make a report from the Committee on Rules.

The PRESIDENT pro tempore. Does the Senator from Maine intend to yield for morning business?

Mr. HALE. No; I do not, but this is a matter that ought to be put through, and it will take no time.

FLOWERS IN THE SENATE CHAMBER.

Mr. LODGE. I report from the Committee on Rules the following resolution and ask for its present consideration. It is a unanimous report from the committee.

The resolution was read, as follows:

Resolved, That until further orders the Sergeant-at-Arms is instructed not to permit flowers to be brought into the Senate Chamber.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

The Senate, by unanimous consent, proceeded to consider the resolution.

Mr. SCOTT. Let it be read again.

The Secretary again read the resolution.

The PRESIDENT pro tempore. The question is on agreeing to the resolution.

The resolution was agreed to.

NAVAL APPROPRIATION BILL.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 18467) making appropriations for the naval service for the fiscal year ending June 30, 1906, and for other purposes.

Mr. CULLOM. While the Senator is getting ready to proceed with the bill I ask leave to present some petitions.

The PRESIDENT pro tempore. The Senator from Maine declines to yield for morning business.

Mr. CULLOM. The bill does not seem to be ready yet, and I think petitions might be received.

Mr. HALE. I wish to go on for half an hour with the naval appropriation bill.

Mr. CULLOM. I merely wish to present some petitions.

The PRESIDENT pro tempore. The Secretary will read the bill.

The Secretary proceeded to read the bill.

Mr. TELLER. Mr. President, I wish to know if I can get a copy of the bill?

The PRESIDENT pro tempore. The Chair has been trying to get a copy, and has not succeeded.

Mr. HALE. The bill was printed yesterday. I have several copies.

Mr. TELLER. There seem to be no copies here.

Mr. HALE. There ought to be.

Mr. McCREARY. Mr. President, we can not hear on this side of the Chamber.

The PRESIDENT pro tempore. Senators will please be in order.