By Mr. KNAPP: Paper to accompany bill for relief of Rosa A. Penfield—to the Committee on Invalid Pensions.

By Mr. KNOPF: Paper to accompany bill for relief of Amanda Hoover (previously referred to the Committee on Pensions)—to the Committee on Invalid Pensions.

By Mr. LAFEAN: Petition of the Vermont Dairy Association, for raising the rank of the dairy division to that of a bureau under the Secretary of Agriculture—to the Committee on Agriculture.

Also, petition of the Fruit Growers' Association of Bedford County, Pa., for legislation securing admission of American fruits into German markets under minimum duties—to the Committee on Ways and Means.

By Mr. LAW: Papers to accompany bills for relief of John D. Lane and Benjamin T. Horton—to the Committee on Invalid Pensions.

By Mr. LILLEY of Connecticut: Papers to accompany bills for relief of Mrs. Elisha R. Starr and John D. Benjamin—to the Committee on Invalid Pensions.

By Mr. LINDSAY: Petition of the National Private Commercial School Managers' Association, for revision of the postal laws—to the Committee on the Post-Office and Post-Roads.

Also, petition of Adam J. Bennett, against interference in Kongo Free State affairs—to the Committee on Foreign Affairs.

Also, petition of La Motte Hartshorn, favoring the Navy personnel bill—to the Committee on Naval Affairs.

Also, petition of the Twenty-sixth Ward Board of Trade, of Brooklyn, N. Y., for increase of salaries of postal clerks (H. R. 9751, the Wilson bill)—to the Committee on the Post-Office and Post-Roads.

By Mr. LOUD: Petition of citizens of Cheboygan County, Mich., for October 12 as a legal holiday (Columbus Day, commemorating the discovery of America)—to the Committee on the Judiciary.

Also, petition of J. E. Betz et al., for an appropriation for survey and improvement of the Au Sable River at or near its outlet into Lake Huron—to the Committee on Rivers and Harbors.

Also, paper to accompany bill for relief of Peter Campbell—to the Committee on Invalid Pensions.

By Mr. McCALL: Paper to accompany bill for relief of Carlos L. Buzzell—to the Committee on Invalid Pensions.

By Mr. McCARTHY: Petition of the Nebraska State Swine Breeders' Association, against free seed distribution—to the Committee on Agriculture.

Also, petition of the Nebraska Duroc Jersey Breeders' Association, against free seed distribution—to the Committee on Agriculture.

By Mr. McMORRAN: Papers to accompany bills for relief of Rev. Henry S. White and John Rogers, alias John Moore—to the Committee on Invalid Pensions.

By Mr. MOORE: Petition of H. Allen Knips, Pott & Faltz, and others, against amendment to the copyright law abridging rights of photographers—to the Committee on Patents.

By Mr. PAYNE: Paper to accompany bill for relief of William Hawley—to the Committee on Invalid Pensions.

By Mr. POLLARD: Petition of the Nebraska Duroc Jersey Breeders' Association, against free distribution of garden seeds—to the Committee on Agriculture.

By Mr. ROBINSON of Arkansas: Papers to accompany bill for an appropriation to enlarge the public buildings at Hot Springs, Ark.—to the Committee on Public Buildings and Grounds.

Also, paper to accompany bill for relief of David Hurbert—to the Committee on Invalid Pensions.

By Mr. RYAN: Petitions of Fred. Buechsenschuety et al. and Robert Stier et al., of Buffalo, N. Y., against certain clauses in the immigration bill—to the Committee on Immigration and Naturalization.

By Mr. SCHNEEBELI: Paper to accompany bill for relief of Mrs. Alice O'Connor—to the Committee on Military Affairs.

Also, petition of the Private School Managers' Association, of Cleveland, Ohio, for revision of the postal laws—to the Committee on the Post-Office and Post-Roads.

By Mr. SHEPPARD: Petitions of citizens of Lawton, Okla.; Fulton, Ark., and Texarkana, Tex., for an appropriation to improve upper Red River—to the Committee on Rivers and Harbors.

By Mr. SMITH of Kentucky: Paper to accompany bill for relief of Dennis T. Kirby et al.—to the Committee on War Claims.

Also, paper to accompany bill for relief of Robert H. Gulick et al.—to the Committee on War Claims.

By Mr. SOUTHARD: Petition of the New Immigrant Protective League, against the Lodge-Gardner bill—to the Committee on Immigration and Naturalization.

Also, petition of the Association of Army and Navy Nurses of the Civil War, for pensions to all nurses of the war as per the Dalzell bill—to the Committee on Invalid Pensions.

Also, petition of Samuel Holmes, for the ship-subsidy bill—to the Committee on the Merchant Marine and Fisheries.

By Mr. STANLEY: Paper to accompany bill for relief of Absalom R. Shacklett (previously referred to the Committee on Invalid Pensions)—to the Committee on Pensions.

By Mr. VAN WINKLE: Petition of the Board of Trade of Hoboken, N. J., for higher salaries for postal clerks—to the Committee on the Post-Office and Post-Roads.

By Mr. WEEMS: Petition of the German Society, against the Dillingham bill—to the Committee on Immigration and Naturalization.

Also, paper to accompany bill for relief of the Bridgeport (Ohio) National Bank—to the Committee on Claims.

SENATE.

TUESDAY, *January 22, 1907.*

Prayer by Rev. WILLIAM LAWRENCE, D. D., Bishop of the Diocese of Massachusetts.

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

The VICE-PRESIDENT. The Journal stands approved.

EDWIN S. HALL.

The VICE-PRESIDENT laid before the Senate the request of the House of Representatives to return the bill (H. R. 1050) for the relief of Edwin S. Hall; and by unanimous consent the request was ordered to be complied with.

HOUSE BILLS REFERRED.

The following bills were severally read twice by their titles, and referred to the Committee on Finance:

H. R. 5. An act to provide for the refunding of certain money, etc.;

H. R. 8. An act for the relief of the Harbison-Walker Company, of Pittsburg, Pa.;

H. R. 1371. An act to refund to J. Tennant Steeb certain duties erroneously paid by him, without protest, on goods of domestic production shipped from the United States to Hawaii and thereafter returned;

H. R. 2326. An act for the relief of J. W. Bauer and others;

H. R. 8685. An act for the relief of Charles E. Danner & Co.;

H. R. 8727. An act for the relief of James W. Kenney and the Union Brewing Company;

H. R. 8749. An act to refund a fine of $200 paid by Charles H. Marsden, owner of the tug *Owen;*

H. R. 10305. An act to provide for the repayment of certain customs dues;

H. R. 14125. An act for the relief of The Nebraska Mutual Lfe Insurance Company, of Stromburg, Nebr.;

H. R. 14464. An act for the relief of Wiley Corbett;

H. R. 16085. An act for the relief of Gordon, Ironsides & Fares Company (Limited);

H. R. 16581. An act for the relief of George W. Schroyer; and

H. R. 19275. An act for the relief of T. E. Boyt.

The following bills were severally read twice by their titles, and referred to the Committee on Naval Affairs:

H. R. 1561. An act authorizing the Secretary of the Navy to grant a discharge to Peter O'Neil;

H. R. 13605. An act to satisfy certain claims against the Government arising under the Navy Department;

H. R. 17875. An act waiving the age limit for admission to the Pay Corps of the United States Navy in the case of W. W. Peirce;

H. R. 19284. An act for the relief of James Behan; and

H. R. 22291. An act to authorize the reappointment of Harry McL. P. Huse as an officer of the line in the Navy.

The following bills were severally read twice by their titles, and referred to the Committee on Post-Offices and Post-Roads:

H. R. 4271. An act for the relief of Patrick J. Madden;

H. R. 5169. An act for the relief of W. B. Sutter;

H. R. 6104. An act to reimburse John Waller, late postmaster at Monticello, N. Y., for moneys expended in carrying the mails;

H. R. 8699. An act for the relief of James A. Carroll;

H. R. 13418. An act for the relief of W. S. Hammaker; and

H. R. 14381. An act authorizing and directing the Secretary of the Treasury to pay to the Holtzer-Cabot Electric Company the amount due said company from the Post-Office Department.

The following bill and joint resolution were severally read twice by their titles, and referred to the Committee on Military Affairs:

H. R. 17285. An act for the relief of Second Lieut. Gouverneur V. Packer, Twenty-fourth United States Infantry; and

H. J. Res. 195. Joint resolution authorizing the Secretary of War to furnish two condemned cannon to the mayor of the town of Preston, Iowa.

The following bills were severally read twice by their titles, and referred to the Committee on Pensions:

H. R. 12124. An act granting an increase of pension to Howard Brown; and

H. R. 16222. An act granting an increase of pension to Napoleon B. Ferrell.

The following bills were severally read twice by their titles, and referred to the Committee on Commerce:

H. R. 17099. An act to authorize the refund of part of fines imposed on the vessels *Sotie R.*, *Mathilda R.*, and *Helen R.*;

H. R. 23383. An act to amend an act entitled "An act to authorize the city of St. Louis, a corporation organized under the laws of the State of Missouri, to construct a bridge across the Mississippi River," approved June 25, 1906;

H. R. 23939. An act to authorize the board of commissioners of Lake County, Ind., to construct a bridge across the Calumet River in the State of Indiana; and

H. R. 24275. An act permitting the building of a dam across the Flint River at Porter Shoals.

H. R. 24104. An act transferring Phelps County to the eastern division of the eastern judicial district of Missouri, was read twice by its title, and referred to the Committee on the Judiciary.

H. R. 1443. An act for the payment of Robert D. Benedict for services rendered was read twice by its title.

The VICE-PRESIDENT. The bill will be referred, without objection, to the Committee on the Judiciary.

Mr. KEAN. A similar bill is on the Calendar, reported by the Committee on Claims, I think, and this bill should go to the Committee on Claims.

The VICE-PRESIDENT. The bill will be referred to the Committee on Claims.

The following bills were severally read twice by their titles, and referred to the Committee on Indian Affairs:

H. R. 19930. An act referring the claim of S. W. Peel for legal services rendered the Choctaw Nation of Indians to the Court of Claims for adjudication; and

H. R. 22362. An act for the relief of Esther Rousseau.

The following bills were severally read twice by their titles, and referred to the Committee on Public Lands:

H. R. 23889. An act authorizing the Secretary of the Interior to issue deed of conveyance to Lyman Ballou to certain lands in Custer County, S. Dak.; and

H. R. 23927. An act excepting certain lands in Pennington County, S. Dak., from the operation of the provisions of section 4 of an act approved June 11, 1906, entitled "An act to provide for the entry of agricultural lands within forest reserves."

H. R. 24541. An act making appropriations to supply additional urgent deficiencies in the appropriations for the fiscal year ending June 30, 1907, and for other purposes, was read twice by its title, and referred to the Committee on Appropriations.

FINDINGS OF THE COURT OF CLAIMS.

The VICE-PRESIDENT laid before the Senate communications from the assistant clerk of the Court of Claims, transmitting certified copies of the findings of fact filed by the court in the following causes:

In the cause of The Trustees of the Missionary Baptist Church, of Huntsville, Ala., successor to the Primitive Baptist Church, of Huntsville, Ala., *v.* The United States;

In the cause of Harriet Camp, William A. Camp, Olive M. Allen, Mary B. Brown, Margaret E. Bowie, Clarence Camp, Carrie Camp, Hattie Brannan, and Thomas Brannan, heirs of Adam Camp, deceased, *v.* The United States;

In the cause of Archibald A. Griggs, administrator of the estate of Archibald P. Griggs, deceased, *v.* The United States; and

In the cause of Ludger Lemelle, administrator of the estate of Clarisse Donato, deceased, *v.* The United States.

The foregoing findings were, with the accompanying papers, referred to the Committee on Claims, and ordered to be printed.

CREDENTIALS.

Mr. BURROWS presented the credentials of WILLIAM ALDEN SMITH, chosen by the legislature of the State of Michigan a Senator from that State for the term beginning March 4, 1907; which were read and ordered to be filed.

Mr. HALE presented the credentials of WILLIAM P. FRYE, chosen by the legislature of the State of Maine a Senator from that State for the term beginning March 4, 1907; which were read and ordered to be filed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed the bill (S. 5469) to authorize the Secretary of Commerce and Labor to investigate and report upon the industrial, social, moral, educational, and physical condition of woman and child workers in the United States.

The message also announced that the House had passed the bill (S. 4563) to prohibit corporations from making money contributions in connection with political elections, with an amendment; in which it requested the concurrence of the Senate.

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

H. R. 15242. An act to confirm titles to certain lands in the State of Louisiana;

H. R. 24103. An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1908, and for other purposes;

H. R. 24111. An act to authorize the Norfolk and Western Railway Company to construct a bridge across the Potomac River, at or near Shepherdstown, W. Va.; and

H. R. 24122. An act in reference to the expatriation of citizens and their protection abroad.

The message also announced that the House had agreed to the concurrent resolution of the Senate requesting the President to return the bill (S. 5073) granting an increase of pension to Daniel G. Smith.

The message further announced that the House had agreed to the concurrent resolution of the Senate requesting the President to return the bill (S. 3671) granting a pension to Louis Castinette.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a joint resolution of the legislature of South Dakota, praying for an extension until the 1st of April, 1907, of the time in which persons who have heretofore filed homestead claims in counties west of the Missouri River in the State of South Dakota may lawfully establish their residence upon these claims; which was referred to the Committee on Public Lands, and ordered to be printed in the RECORD, as follows:

STATE OF SOUTH DAKOTA,
DEPARTMENT OF STATE, SECRETARY'S OFFICE.

UNITED STATES OF AMERICA, *State of South Dakota:*

I, D. D. Wipf, secretary of state of South Dakota and keeper of the great seal thereof, do hereby certify that the attached instrument of writing is a true and correct copy of senate joint resolution No. 5, as passed by the legislature of South Dakota, 1907, and of the whole thereof, and has been compared with the original now on file in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of South Dakota. Done at the city of Pierre this 17th day of January, 1907.

[SEAL.] D. D. WIPF, *Secretary of State.*

A joint resolution memorializing the President and the Congress of the United States to extend until April 1, 1907, the time within which persons who have heretofore filed homestead claims in counties west of the Missouri River in the State of South Dakota may lawfully establish their residence upon said claims.

Whereas large numbers of persons, many of whom are women, have during the summer of 1906 filed homestead claims upon the public lands west of the Missouri River in the State of South Dakota, in the belief and with the understanding that the extensions of the Chicago and Northwestern and the Chicago, Milwaukee and St. Paul railways, now being built over and across said lands from the Missouri River west to the Black Hills country, would be completed prior to January 1, 1907, and would thus furnish means for said persons to go upon their several homestead claims and establish a residence as required by law; and

Whereas neither of said railroad extensions will be completed until some time during the summer of 1907; and

Whereas heavy snows have fallen and now lie over all of said country, rendering travel with building material, household goods, fuel, and supplies an impossibility, and extreme and unusually cold weather prevails throughout this and the northwestern country generally, making it dangerous to human life to attempt to go upon said claims at this time; and

Whereas it is impossible to establish a residence or reside upon said lands under the present conditions of severely cold winter weather without comfortable houses to protect the lives and the health of said persons and their families: Now, therefore, be it

Resolved by the senate of the legislature of the State of South Dakota (the house of representatives concurring), That the President and the Congress of the United States be, and they are hereby, respectfully requested and urged to extend until the 1st day of April, 1907, the time within which all such persons may lawfully establish their residence upon said claims.

[Indorsed.]

A joint resolution memorializing the President and the Congress of the United States to extend until April 1, 1907, the time within which persons who have heretofore filed homestead claims in counties west of

the Missouri River in the State of South Dakota may lawfully establish their residence upon said claims.

M. J. CHANEY,
Speaker of the House.

Attest:
JAMES W. CONE, *Chief Clerk.*

HOWARD C. SHOBER,
President of the Senate.

Attest:
L. M. SIMONS, *Secretary of the Senate.*

I hereby certify that the within resolution originated in the senate and was known in the senate files as senate joint resolution No. 5.

STATE OF SOUTH DAKOTA.
Office Secretary of State, ss:

Filed January 17, 1907, at 2.40 o'clock p. m.

D. D. WIPF,
Secretary of State.

The VICE-PRESIDENT presented a petition of Columbia Typographical Union, No. 101, American Federation of Labor, of Washington, D. C., praying for the enactment of legislation to increase the salaries of Members of Congress; which was ordered to lie on the table.

Mr. TELLER presented petitions of sundry citizens of Grand Junction, Salida, Akron, Delta, and Fort Collins, all in the State of Colorado, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

He also presented petitions of Local Union No. 139, of Painters' Local Union No. 79, of Union Label League, of the United Brewery Workers' Union, of the Brewers and Coopers' Union, of Apprentice Lodge No. 16, of the International Association of Bridge and Structural Iron Workers' Union, of Typographical Union, of Carpenters' Local Union No. 55, of the United Brotherhood of Leather Workers' Union, of Local Union No. 68, of the Glass Workers' Local Union No. 53, and of Local No. 121, all of the American Federation of Labor, of Denver, in the State of Colorado, praying for an extension of the provisions of the present Chinese-exclusion law so as to include Japanese and Koreans; which were referred to the Committee on Immigration.

He also presented memorials of sundry citizens of Delta and Colorado Springs, in the State of Colorado, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

Mr. DU PONT presented a petition of sundry citizens of Newcastle, Del., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. BULKELEY presented a memorial of Horeb Lodge, No. 25, Independent Order of B'nai Brith, of New Haven, Conn., remonstrating against the enactment of legislation to restrict immigration; which was referred to the Committee on Immigration.

He also presented a petition of the Republican Club of Danbury, Conn., praying for a reclassification and increase of salaries of postal clerks in all first-class and second-class post-offices; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of the Young People's Society of Christian Endeavor of the First Church of Christ of New Britain, Conn., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. GALLINGER presented the petition of G. R. Armstrong, of Littleton, N. H., praying for the passage of the so-called "Crumpacker bill;" which was referred to the Committee on Post-Offices and Post-Roads.

He also presented the petition of Frank W. Hackett, of Washington, D. C., praying that an appropriation be made to provide fireproof files for the preservation of the papers of the supreme court of the District of Columbia; which was referred to the Committee on Appropriations.

He also presented a petition of the Council of the Civic Center, of Washington, D. C., praying for the enactment of legislation providing for the control of tuberculosis in the District of Columbia; which was referred to the Committee on the District of Columbia.

Mr. PLATT presented the memorial of W. B. Rockwell, of Elmira, N. Y., remonstrating against the enactment of legislation to restrict immigration; which was referred to the Committee on Immigration.

He also presented a petition of the Woman's Christian Temperance Union, of Jamestown, N. Y., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. DEPEW presented petitions of the congregation of the First Methodist Episcopal Church of Jamestown, of sundry citizens of Middleport, and of the Woman's Christian Temperance Union of Westerleigh, all in the State of New York, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. NELSON presented the memorial of J. G. Butler, editor of the Lutheran Evangelist, of Washington, D. C., remonstrating against the enactment of legislation to increase the postage rate on religious and other bona fide newspapers; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented petitions of sundry citizens of Duluth, Norman, Atwater, and Wood Lake, all in the State of Minnesota, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. ANKENY presented a memorial of sundry citizens of North Yakima, Wash., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which was referred to the Committee on the District of Columbia.

Mr. HANSBROUGH presented petitions of the congregations of the Methodist Episcopal Church of Leonard and of the Congregational Church of Valley City, in the State of North Dakota, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. CULBERSON presented a petition of the Woman's Christian Temperance Union of Tyler, Tex., and a petition of sundry citizens of Tyler, Tex., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. KITTREDGE presented a petition of sundry citizens of Huron, S. Dak., praying for the establishment of a permanent international congress; which was referred to the Committee on Foreign Relations.

Mr. LONG. I present a memorial of the Cherokee Indians, relative to their rights of property as Cherokee citizens of tribal lands and tribal funds belonging to the Cherokee people. I move that the memorial be printed as a document and referred to the Committee on Indian Affairs.

The motion was agreed to.

Mr. LONG (for Mr. CLAPP) presented petitions of the congregation of the First Methodist Episcopal Church of Owatomie, of the congregation of the Universalist Church of Owatomie, of the congregation of the Congregational Church of Cambria, of the Woman's Christian Temperance Union of Vernon Center, and of the Woman's Christian Temperance Union of Rice County, all in the State of Minnesota, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

He also (for Mr. CLAPP) presented a memorial of sundry citizens of Fergus Falls, Minn., remonstrating against the enactment of legislation providing for an elastic currency; which was referred to the Committee on Finance.

Mr. McCREARY presented a petition of the Woman's Christian Temperance Union of Louisville, Ky., praying for an investigation into the charges made and filed against Hon. REED SMOOT, a Senator from the State of Utah; which was ordered to lie on the table.

He also presented the petition of John H. Davis and sundry other citizens of Barboursville, Ky., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. DANIEL presented a paper to accompany the bill (S. 6893) for the relief of the heirs of Thomas N. Towson, deceased; which was referred to the Committee on Claims.

Mr. PILES presented petitions of sundry citizens of Elma and Seattle, in the State of Washington, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. KNOX presented a petition of the congregation of the First Baptist Church of Newcastle, Pa., and a petition of the congregation of the Church of God, of Pittsburg, Pa., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

He also presented petitions of M. D. Lichliter, of Harrisburg; John W. Calver & Co., of Philadelphia; R. J. McKibbin, of Landisburg; John P. Brewer, of Williamsport; William J. Berkey, of Johnstown; B. Wilkinson, of Coal Valley; S. E. Haas, of Herndon; William Weand, State secretary of the

Patriotic Order Sons of America, of Philadelphia; Patriotic Order Sons of America of Blandburg; Patriotic Order Sons of America of Mount Carmel; Hancock Commandery, Patriotic Order Sons of America, of Scranton; Washington Camp, No. 333, Patriotic Order Sons of America, of Scranton; Council No. 514, Junior Order United American Mechanics, of Watsontown; Council No. 75, Junior Order United American Mechanics, of Dickerson Run; Saratoga Council, Junior Order United American Mechanics, of Pittsburg, all in the State of Pennsylvania, praying for the enactment of legislation to restrict immigration with the educational test included; which were referred to the Committee on Immigration.

Mr. PERKINS presented petitions of the Improvement Club of Paso Robles, and of the Board of Trade of Templeton, in the State of California, praying for the enactment of legislation providing for the purchase of the so-called "Henry Ranch" in San Luis Obispo County, Cal., for a brigade post or Army maneuvering camp; which were referred to the Committee on Military Affairs.

He also presented a petition of the Associated Charities of San Francisco, Cal., praying for the enactment of legislation to restrict immigration; which was referred to the Committee on Immigration.

Mr. BLACKBURN presented a paper to accompany the bill (S. 5273) for the relief of the estate of Mary Rendy Cammack, deceased; which was referred to the Committee on Claims.

He also presented a paper to accompany the bill (S. 5268) for the relief of the estate of R. W. Hawkins, deceased; which was referred to the Committee on Claims.

Mr. PROCTOR presented a petition of the Women's Review Club of Chester, Vt., praying that an appropriation be made for a scientific investigation into the industrial condition of woman and child workers in the United States; which was referred to the Committee on Education and Labor.

Mr. LODGE presented a petition of the Woman's Christian Temperance Union of Millville, Mass., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

REPORTS OF COMMITTEES.

Mr. FULTON, from the Committee on Claims, to whom was referred the bill (S. 7467) to provide for the division of a penalty recovered under the alien contract-labor law; reported it without amendment, and submitted a report thereon.

Mr. KEAN, from the Committee on Claims, to whom was referred the bill (S. 6544) for the relief of Durham W. Stevens, reported it without amendment, and submitted a report thereon.

Mr. MORGAN, from the Committee on Interoceanic Canals, submitted a report to accompany the bill (S. 6539) to control the direction and management of the Panama Railroad, heretofore reported by him from that committee.

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

A bill (H. R. 15193) granting an increase of pension to Frederick W. Studdiford;

A bill (H. R. 15150) granting an increase of pension to John O'Connor;

A bill (H. R. 14862) granting an increase of pension to Ann E. White;

A bill (H. R. 14767) granting an increase of pension to Henry Simon;

A bill (H. R. 14690) granting an increase of pension to Henrietta Hull;

A bill (H. R. 14689) granting an increase of pension to Herman G. Weller;

A bill (H. R. 16249) granting an increase of pension to Thomas Miller;

A bill (H. R. 16087) granting an increase of pension to Charles W. Foster;

A bill (H. R. 16002) granting a pension to Theodore T. Bruce;

A bill (H. R. 15980) granting an increase of pension to John T. Smith;

A bill (H. R. 15890) granting an increase of pension to Hiram C. Barney;

A bill (H. R. 15790) granting an increase of pension to Nicholas W. Dorrel;

A bill (H. R. 15580) granting an increase of pension to James P. Hudkins;

A bill (H. R. 15430) granting an increase of pension to Oliver Lawrence;

A bill (H. R. 15421) granting an increase of pension to Paul Diedrich;

A bill (H. R. 15455) granting an increase of pension to John D. Brooks;

A bill (H. R. 14985) granting an increase of pension to Mary Gramberg;

A bill (H. R. 15297) granting an increase of pension to Nelson Hanson; and

A bill (H. R. 15202) granting a pension to Henry Peetsch.

Mr. OVERMAN, from the Committee on Pensions, to whom was referred the bill (H. R. 21579) granting an increase of pension to Sarah R. Harrington, reported it with an amendment, and submitted a report thereon.

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

A bill (H. R. 19541) granting an increase of pension to Job F. Martin;

A bill (H. R. 19553) granting an increase of pension to James Robertson;

A bill (H. R. 19510) granting an increase of pension to Richard B. West;

A bill (H. R. 19426) granting an increase of pension to George N. Griffin;

A bill (H. R. 19479) granting an increase of pension to George W. Savage;

A bill (H. R. 19420) granting an increase of pension to Eliza A. McKean;

A bill (H. R. 19412) granting an increase of pension to Jefferson K. Smith;

A bill (H. R. 19386) granting an increase of pension to Robert Stewart;

A bill (H. R. 19363) granting an increase of pension to Theodore Bland;

A bill (H. R. 19281) granting an increase of pension to Mary J. Gillem;

A bill (H. R. 19280) granting an increase of pension to Peter J. Williamson;

A bill (H. R. 19117) granting an increase of pension to Mary E. Higgins;

A bill (H. R. 20061) granting an increase of pension to Caswell York;

A bill (H. R. 19603) granting an increase of pension to Jacob Farner;

A bill (H. R. 19584) granting an increase of pension to Joseph B. Pettey;

A bill (H. R. 19579) granting an increase of pension to Robert F. Mayfield;

A bill (H. R. 19490) granting a pension to Estelle I. Reed;

A bill (H. R. 19237) granting an increase of pension to James Rout;

A bill (H. R. 19216) granting an increase of pension to Theophil Brodowski;

A bill (H. R. 19048) granting an increase of pension to Alfred Branson;

A bill (H. R. 19044) granting an increase of pension to Samuel C. McCormick;

A bill (H. R. 19577) granting an increase of pension to Mary L. Patton;

A bill (H. R. 19023) granting an increase of pension to John T. Lester;

A bill (H. R. 19045) granting an increase of pension to Mary A. Agey;

A bill (H. R. 19629) granting an increase of pension to Oliver Morton; and

A bill (H. R. 19648) granting an increase of pension to Sarah A. Wilson.

Mr. GEARIN, from the Committee on Pensions, to whom was referred the bill (H. R. 20060) granting an increase of pension to Anna E. Hughes, reported it with an amendment, and submitted a report thereon.

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

A bill (H. R. 17486) granting an increase of pension to Rudolph Papst;

A bill (H. R. 18295) granting an increase of pension to Joshua B. Casey;

A bill (H. R. 18218) granting an increase of pension to Joseph L. Topham;

A bill (H. R. 18114) granting an increase of pension to Henry B. Parker;

A bill (H. R. 18474) granting an increase of pension to Robert Sturgeon;

A bill (H. R. 18089) granting an increase of pension to Daniel J. Harte;

A bill (H. R. 18031) granting an increase of pension to Daniel H. Toothaker;

A bill (H. R. 17958) granting an increase of pension to Alexander Dixon;
A bill (H. R. 17864) granting an increase of pension to Mary E. Austin;
A bill (H. R. 17770) granting an increase of pension to Julia P. Grant;
A bill (H. R. 18247) granting an increase of pension to William Baird;
A bill (H. R. 18179) granting an increase of pension to William G. Baity;
A bill (H. R. 18155) granting an increase of pension to Frank S. Hastings;
A bill (H. R. 17969) granting an increase of pension to Charles Walrod;
A bill (H. R. 17646) granting an increase of pension to James M. Sheak;
A bill (H. R. 17539) granting an increase of pension to Ambrose D. Albertson;
A bill (H. R. 17172) granting an increase of pension to John Short;
A bill (H. R. 16895) granting an increase of pension to William M. Baker;
A bill (H. R. 16546) granting an increase of pension to Louis F. Beeler; and
A bill (H. R. 16488) granting an increase of pension to Charles Hopkins.

Mr. PATTERSON, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:
A bill (H. R. 18884) granting an increase of pension to Weymouth Hadley;
A bill (H. R. 18871) granting an increase of pension to Emanuel Raudabaugh;
A bill (H. R. 18797) granting an increase of pension to John M. Defoe;
A bill (H. R. 18791) granting a pension to Michael Bocoskey;
A bill (H. R. 18771) granting an increase of pension to William G. Bailey;
A bill (H. R. 18761) granting an increase of pension to Benjamin Bolinger;
A bill (H. R. 18758) granting an increase of pension to Mary A. Daniel;
A bill (H. R. 18637) granting an increase of pension to Henry L. Sparks;
A bill (H. R. 18634) granting an increase of pension to Mary Sullivan;
A bill (H. R. 18608) granting an increase of pension to Mary E. Strickland;
A bill (H. R. 18494) granting an increase of pension to Emmagene Bronson;
A bill (H. R. 18582) granting an increase of pension to Sarah E. Hoffman;
A bill (H. R. 10916) granting an increase of pension to Charles H. Shreeve;
A bill (H. R. 18261) granting an increase of pension to John T. Mitchell; and
A bill (H. R. 4351) granting an increase of pension to George A. Johnson.

Mr. WARREN, from the Committee on Military Affairs, to whom was referred the bill (S. 7762) authorizing and empowering the Secretary of War to locate a right of way for and granting the same and a right to operate and maintain a line of railroad through the Fort Wright Military Reservation, in the State of Washington, to the Spokane and Inland Empire Railroad Company, its successors and assigns, reported it without amendment, and submitted a report thereon.

COURTS IN IOWA.

Mr. CLARK of Wyoming. I report back favorably from the Committee on the Judiciary, without amendment, the bill (S. 7793) to fix the time of holding the circuit and district courts of the United States in and for the northern district of Iowa. At the request of the senior Senator from Iowa [Mr. ALLISON], I ask for the immediate consideration of the bill.

The Secretary read the bill, and, there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

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

BILLS INTRODUCED.

Mr. HOPKINS introduced a bill (S. 7989) for acquiring a site and the erection of a Federal building for the post-office at Duqoin, Ill.; which was read twice by its title, and referred to the Committee on Post-Offices and Post-Roads.

Mr. TALIAFERRO introduced a bill (S. 7990) granting an increase of pension to Ishem Sheffield; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. ALGER introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:
A bill (S. 7991) granting an increase of pension to Adella Washer; and
A bill (S. 7992) granting a pension to Sarah Harrison.

Mr. HANSBROUGH introduced a bill (S. 7993) granting an increase of pension to Ishem Sheffield; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 7994) authorizing the State of North Dakota to select other lands in lieu of lands erroneously entered in sections 16 and 36, within the limits of the abandoned Fort Rice and Fort Abraham Lincoln military reservations, in said State; which was read twice by its title, and referred to the Committee on Public Lands.

Mr. GEARIN introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:
A bill (S. 7995) granting an increase of pension to Ashley White; and
A bill (S. 7996) granting an increase of pension to Robert B. Lucas.

Mr. CULLOM introduced a bill (S. 7997) authorizing the President of the United States to confer rank upon Maj. Joseph W. Wham, United States Army, retired; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. GALLINGER introduced a bill (S. 7998) granting an increase of pension to George N. Julian; which was read twice by its title, and referred to the Committee on Pensions.

Mr. LONG (for Mr. CLAPP) introduced a bill (S. 7999) to authorize the purchase from Karl A. Torgerson and Charles E. Heyn of 80 acres of land, more or less; which was read twice by its title, and referred to the Committee on Public Lands.

Mr. HEMENWAY submitted the following bills, which were severally read twice by their titles, and referred to the Committee on Pensions:
A bill (S. 8000) granting an increase of pension to Hezekiah Allen; and
A bill (S. 8001) granting an increase of pension to Valentine Thompson.

Mr. FULTON introduced a bill (S. 8002) granting an increase of pension to Thomas H. Webley; which was read twice by its title, and referred to the Committee on Pensions.

Mr. McCREARY introduced a bill (S. 8003) granting an increase of pension to Isaac N. Sheffield; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 8004) for the relief of the estate of Edward H. Green, deceased; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Claims.

Mr. PILES introduced a bill (S. 8005) granting an increase of pension to Garrett F. Cowan; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. ANKENY introduced a bill (S. 8006) granting an increase of pension to Epaminondas P. Thurston; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. DICK introduced a bill (S. 8007) to authorize the reappointment of Harry McL. P. Huse to the active list of the Navy; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. HALE introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Naval Affairs:
A bill (S. 8008) to remove the charge of desertion from the naval record of Michael McLaughlin, alias Charles L. Smith; and
A bill (S. 8009) to correct the naval record of Charles H. Haswell.

Mr. HALE introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:
A bill (S. 8010) granting an increase of pension to Charles E. Jordan; and
A bill (S. 8011) granting a pension to Joel P. Osgood.

Mr. BEVERIDGE introduced a bill (S. 8012) to erect a monument on the Tippecanoe battle ground in Tippecanoe County, Ind.; which was read twice by its title, and, with the accompanying paper, referred to the Committee on the Library.

Mr. LA FOLLETTE introduced a bill (S. 8013) reserving from entry and sale the mineral rights to coal and other mate-

rials mined for fuel, oil, gas, or asphalt, upon or underlying the public lands of the United States, and providing for the sale of the surface of public lands underlaid with or containing coal or other minerals mined for fuel, oil, gas, or asphalt, and providing for the leasing of the mineral rights in such lands; which was read twice by its title, and referred to the Committee on Public Lands.

Mr. ANKENY introduced a joint resolution (S. R. 87) extending the time in which to make homestead settlement upon lands entered upon in the State of Washington; which was read twice by its title, and referred to the Committee on Public Lands.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. NELSON submitted an amendment authorizing the extension to the Federal building at Duluth, Minn., and proposing to appropriate $105,000 for the purpose of acquiring a new Federal building site, etc., intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Public Buildings and Grounds, and ordered to be printed.

Mr. GALLINGER submitted an amendment proposing to appropriate $10,000 for grading Albemarle street east from Connecticut avenue extended to Broad Branch road, intended to be proposed by him to the District of Columbia appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

He also submitted an amendment providing that all tracts of land, except parking areas, heretofore or hereafter acquired for use as public highways in the District of Columbia shall be opened for the use of the general public, etc., intended to be proposed by him to the District of Columbia appropriation bill; which was ordered to be printed, and, with the accompanying paper, referred to the Committee on Appropriations.

Mr. FORAKER submitted an amendment proposing to appropriate $2,000 for the purchase of flags for use on Memorial Day in suitably decorating the graves of soldiers and sailors of the Union Army buried in national cemeteries, intended to be proposed by him to the Army appropriation bill; which was referred to the Committee on Military Affairs, and ordered to be printed.

Mr. DANIEL submitted an amendment proposing to appropriate $1,000,000 for the purpose of aiding in the payment of the cost of the construction, completion, and opening of the Jamestown Ter-Centennial Exposition, etc., intended to be proposed by him to the urgent deficiency appropriation bill; which was ordered to be printed, and, with the accompanying paper, referred to the Committee on Appropriations.

Mr. TALIAFERRO submitted an amendment relative to an appropriation to assist in the industrial education of the negro youth of the Southern States, etc., intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Education and Labor, and ordered to be printed.

OMNIBUS CLAIMS BILL.

Mr. PLATT submitted an amendment intended to be proposed by him to the omnibus claims bill; which was referred to the Committee on Claims, and ordered to be printed.

DEALING IN COTTON FUTURES.

Mr. CULBERSON. Mr. President, yesterday I introduced a bill—Senate bill 7988—regulating the use of telegraph lines and the mails in matters affecting gambling in cotton. In that connection I ask to have reprinted as a Senate document the text of the report of the Committee on Agriculture and Forestry of 1895, which will be found in the volume I have here, from page 2 to page 44, inclusive. I do not ask that the whole report, including the exhibits, be printed, but merely the text of the report.

There being no objection, the order was agreed to, as follows:

Ordered, That so much of Senate Report No. 986, part 1, Fifty-third Congress, third session, on Cotton Production and Consumption, and Prices and the Remedy, as is contained on pages 2 to 44, inclusive, be reprinted.

PANAMA CANAL ZONE.

Mr. MORGAN. Mr. President, I desire to have printed in the RECORD an opinion of the Supreme Court of the United States, delivered on the 7th of January, 1907, in which opinion the Supreme Court settled finally and forever the question of the sovereignty of the United States over the Panama Canal Zone, affirming the sovereignty of this country absolutely over that territory. I ask to have it printed in the RECORD.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

SUPREME COURT OF THE UNITED STATES.

(No. 43.—October Term, 1906.)

Warren B. Wilson, appellant, *v.* Leslie M. Shaw, Secretary of the Treasury. Appeal from the Court of Appeals of the District of Columbia.

[January 7, 1907.]

In a general way it may be said that this is a suit brought in the Supreme Court of the District of Columbia by the appellant, alleging himself to be a citizen of Illinois and the owner of property subject to taxation by the United States, to restrain the Secretary of the Treasury from paying out money in the purchase of property for the construction of a canal at Panama, from borrowing money on the credit of the United States, from issuing bonds or making any payments under the act of Congress, June 28, 1902 (32 Stat., 481), providing for the acquisition of property and rights from Colombia and the canal company and the construction and operation of the canal and the Panama Railroad. The Republic of Panama and the New Panama Canal Company of France were named parties defendant, but they were not served with process and made no appearance. A demurrer to the bill was sustained, and the bill dismissed. This decree was affirmed by the Court of Appeals, from whose decision this appeal was taken.

Mr. Justice Brewer delivered the opinion of the court.

If the bill was only to restrain the Secretary of the Treasury from paying the specific sums named therein, to wit, $40,000,000 to the Panama Canal Company, and $10,000,000 to the Republic of Panama, it would be sufficient to note the fact, of which we may take judicial notice, that those payments have been made and that whether they were rightfully made or not is, so far as this suit is concerned, a moot question. Cheong Ah Moy *v.* United States, 113 U. S., 216; Mills *v.* Green, 159 U. S., 651; American Book Company *v.* Kansas, 193 U. S., 49; Jones *v.* Montague, 194 U. S., 147.

But the bill goes further and seeks to restrain the Secretary from paying out money for the construction of the canal, from borrowing money for that purpose, and issuing bonds of the United States therefor. In other words, the plaintiff invokes the aid of the courts to stop the Government of the United States from carrying into execution its declared purpose of constructing the Panama Canal. The magnitude of the plaintiff's demand is somewhat startling. The construction of a canal between the Atlantic and Pacific somewhere across the narrow strip of land which unites the two continents of America has engaged the attention not only of the United States, but of other countries for many years. Two routes, the Nicaragua and the Panama, have been the special objects of consideration. A company chartered under the laws of France undertook the construction of a canal at Panama. This was done under the superintendence and guidance of the famous Ferdinand de Lesseps, to whom the world owes the Suez Canal. To tell the story of all that was done in respect to the construction of this canal, prior to the active intervention of the United States, would take volumes. It is enough to say that the efforts of De Lesseps failed. Since then Panama has seceded from the Republic of Colombia and established a new republic, which has been recognized by other nations. This new republic has, by treaty, granted to the United States rights, territorial and otherwise. Acts of Congress have been passed providing for the construction of a canal, and in many ways the executive and legislative departments of the Government have committed the United States to this work, and it is now progressing. For the courts to interfere and at the instance of a citizen, who does not disclose the amount of his interest, stay the work of construction by stopping the payment of money from the Treasury of the United States therefor would be an exercise of judicial power which, to say the least, is novel and extraordinary.

Many objections may be raised to the bill. Among them are these: Does plaintiff show sufficient pecuniary interest in the subject-matter? Is not the suit really one against the Government, which has not consented to be sued? Is it any more than an appeal to the courts for the exercise of governmental powers which belong exclusively to Congress? We do not stop to consider these or kindred objections; yet, passing them in silence must not be taken as even an implied ruling against their sufficiency. We prefer to rest our decision on the general scope of the bill.

Clearly there is no merit in plaintiff's contentions. That, generally speaking, a citizen may be protected against wrongful acts of the Government affecting him or his property may be conceded. That his remedy is by injunction does not follow. A suit for an injunction is an equitable proceeding, and the interests of the defendant are to be considered as well as those of the plaintiff. Ordinarily it will not be granted when there is adequate protection at law. In the case at bar it is clear not only that plaintiff is not entitled to an injunction, but also that he presents no ground for any relief.

He contends that whatever title the Government has was not acquired as provided in the act of June 28, 1902, by treaty with the Republic of Colombia. A short but sufficient answer is that subsequent ratification is equivalent to original authority. The title to what may be called the Isthmian or Canal Zone, which at the date of the act was in the Republic of Colombia, passed by an act of secession to the newly formed Republic of Panama. The latter was recognized as a nation by the President. A treaty with it, ceding the Canal Zone, was duly ratified. (33 Stat., 2234.) Congress has passed several acts based upon the title of the United States, among them one to provide a temporary government (33 Stat., 429); another, fixing the status of merchandise coming into the United States from the Canal Zone (33 Stat., 843); another, prescribing the type of canal (34 Stat., 611). These show a full ratification by Congress of what has been done by the Executive. Their concurrent action is conclusive upon the courts. We have no supervising control over the political branch of the Government in its action within the limits of the Constitution. (Jones *v.* United States, 137 U. S., 202, and cases cited in the opinion; In re Cooper, 143 U. S., 472, 499, 503.)

It is too late in the history of the United States to question the right of acquiring territory by treaty. Other objections are made to the validity of the right and title obtained from Panama by the treaty, but we find nothing in them deserving special notice.

Another contention, in support of which plaintiff has presented a voluminous argument, is that the United States has no power to engage in the work of digging this canal. His first proposition is that the Canal Zone is no part of the territory of the United States, and that, therefore, the Government is powerless to do anything of the kind therein. Article 2 of the treaty, heretofore referred to, "grants to the United States in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection of said canal." By article 3 Panama "grants to the United States all the rights, power, and authority within the Zone mentioned and described in article 2 of this agreement, * * * which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located, to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority."

Other provisions of the treaty add to the grants named in these two articles further guaranties of exclusive rights of the United States in the construction and maintenance of this canal. It is hypercritical

to contend that the title of the United States is imperfect, and that the territory described does not belong to this nation, because of the omission of some of the technical terms used in ordinary conveyances of real estate.

Further, it is said that the boundaries of the Zone are not described in the treaty; but the description is sufficient for identification, and it has been practically identified by the concurrent action of the two nations alone interested in the matter. The fact that there may possibly be in the future some dispute as to the exact boundary on either side is immaterial. Such disputes not infrequently attend conveyances of real estate or cessions of territory. Alaska was ceded to us forty years ago, but the boundary between it and the English possessions east was not settled until within the last two or three years. Yet no one ever doubted the title of this Republic to Alaska.

Again, plaintiff contends that the Government has no power to engage anywhere in the work of constructing a railroad or canal. The decisions of this court are adverse to this contention. In California *v.* Pacific Railroad Company (127 U. S., 1, 39) it was said:

"It can not at the present day be doubted that Congress, under the power to regulate commerce among the several States, as well as to provide for postal accommodations and military exigencies, had authority to pass these laws. The power to construct or to authorize individuals or corporations to construct national highways and bridges from State to State is essential to the complete control and regulation of interstate commerce. Without authority in Congress to establish and maintain such highways and bridges, it would be without authority to regulate one of the most important adjuncts of commerce. This power in former times was exerted to a very limited extent, the Cumberland or National road being the most notable instance. Its exertion was but little called for, as commerce was then mostly conducted by water, and many of our statesmen entertained doubts as to the existence of the power to establish ways of communication by land. But since, in consequence of the expansion of the country, the multiplication of its products, and the invention of railroads and locomotion by steam, land transportation has so vastly increased, a sounder consideration of the subject has prevailed and led to the conclusion that Congress has plenary power over the whole subject. Of course, the authority of Congress over the Territories of the United States, and its power to grant franchises exercisable therein, are, and ever have been, undoubted. But the wider power was very freely exercised, and much to the general satisfaction, in the creation of the vast system of railroads connecting the East with the Pacific, traversing States as well as Territories, and employing the agency of State as well as Federal corporations. (See Pacific Railroad Removal cases, 115 U. S., 1, 14, 18)."

In Luxton *v.* North River Bridge Company (153 U. S., 525, 529), Mr. Justice Gray, speaking for the court, says:

"Congress, therefore, may create corporations as appropriate means of executing the powers of government, as, for instance, a bank for the purpose of carrying on the fiscal operations of the United States, or a railroad corporation for the purpose of promoting commerce among the States. (McCulloch *v.* Maryland, 4 Wheat., 316, 411, 422; Osborn *v.* Bank of United States, 9 Wheat., 738, 861, 873; Pacific Railroad Removal Cases, 115 U. S., 1, 18; California *v.* Pacific Railroad, 127 U. S., 1, 39.) Congress has likewise the power, exercised early in this century by successive acts in the Cumberland or National road, from the Potomac across the Alleghenies to the Ohio, to authorize the construction of a public highway connecting several States. (See Indiana *v.* United States, 148 U. S., 148.)"

See also Monongahela Navigation Company *v.* United States (148 U. S., 312).

These authorities recognize the power of Congress to construct interstate highways. A fortiori, Congress would have like power within the Territories and outside of State lines, for there the legislative power of Congress is limited only by the provisions of the Constitution, and can not conflict with the reserved power of the States. Plaintiff, recognizing the force of these decisions, seeks to obviate it by saying that the expressions were obiter dicta, but plainly they were not. They announce distinctly the opinion of this court on the questions presented, and would have to be overruled if a different doctrine were now announced. Congress has acted in reliance upon these decisions in many ways, and any change would disturb a vast volume of rights supposed to be fixed; but we see no reason to doubt the conclusions expressed in those opinions, and adhere to them.

The court of appeals was right, and its decision is

Affirmed.

True copy.
Test:

Clerk Supreme Court, United States.

ALLEGED CONDITIONS IN KONGO FREE STATE.

Mr. MORGAN. I ask for a reprint of 2,000 copies of Senate Document No. 316, Fifty-ninth Congress, first session, being papers relating to conditions alleged to exist in the Kongo Free State. The demand for that document has been very great, I am told.

The VICE-PRESIDENT. Without objection, it is so ordered.

FIVE CIVILIZED TRIBES.

On motion of Mr. CLARK of Wyoming, it was

Ordered, That 500 additional copies of Senate Report 5013, Fifty-ninth Congress, second session, be printed for the use of the Senate.

COLOMBIAN PANAMA CANAL STOCK.

Mr. MORGAN. Yesterday I introduced a resolution in regard to the ownership of the 5,000,000 francs of stock of the Panama Canal. The papers have not yet been printed, and I ask that the resolution may go over without prejudice.

The VICE-PRESIDENT. Without objection, it is so ordered.

POTOMAC RIVER BRIDGE AT SHEPHERDSTOWN, W. VA.

Mr. DANIEL. I ask unanimous consent for the consideration of the bill (S. 7800) to authorize the Norfolk and Western Railway Company to construct a bridge across the Potomac River at or near Shepherdstown, W. Va.

I may be permitted to state that it is a brief bill, introduced by the Senator from Maryland [Mr. RAYNER].

The Secretary read the bill, and, there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The bill was reported from the Committee on Commerce with amendments.

The first amendment was, in section 1, page 2, line 2, after the word "Maryland," to strike out the words "as the said company may deem suitable, for the passage of its road over the said river;" so as to make the section read:

That the Norfolk and Western Railway Company, a corporation organized under the laws of the State of Virginia, its successors and assigns, be, and they are hereby, authorized, in the improvement and relocation of its line, to construct, maintain, and operate a bridge and approaches thereto across the Potomac River at or near Shepherdstown, W. Va., where the Potomac River forms the boundary line between the States of West Virginia and Maryland, in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906.

The amendment was agreed to.

The next amendment was, in section 2, page 2, line 11, to strike out the word "passage" and insert the word "approval;" so as to make the section read:

That this act shall be null and void unless the actual construction of the bridge authorized by this act be commenced within two years and completed within three years from the date of the approval of this act.

The amendment was agreed to.

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

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

ASSISTANT APPRAISERS AT THE PORT OF NEW YORK.

Mr. BURROWS obtained the floor.

Mr. PLATT. Mr. President——

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

Mr. BURROWS. Certainly.

Mr. PLATT. I ask unanimous consent for the consideration of the bill (S. 7147) to amend section 2536 of the Revised Statutes, relative to assistant appraisers at the port of New York, and further defining their powers, duties, and compensation.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, preceeded to its consideration.

The bill was reported from the Committee on Finance with an amendment, in section 2, page 2, line 6, after the word "approval," to insert the words "or by the direction;" so as to make the section read:

That of such assistant appraisers, one shall be designated by the appraiser of merchandise in the district of New York, with the approval of the Secretary of the Treasury, as special deputy appraiser, and two, with like approval, as deputy appraisers; and any such designation may be revoked by the appraiser, with the approval or by the direction of the Secretary of the Treasury, at any time, and another designation made in place thereof. Such special deputy and deputies, respectively, shall at all times, in addition to the duties of assistant appraiser, exercise and perform such functions, powers, and duties appertaining to the office of appraiser as the said appraiser shall, under his hand and seal, respectively assign to them. Such special deputy and deputies shall be subject to the control and direction of the appraiser in the exercise of the functions, powers, and duties appertaining to the office of appraiser, and the said appraiser may revise and correct the reports of such special deputy and deputies as he may judge proper, and he may at any time revoke the authority so conferred on them to exercise the functions of appraiser. Such special deputy and deputies shall each receive during the time they are so designated, in addition to the salary as assistant appraisers, compensation at the rate of $500 per annum.

The amendment was agreed to.

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

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

Mr. PLATT. I also ask for the consideration of the bill——

Mr. CULLOM. Mr. President, I call for the regular order of business.

The VICE-PRESIDENT. Objection is made.

DISMISSAL OF THREE COMPANIES OF TWENTY-FIFTH INFANTRY.

Mr. BURROWS. The junior Senator from Utah [Mr. SUTHERLAND] gave notice the other day that he would address the Senate to-day on Senate resolution 142. I ask that that resolution may be laid before the Senate.

Mr. FORAKER. Before the request of the Senator from Michigan is complied with, I want to have some understanding as to Senate resolution No. 208—the Brownsville matter. It was made the special order for to-day immediately after the close of the morning business, and it is in order now. I do not want it displaced without an agreement that it shall be taken

up immediately after the Senator from Utah shall have concluded his remarks. I do not wish to interfere with his speech. He gave notice that he would address the Senate at this time, and he is prepared to speak. I want to show him the courtesy we extend to everybody else, and therefore I do not insist upon taking up the resolution at this time, but I do wish that an understanding shall be agreed to that it shall be taken up immediately after he concludes.

The VICE-PRESIDENT. The Senator from Ohio asks unanimous consent that resolution No. 208 be taken up immediately after the conclusion of the remarks of the junior Senator from Utah. Is there objection? The Chair hears none. It is so ordered.

SENATOR FROM UTAH.

Mr. BURROWS. I ask that the resolution reported from the Committee on Privileges and Elections may be laid before the Senate.

The VICE-PRESIDENT. The Secretary will read the resolution called up by the Senator from Michigan.

The Secretary read the resolution reported by Mr. BURROWS from the Committee on Privileges and Elections, June 11, 1906, as follows:

Resolved, That REED SMOOT is not entitled to a seat as a Senator of the United States from the State of Utah.

Mr. SUTHERLAND obtained the floor.

Mr. PILES. Mr. President——

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

Mr. SUTHERLAND. Certainly.

Mr. PILES. Mr. President, I desire at this time, because of their great importance to my State, to ask first for the consideration of the bill (H. R. 23561) to authorize the construction of a bridge across the Columbia River between Walla Walla and Benton counties, in the State of Washington, by the North Coast Railroad Company, and then for the consideration of the bill (H. R. 23560) to authorize the construction of a bridge across the Columbia River between Benton and Franklin counties, in the State of Washington, by the North Coast Railroad Company.

The VICE-PRESIDENT. The Senator from Washington asks unanimous consent for the present consideration of the bills named by him.

Mr. BACON. Is not that a violation of the rule of the Senate, Mr. President?

The VICE-PRESIDENT. The request is for unanimous consent. The Chair submits the question to the Senate. Is there objection?

Mr. BACON. Mr. President, I do not want to object, but I think that the purpose of the rule will be defeated if it can be evaded in that way. I do not like to object; but I think when a Senator rises to make a speech he ought not to be interrupted for the ordinary business of the Senate. I know that is the object of the rule, for I wrote it myself, although it was incorporated in another rule. I, however, suggested it, and I think I know what is its intention.

Mr. PILES. I withdraw the request, Mr. President.

The VICE-PRESIDENT. The Senator from Washington withdraws his request. The Senator from Utah is recognized.

Mr. SUTHERLAND. Mr. President, the resolution just laid before the Senate declaring that my colleague is not entitled to his seat is a matter of such profound concern not only to him personally, but to the people of the State which I have the honor in part to represent as well, that I enter upon the discussion of it with a feeling of more than passing interest. I have no desire to unnecessarily occupy the time of the Senate, and I shall be as brief as the gravity of the issue and the wide range which the investigation itself has taken will permit.

In my own State the people are by no means united in their opinion respecting the merits of this controversy. There are extremists upon both sides holding widely divergent views. Neither side is necessarily wanting in honesty or in sincerity. Fanaticism may be entirely consistent with the love of truth and the desire for justice, although I have never discovered that it is any aid to the ascertainment of the one or the administration of the other. The fanatic in Utah, as elsewhere, does not look at the facts through his natural eyes. He uses a telescope—which is another name for his prejudices.

When he views the shortcomings of his neighbors he looks through the big end of the instrument, and when he looks at his own shortcomings he reverses the operation. The result is that to the eyes of the anti-Mormon extremist the evils of which he complains are, perhaps quite unconsciously to himself, exaggerated and magnified, and sometimes distorted, while to the eyes of the pro-Mormon extremist these same evils are minimized or not revealed at all. In what I shall have to say I do not expect and I shall not attempt to satisfy either of these extreme classes. I shall undertake to discuss the various questions involved with candor and state the facts and vindicate the truth according to my understanding.

I am not here, Mr. President, to justify wrongdoing in my own State, any more than I am here to justify wrongdoing in any other State. Whoever may be thus employed must bear his own responsibility. On the other hand, I shall not condemn simply because somebody else condemns, except where I believe condemnation to be justly due.

I do not understand it is the duty of this Senate in this investigation to ascertain whether Brigham Young was a model citizen or the reverse, or whether the keys of the Gospel are in the possession of the Utah branch of the church or the Josephite branch of the church, nor to ascertain whether the creed or the doctrines of the Mormon Church are in accordance with the twentieth-century standards of theology. While all of those questions may be interesting, they do not seem to me to be pertinent. Neither do I understand that we are here to try the Mormon Church or the Mormon leaders or lawbreakers generally or lawbreakers specially in the State of Utah or elsewhere, except in so far as those matters may reflect legitimate light upon the question which we are here to try and determine, namely, Is Senator REED SMOOT entitled to retain his seat in this Senate?

So far as that question is concerned, it has always seemed to me that the issue was clear-cut and simple. If Senator SMOOT is a lawbreaker, either as principal or accessory; if he owes or recognizes allegiance to any power paramount to the allegiance which he owes to his flag and country; if by reason of his conduct he is so morally unfit that his continued presence in this Senate will bring shame and reproach upon it, he ought not to retain his seat. If he is not a lawbreaker, either in his own person or as aider or abettor of others; if he places his love of country, his devotion to his Government, his duty as a Senator of the United States above every other consideration; if he is not morally unfit, he ought not to be deprived of his seat in obedience to any feeling of prejudice within or popular demand from without this Chamber. His case ought to be determined upon broad considerations. Technicalities should not be invoked nor hair-splitting distinctions indulged either in favor of his retention or his expulsion.

In one sense the power of this Senate to deal with the accused Senator is plenary. It may be exercised arbitrarily. In a legal sense, the Senate is not accountable to any other authority or tribunal for its action. Right or wrong, wise or unwise, just or unjust, its decision becomes the unappealable law of the case. But, in another sense, and in a higher and a better and a juster sense, its action is restricted by those considerations of fundamental justice which find an abiding place in the conscience of every just man.

The distinguished Senator from Idaho [Mr. DUBOIS], in his speech the other day, called the attention of the Senate to the fact that a very large number of petitions had been presented by the good women of this country, and it seemed to be in the mind of that Senator that these petitions should be regarded as of controlling force.

I do not intend to express any opinion upon the question as to whether petitions addressed to this Senate, suggesting or demanding that a particular judgment should be rendered in a case involving the right of a Senator to his seat, are as much out of place as would be similar petitions addressed to a court of justice engaged in a purely judicial inquiry. Perhaps something could be said upon either side of that proposition.

The Constitution of the United States provides that Congress shall make no law abridging the right of the people to petition the Government for a redress of grievances. The language is peculiar. It does not confer a new right, but recognizes a pre-existing right, with which Congress is forbidden to interfere. Whether the framers of the Constitution had in mind a case like this, which is at least quasi judicial in character, which has to do with the privileges of the Senate, which does not involve any question of legislation or of governmental policy, is at least questionable. However that may be, the privilege, if not the right, of petition has been freely exercised by the people in this case; and, whatever may be the proprieties of the matter, one thing seems certain—that Senators can not permit themselves to be swayed in the slightest degree from a just determination of this case upon the merits by petitions, however numerous or by whomsoever signed.

The fathers of the Constitution intended that this great Senate should be a conservative force, a deliberative body, that should neither blindly follow nor impatiently reject the demands of the multitude. I can conceive of cases—cases involving questions of legislation, questions of political or governmental policy—where the demands of the people should not only be heeded, but

should be obeyed. But I respectfully submit that this is a case where the *right* of one individual is more sacred than the mere *demand* of *all* the people.

Mr. President, I yield to no man in my respect for that great body of Christian and patriotic women who have brought to us these vast petitions praying for Senator SMOOT's expulsion. As to their good faith, as to their desire that only justice should be done, I make no question, and I have no doubt but the responsibility of the decision of this case is with us and not with them. Whether they are familiar with the facts, we know not; whether they have read the mass of testimony taken before the Committee on Privileges and Elections, we know not; whether they are seeking to hold the Senator from Utah accountable only for his own acts, or to punish him vicariously for the sins of others, for which he is not responsible and with which he does not sympathize, we know not. But this much we do know, that whether the prayer of these petitions be based upon an actual knowledge and a calm review of the facts, or upon a misconception of the facts, each of us must render his judgment after a passionless consideration of the evidence and a judicial determination of the truth, else in the high court of his own conscience he stands forsworn.

Mr. President, this investigation has been in progress before the Committee on Privileges and Elections for a period exceeding two years. It has been conducted with great care, great deliberation, and great diligence. The results are to be found in four large volumes of closely printed matter, aggregating some 3,000 pages. I think it is fair to assume that whatever could be said either for or against the position of the Senator from Utah must be found somewhere in that record. To travel outside into the domain of idle gossip or mere rumor, to invoke sensational and perhaps unfounded articles contained in newspapers, magazines, or books would seem to be not only unnecessary, but unfair.

I repeat, Mr. President, and emphasize—because it is an important fact—that this investigation has been in progress before this committee for a period exceeding two years. Eminent counsel have appeared upon both sides of the controversy. Large sums of money have been expended in the search for and the production of evidence. Something more than 100 witnesses personally appeared before the committee and gave testimony under oath.

The books and the publications of the Mormon Church, the sermons and the declarations of the Mormon leaders, the statements of friends and opponents—sometimes authentic and sometimes not—from the foundation of the church, more than seventy years ago, to the present time, have been produced and are to be found in these pages. Everything, however trivial; everything, however unimportant; everything that could reflect the slightest light, and very much that by no possibility could reflect any light at all, upon the question with which we have to deal has been searched out and produced and spread upon the pages of this record. I submit that if justification can not be found somewhere in these pages for the expulsion of the Senator from Utah, it is fair to presume, conclusively presume, that no such justification exists.

Mr. President, it would tend to a better understanding of this case, as it does to every case, if we were able first of all to accurately determine and precisely define the issues which we are called upon to adjudicate, but this no one can do except in a more or less tentative fashion. Some of the charges originally made were so vague; others have become so clouded and uncertain and indefinite by being first asserted, afterwards withdrawn, and then partially reinstated, that no man can read this record and determine from it precisely what are the grounds relied upon by those representing the protestants. Two protests have been presented to the Senate and have been considered by the Committee on Privileges and Elections—the first a general protest signed by nineteen citizens of Salt Lake, the second a special protest signed by one John L. Leilich alone. The first or general protest contains this significant statement:

> We charge him—
>
> Meaning Senator SMOOT—
>
> with no offense cognizable by law.

That statement means, if it means anything, that it is not pretended that Senator SMOOT has ever violated the law against polygamy or any other law; it means, if it means anything, that he has not aided or abetted any other person in the violation of the law against polygamy or any other law; it means, finally, if it means anything, that he has not engaged in any conspiracy with others for the violation of the law against polygamy or any other law, because, I do not need to say to the Senate, that to engage in such a conspiracy would be an offense cognizable by the law of every State in the Union.

Mr. President, I emphasize that last phase of this matter because it has been asserted here with more or less earnestness that the proof establishes that Senator SMOOT has engaged in some such conspiracy. The gentleman who prepared this general protest was a witness before the committee. It appears from the testimony that he prepared the protest after very careful study and thorough consideration of all the facts. I happen to know that gentleman—Mr. Critchlow—very well indeed. I have known him intimately. He has been my warm personal friend for a great many years. I know him to be a lawyer of exceptional ability and of ripe and accurate judgment upon a proposition of law.

Another of the signers of the protest is Mr. P. L. Williams, also a resident of the State, who has lived there for the past thirty or more years. Mr. Williams is also a lawyer whom I know well. I was a law partner of his for many years, and I know that in ability as a lawyer he stands second to no man in the West.

This protest is also signed by other lawyers of ability and standing at the bar of that State.

When these lawyers put into that protest the language which I have quoted—"We charge him with no offense cognizable by law"—they were not indulging in some idle or meaningless phrase. They were stating deliberately precisely what they meant to state. I shall have occasion as I go along to show that they are entirely correct in that statement; but for the present I content myself by saying that I will place the judgment of these lawyers, with full and accurate knowledge of the facts, against the judgment of anybody who asserts to the contrary, that Senator SMOOT has violated any law himself, that he has aided or abetted any other person in the violation of law, or that he has engaged in any conspiracy for the violation or subversion of the law.

One of the signers of this original protest is John L. Leilich, who also signed the special protest. It appears from the evidence that Mr. Leilich signed this original protest after having read it over and thoroughly considered it. He therefore asserted, as did the other petitioners, that Senator SMOOT was not guilty of any offense cognizable by law. Then Mr. Leilich, with unexplained and unexplainable inconsistency, immediately turns about and makes his special protest, in which he alleges in specific and detailed terms that Senator SMOOT is a polygamist and therefore has made himself amenable to the laws of the State of Utah. That charge in Mr. Leilich's protest is in this language, and I desire to read it to the Senate:

> Thirteenth. That the said REED SMOOT is a polygamist, and that since the admission of Utah into the union of States he, although then and there having a legal wife, married a plural wife in the State of Utah in violation of the laws and compacts hereinbefore described, and since such plural or polygamous marriage the said REED SMOOT has lived and cohabited with both his legal wife and his plural wife in the State of Utah and elsewhere, as occasion offered, and that the only record of such plural marriage is the secret record made and kept by the authorities of the Church of Jesus Christ of Latter-Day Saints, which secret record is in the exclusive custody and control of the first presidency and the quorum of the twelve apostles of the said church, of which the said REED SMOOT is one, and is beyond the control or power of the protestants.
>
> Protestants in the plural.

Evidently Mr. Leilich expected in the beginning that somebody else was going to sign this protest with him. It appears that he was unable in the whole State of Utah to find anybody who would agree with his statement.

> Your protestants respectfully ask that the Senate of the United States or its appropriate committee compel the first presidency and the quorum of the twelve apostles and the said REED SMOOT to produce such secret record for the consideration of the Senate. Your protestants say that they are advised by counsel that it is inexpedient at this time to give further particulars concerning such plural marriage and its results or the place it was solemnized or the maiden name of the plural wife.

And there, Mr. President, so far as this investigation before the committee or before the Senate is concerned, this matter with reference to the charge of polygamy rested, except that from time to time during the progress of the investigation before the committee this charge of Mr. Leilich was repudiated by the counsel for the protestants, Mr. Tayler, and by members of the committee, as, for instance, the Senator from Idaho [Mr. DUBOIS] and by other members of the committee. For example, Mr. Tayler, in making his opening statement to the committee, made use of this expression:

> I merely say, respecting the charge made in the supplemental protest, that I do not know, and therefore can not say to the committee, that proof will be made sustaining the charge of what is called "the Leilich protest," to the effect that Mr. SMOOT is a polygamist.

And again, upon at least three separate and distinct occasions

Mr. Tayler repeated that he did not stand, nor did the protestants whom he represented, stand for that charge.

In the course of the proceedings before the committee this occurred after a colloquy between the Senator from Indiana [Mr. BEVERIDGE] and the Senator from Idaho [Mr. DUBOIS]. The Senator from Idaho stated:

Senator DUBOIS. No; I do not include the Senator from Vermont, who thought that we were trying Mr. SMOOT upon the charge of his being a polygamist, or of his having taken an oath as an apostle which was incompatible with his oath as a Senator. That charge was not preferred by the committee of nineteen from Salt Lake City, Utah. That charge was preferred by an individual named Leilich, and was repudiated instantly by telegram from the protestants—the nineteen—and no one ever appeared here, and it was stated in the first meeting, in answer to a direct question, that no one was present to press those charges.

One of the witnesses who was called before the committee was Doctor Buckley, a gentleman who is known by reputation probably to every member of the Senate. Doctor Buckley testified that he had gone to Salt Lake while this investigation was in progress. He was asked, I think by the Senator from Ohio [Mr. FORAKER], to state if he had any personal knowledge with regard to Senator SMOOT, and Doctor Buckley answered:

No. While I was there I asked all sorts of people, Mormons and others, whom I met how Senator SMOOT stood in the whole community, the whole general community, and I got plenty of answers. Would it be proper for me to say that not a syllable was breathed against him; that many commended him highly?

And again, further on, Doctor Buckley proceeded:

Every person I saw—and the number was as many as I could see at the principal hotel, at a church to which I went, where there were more than a thousand people, with scores of whom I spoke afterwards—wherever I asked the question, "What kind of a man is Mr. SMOOT?" whether he was a polygamist or anybody believed he was a polygamist, I am compelled to say that I did not find, either in California, where I had been for months at a convention, or while I was in Utah, a single person who said one word against Mr. SMOOT. Nor did I find one person who believed that he had ever been married to anyone but his wife or had otherwise lived with any woman who was not his wife. That is the fact in the case. Republicans and Democrats, Mormons and Gentiles, all talked in that way. How many I saw I can not tell, for I did not expect ever to keep that fact in mind as of any importance.

Mr. DILLINGHAM. Doctor Buckley is the editor of the Christian Advocate.

Mr. SUTHERLAND. I am reminded by the Senator from Vermont that Doctor Buckley is editor of the Christian Advocate.

Mr. DILLINGHAM. The New York Christian Advocate.

Mr. SUTHERLAND. He went there upon this special errand and to make this inquiry among others, and was therefore engaged in this very investigation. This was the result of his inquiries.

Mr. President, this record is full of similar statements. I am not going to take the time of the Senate to read any of them or to call further attention to them. Of course, there is to-day in the United States no well-informed person who believes or contends that Senator SMOOT is a polygamist, but this charge, originally made by Mr. Leilich, has been repeated and reiterated by irresponsible persons and irresponsible newspapers from one end of this country to the other, until it has gained wide circulation and has been given general credence throughout the country.

A lie travels fast; the truth crawls slowly; and so, while it is true that this charge of Mr. Leilich was instantly repudiated by the other signers of this protest, and while it is true that Mr. Tayler, representing the protestants, repudiated it before the committee, and while there is not a syllable of testimony before the committee that even raises a suspicion that Mr. SMOOT is a polygamist, while there is an abundance of testimony to the precise contrary, still this charge of polygamy is even to this day believed by a very large number of people in the United States.

As late as March 13, 1906, less than a year ago, the New York World contained in its columns an article upon this subject, and I call attention to that simply as illustrative. Practically the same article appeared or the same pretended facts were stated in scores of papers throughout the country. I am not going to read the article entire. It covers nearly a whole column in length. It asserts, upon the statement of one Rev. N. E. Clemenson, a Presbyterian minister, residing in the State of Utah, that Senator SMOOT is a polygamist, and goes on to give the details and undertakes to give the names of his wives. It says that one of the wives has borne him a son, and gives the name of that son. It declares that these wives have been spirited out of the State, and goes into sensational details with reference to that, all of which is utterly false, of course. Let me read the headlines:

Reveals names of polygamous wives of SMOOT. Rev. N. E. Clemenson, of Logan, Utah, tells the confession made to him by wife No. 2, who was Rose Hamilton, of Milwaukee, of her marriage and her flight from a United States marshal. Spirited away at time of Senate inquiry.

Fled from State to State when investigation was on foot to unseat the Senator—had borne a son to her Mormon husband—wife No. 3 was one Lottie Greenwood.

Under those sensational headlines the New York World proceeds to give in detail the story I have stated, upon the authority of this man Clemenson.

Clemenson was evidently not content with stating this in the New York World, because he proceeded to make a business of going up and down the country delivering lectures upon this subject, declaring in those lectures substantially the same pretended facts that are stated in the New York World article. For example, I find in the Troy (N. Y.) Times, dated April 5, 1906, the account of a meeting which was addressed by the Rev. Dr. Newton E. Clemenson, pastor of the Presbyterian Church at Logan, Utah. The lecture was delivered in a church to a congregation of men and women, and in the course of his lecture, as appears by this account, he again made these statements. I have in my possession a number of other clippings, where he has made similar statements in other parts of the country. The papers were full of it. It has been reprinted over and over again from one end of the country to the other.

Now, of course, this question as to Senator SMOOT's being a polygamist is no longer of any consequence here in this inquiry, but to my mind it reflects a world of light upon the attitude of these good women and these good men who have brought to us these great petitions. Of course there is no way of accurately determining the fact, but I venture to say that if the truth could be known, a very large majority of the women who have signed these petitions have done so in the firm belief, induced by slanderous and libelous statements such as these, that Senator SMOOT is a polygamist, having anywhere from two to a dozen wives.

I have had occasion myself during the last few weeks—and other Senators have told me that they have had similar occasion—to deny stories of this kind. People have said to me, "Senator SMOOT ought to be expelled." I have asked, "Why?" They have said, "Because he is a polygamist." I have answered them, "You are entirely mistaken. Senator SMOOT is not a polygamist. I know him intimately. I know his family. I know his neighbors. I think I know all about it; and I know as well as I know anything concerning another that he is not a polygamist." Then these people have said to me, "Then what in the world is all the row about?"

To show how fixed this opinion is in the minds of the people, I call attention to an editorial contained in the Wheeling (W. Va.) Intelligencer of date January 12, 1907, after the Senator from Illinois [Mr. HOPKINS] had delivered his speech upon this question. It would be supposed that the editor of that paper—because he speaks of the speech of the Senator from Illinois—would have had before him that speech. But he proceeds editorially to deliver himself as follows under the caption, "The Smoot Case:"

Mr. HOPKINS, of Illinois, is the first Senator to raise his voice in favor of SMOOT. According to HOPKINS, SMOOT is an apostle of a high grade of Mormonism that abominates polygamy. The evidence is that SMOOT himself has been guilty of plural marriage. It seems to the Intelligencer that this is the only point at issue. With Mr. SMOOT's religious views and practices, so long as those views and practices are not in violation of the law, the United States Senate has no interest. Does he or does he not practice polygamy? That is the question. The evidence submitted thus far indicates that he is a practicer of polygamy and a lawbreaker. As such he should not hold his seat in the Senate.

And, Mr. President, this paper is called the *Intelligencer*. It seems to me the name is slightly overdrawn.

Another charge which is made by Mr. Leilich and not contained in the general protest, and therefore discredited prima facie, is that Senator SMOOT, as an apostle or otherwise, has taken an oath inconsistent with his obligations as a Senator of the United States.

Mr. BURROWS. Mr. President——

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

Mr. SUTHERLAND. Certainly.

Mr. BURROWS. I think in justice to the committee, in view of what the Senator has quoted from the public press, it ought to be publicly stated in this connection that the committee in its report fully exonerated the senior Senator from Utah from the charge of polygamy, and if the Senator will allow me I will read from page 7 of the report:

As regards the charge that Mr. SMOOT has a plural wife, this fact, if proved, is conceded by Mr. SMOOT and his counsel to be sufficient to disqualify him from holding a seat in the Senate. But this accusation seems to have been made by Mr. Leilich unadvisedly and on his own responsibility, and without any sufficient evidence in support of the same. This charge is not made in the main protest, and counsel for the protestants at the outset of the investigation very frankly admitted that they had no proof to offer in support of this allegation.

The public ought to have known that if they had read the re-

port. And if the Senator from Utah will pardon me a moment further, in the remarks which I had the honor of making on this case, at page 4, I stated:

Let me say at the outset, touching the charge that the Senator from Utah is a polygamist, and for that reason disqualified from holding a seat in this body, no evidence was submitted to the committee in support of such allegation, and, so far as the investigation discloses, the Senator stands acquitted of that charge. This relieves the inquiry of its personal character, always distressing, and the Senator stands before the Senate in personal character and bearing above criticism and beyond reproach, and if found disqualified for membership in this body it must be upon other grounds and from other considerations.

I wanted to state this in order that it should be known that the charge that the senior Senator from Utah [Mr. SMOOT] is a polygamist has been absolutely repudiated by the committee and also in the remarks I had the honor of making.

Mr. SCOTT. Will the Senator from Utah, before he resumes his remarks, allow me to say a word?

The VICE-PRESIDENT. Does the Senator from Utah yield to the Senator from West Virginia?

Mr. SUTHERLAND. I do.

Mr. SCOTT. The Senator in his remarks referred to an editorial in a paper in my home city. I hope the Senator has a recent editorial in which the editor quoted the language just now read by the Senator from Michigan [Mr. BURROWS] and in which he corrects the editorial which the junior Senator from Utah has just read.

Mr. SUTHERLAND. I will say to the Senator from West Virginia that I have not that article, but my attention has been called to it. I have been told that there is such an editorial. Of course, the difficulty with matters of that kind is that ordinarily a thousand people read the original charge because there is something bad about a man in it, and perhaps only one reads the correction. That is the great difficulty with that sort of business.

I am very glad that the Senator from Michigan has made the statement he has. He is entirely correct about it. The committee did exonorate Senator SMOOT of this charge and the Senator from Michigan in his speech did the same. I am not complaining about the committee. I thought I had made myself clearly understood about that. I am speaking of this matter with reference to the attitude of the public, with reference to the attitude of these petitioners upon this subject. I do not accuse any member of the committee of desiring to do anything unfair. Such men as the Rev. Mr. Clemenson, of Logan, Utah, are the people who are responsible. Mr. Clemenson, who is referred to in these various articles and who, by making the charge that the Senator from Utah has violated the seventh commandment, himself so shamelessly disregards the ninth commandment, is a resident of the State of Utah, where he has lived, as I understand, practically all his life.

It is to be presumed that he knows what every well-informed person in the State knows, namely, that Senator SMOOT is not even suspected of being a polygamist. The Reverend Buckley, to whose testimony I called attention, has stated that, although he inquired of scores of people in Salt Lake, he failed to find a single one who believed that Senator SMOOT was a polygamist or had otherwise lived with any woman other than his wife.

Mr. President, it may seem a harsh thing to say, but I believe it to be a just thing to say, that when Mr. Clemenson made this charge he deliberately stated what he knew to be false, or at least what he had no reason to believe was true. There are no words sufficiently severe with which to characterize that kind of a man. Any man, and particularly any man who wears the cloth of the profession of God, who would deliberately make a false statement of that character about another, and especially when that other was engaged in a contest before the Senate and before the country for the preservation of his good name, deserves to be cast out of decent society and pilloried with the contempt of honest men for all time to come.

But, Mr. President, I had begun to discuss the question of this inconsistent oath, and, as I have said, that charge is made by Mr. Leilich alone. So far as that allegation is concerned, it is not made by anybody else. To my mind it is a significant fact that this charge is not contained in the general protest. Most of the men who signed the general protest are residents of Utah who have lived there for upward of a quarter of a century. At the time this protest was made and for many years prior thereto, there were in the State of Utah hundreds, if not thousands, of persons who had prior to that time been adherents of the Mormon Church, but who had severed their connection with or had been excommunicated from the church. Those people, or at least a very large number of them, have gone through the endowment-house ceremonies, where it is said this oath is taken. If such an oath as that is administered in those ceremonies, these men and women have taken it and they know it. With these hundreds and thousands of men and women living in the State of Utah—informed about this matter, having severed their connection with the church and therefore not having any undue friendship for the church—it would be a remarkable thing if this fact had not been spoken about by them so often as to become notorious in the State—a matter of common knowledge—and it would be still more remarkable if some of the signers of this protest should not have heard of that and have made some allegations concerning it, at least upon information and belief. So it is significant that the general protest upon which Senator SMOOT has thus far been tried does not contain this charge at all, either upon information and belief or otherwise.

Now, this charge, like the others, was repudiated in the committee by the counsel for the protestants as many as three or four different times. As I recall it, it was stated before the committee that the other signers of the protest had repudiated this charge by telegraph.

The Senator from Idaho [Mr. DUBOIS] during the course of the examination, speaking both with respect to the charge of Mr. SMOOT being a polygamist and the charge of his having taken an inconsistent oath, said:

Mr. Chairman, I want to bear my testimony as to what occurred. Both of those contentions were set aside entirely. It was not contended that they should be attempted to be proven by the attorneys representing the protestants. Those two questions being entirely eliminated, the counsel for the protestants announced what he would attempt to prove, which is set forth in the proceedings of the committee, and on that the hearing was ordered. It was not ordered at all either upon the charge that Mr. SMOOT was a polygamist or that he had taken an oath incompatible with his oath as a Senator.

That charge having been repudiated by the counsel for the protestants, it having been repudiated by the protestants themselves, it being conceded that there was no such issue before the committee, the Senate will probably be curious to know how the question has arisen. It came about in this way: When Mr. Lyman, an apostle of the church, was upon the stand he said something with reference to the endowment-house ceremonies. The Senator from Michigan [Mr. BURROWS], chairman of the committee, then asked him if he would not state to the committee the endowment-house ceremonies. Mr. Lyman answered that he could not do so, and said further along—some witness did, and I think it was Mr. Lyman—that they were of a sacred and secret character and that he did not care to discuss them. But Mr. Lyman did state:

I remember that I agreed to be an upright and moral man, pure in my life. I agreed to refrain from sexual commerce with any woman except my wife or wives as were given to me in the priesthood. The law of purity I subscribed to willingly, of my own choice, and to be true and good to all men. I took no oath nor obligation against any person or any country or government or kingdom or anything of that kind. I remember that distinctly.

Further along, when another witness was upon the stand, the chairman of the committee again asked the question, and similar replies were made. Some other witnesses were also examined with reference to it, always, as I remember, by the chairman of the committee and never by the counsel for the protestants.

Now, after that had occurred three witnesses were brought from Salt Lake to testify upon this subject. Those three witnesses were Mr. Wallis, Mr. Lundstrom, and Mrs. Elliott. Mr. J. H. Wallis testified that he had gone through these ceremonies, and he gave upon the first occasion when he was called to the stand this version of the oath:

Mr. WALLIS (standing up). "That you and each of you do promise and vow that you will never cease to importune high heaven to avenge the blood of the prophets upon the nations of the earth or the inhabitants of the earth."

I could not tell you exactly which it was.

Now, after having had a night to sleep on the subject, he came back the next morning and said he was mistaken in the version he had given, and he then proceeded to give this version of it:

Mr. WALLIS. "That you and each of you will never cease to importune high heaven for vengeance upon this nation for the blood of the prophets who have been slain." That is as near as I can get at it; that is the substance of it.

Mr. WORTHINGTON. Was there anything in that obligation about inhabitants?

Mr. WALLIS. Nothing about inhabitants. I found I was wrong about that.

So he states when he first comes upon the stand that the oath was to ask vengeance upon the nations of the earth or the inhabitants of the earth, and he did not know which, and the next morning it was upon "this nation."

The next witness who was called was Mr. Lundstrom. His version of the oath is as follows:

"We and each of us solemnly covenant and promise that we shall ask God to avenge the blood of Joseph Smith upon this nation." There is something more added, but that is all I can remember verbatim. That is the essential part.

Mrs. Elliott gave this version of the oath:

One I remember. They told me to pray and never cease to pray to get revenge on the blood of the prophets on this nation, and also teach it to my children and children's children.

Now, as to these three witnesses, and taking them up in their order, first as to Mr. Wallis: Witnesses were brought from Salt Lake and testified before the committee—and although more than a year elapsed before the case was finally closed the testimony remained absolutely uncontradicted—that they knew Mr. Wallis, that he lived in Salt Lake, that they knew his reputation in that community for truth and veracity, and that it was bad. Other witnesses testified that he was a drunkard; that he had been convicted before the police court for drunkenness. Another witness testified that he was of unsound mind, and that he had claimed personally that he had communication with the devil.

The next witness, Mr. Lundstrom, was also shown to be a person unworthy of belief. Witnesses, also absolutely uncontradicted, of good repute and standing in the community, testified that they knew his reputation for truth and veracity, and that it was bad.

Mrs. Annie Elliott, after giving her version of the oath, said she had never made this statement to any other person; that when she stated it upon the stand it was the first time she had made any statement regarding it, and she said that if Mr. Tayler, the counsel, was examining her from a memorandum, she had not the least idea where he had obtained it.

Mrs. Elliott also testified that she was then living with her second husband. She was asked what had become of her first husband. She replied that he was dead. Upon cross-examination she gave the date of his death as being October, 1897. The Senate will be interested and somewhat surprised to know that later on in that investigation this husband who was declared to be dead himself appeared before the committee in the flesh and gave the committee to understand that the statements regarding his death made by his wife were considerably exaggerated.

That is the character of the testimony which is brought here to show that this oath is taken. I am not going to stop to read to the Senate the testimony to the contrary. A large number of witnesses were called, among them four or five who had formerly been members of the church and who had severed their connection with the church, and each of them testified that no such oath was taken at all. They had gone through these ceremonies; they had taken whatever obligations were taken by anybody; and they swore positively that no such obligation was taken at all.

Mr. HOPKINS. Mr. President——

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

Mr. SUTHERLAND. Certainly.

Mr. HOPKINS. I desire to call the attention of the Senator to the fact, as I now remember it from the testimony, that the first husband of Mrs. Elliott testified that he had been in constant communication with the children of Mrs. Elliott, who were living with her. So she could not have been misled as to the fact that he was alive.

Mr. SUTHERLAND. The Senator from Illinois is entirely correct about that. She did testify that the children had been in communication with the father, so that she knew absolutely that what she was stating was not the fact.

Now, as I said, four or five of these witnesses—I do not recall just how many—were at the time they testified not members of the church. Of course they had to be members of the church at the time they went through the endowment-house ceremonies.

Thus the case was when it was rested upon both sides and submitted to the final determination of the committee, on January 27, 1905. It was supposed by everybody to be closed, but to the astonishment of at least some people it was reopened more than a year later, namely, on February 6, 1906. This was after all the arguments had been made and after the whole case had been submitted to the committee. The case was reopened and four witnesses were produced to testify with reference to this oath. Those four witnesses were Prof. Walter M. Wolfe, William J. Thomas, John P. Holmgren, and Henry W. Lawrence.

Professor Wolfe gave his version of the oath as follows:

Mr. WOLFE. The law of vengeance is this: "You and each of you do covenant and promise that you will pray, and never cease to pray, Almighty God to avenge the blood of the prophets upon this nation, and that you will teach the same to your children and your children's children unto the third and fourth generations."

Mrs. Elliott said it was to teach it to their children and their children's children, but Professor Wolfe adds unto the third and fourth generations. It was shown that Professor Wolfe had joined the Mormon Church ten or twelve years before he testified; that immediately after joining the church he had gone through the endowment house ceremonies; and he testified that although he believed the very first time he took this obligation that the seeds of treason were planted in it, he yet testified that he took it eleven times again, the last time within a year or two before he appeared before the committee. He continued to be a member of the church until three weeks before he appeared upon the stand, at which time he was excommunicated for drunkenness. He lost his professorship in one of the colleges and was excommunicated from the church.

I have not the testimony of Mr. Thomas here, but Mr. Thomas testified that some such oath was administered. There was a cross-examination of Mr. Thomas that is somewhat interesting. On pages 71 and 72 of the fourth volume he was examined and some questions were asked him by the Senator from Pennsylvania [Mr. KNOX].

John P. Holmgren, the third witness, in his version did not use the word "nation" at all.

Henry W. Lawrence was a member of the church away back in the sixties, and left the church about that time and, by the way, he is a man of excellent repute in Salt Lake City; I know him well, and am glad to testify to it here. Mr. Lawrence testified that he had not only taken these obligations himself, but that he had been one of those who administered the ceremony; that he had administered the oaths or the obligations, whatever they were which were given, hundreds of times, and Mr. Lawrence swore positively that the word "nation" was not mentioned at all in the oath.

Mr. DILLINGHAM. He is not a Mormon now?

Mr. SUTHERLAND. He is not a Mormon now. As I said, he left the church away back in the sixties. He swore there was no such word named at all in the oath.

So we have the testimony of five witnesses who say the word "nation" is used, and of those five witnesses, four of them are shown to be utterly unworthy of belief—drunkards and of unsound mind—and one of them says that he has communications with His Satanic Majesty.

Mr. FORAKER. And one is a perjurer.

Mr. SUTHERLAND. Yes; and one whose perjury is shown by her own testimony.

Mr. President, that there is some sort of an archaic obligation taken in these ceremonies I have no doubt. I do not know just what it is. But that there is any obligation that is hostile to this Government in any sense whatever there is not a shred of testimony worthy of belief in this record to establish.

It is probably explained by the testimony of Mr. Lawrence. Mr. Lawrence says that in the ceremony two verses of the New Testament are read. I thought I had them here, but I find I have not. One of them is in Revelation and reads:

And they cried with a loud voice, saying, How long, O Lord, holy and true, dost Thou not judge and avenge our blood on them that dwell on the earth?

Probably the whole thing arose from that. Some such obligation, founded upon that verse of Scripture, may be administered.

Now, Mr. President, that disposes of the two charges of polygamy and of having taken an inconsistent oath, and it seems to me it is shown beyond question——

Mr. CULBERSON. Mr. President——

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

Mr. SUTHERLAND. I do.

Mr. CULBERSON. Some of us regard the proposition which the Senator from Utah is now discussing as exceedingly important. I have not had the pleasure, on account of having been called out of the Chamber, to hear all the Senator has said. I should like to ask him what the testimony of Senator SMOOT was upon that subject, as to the oath.

Mr. SUTHERLAND. I am very glad, indeed, that the Senator has called my attention to that matter. I had overlooked it. Senator SMOOT denied in positive terms that any such oath was taken. If the Senator is curious to look at his testimony, he will find it in the third volume, at pages 184 and 185 of the record. There the Senator from Texas will find that Senator SMOOT positively denied that any such obligation as that was taken or any obligation that imported in any way hostility to the Government.

Mr. BURROWS. Mr. President——

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

Mr. SUTHERLAND. I do.

Mr. BURROWS. Ought not the Senator to state in this connection that the Senator from Utah absolutely refused to disclose what the oath was?

Mr. SUTHERLAND. Mr. President, I have not the slightest objection to stating in this connection that that is correct. The

Senator from Utah declined to state what these obligations were, and so did other witnesses; and they declined to state it upon precisely the same theory that a member of the Masonic order or any other secret society would decline if called to testify about the ceremonies of his order. Unless he were compelled, he would absolutely decline to state what were in those ceremonies. He would be perfectly willing to state what was not in them. Any Mason would be willing to state that there is nothing in the Masonic ceremonies or ritual that in any way imports hostility to the Government, but if he were asked to state in detail what those ceremonies were, in all probability he would decline to state them. Upon precisely the same ground Senator SMOOT and these other witnesses who are still members of the church declined to state them.

Mr. GALLINGER. A Mason would absolutely decline to state them.

Mr. SUTHERLAND. A Mason, as the Senator from New Hampshire says, would absolutely decline to state them.

Mr. HOPKINS. I desire to call to the attention of the Senator now addressing the Senate the fact that the witnesses who declined to give the oaths did state that they were of a religious character and that there was nothing in them that was hostile to the Government in any form.

Mr. SUTHERLAND. Yes; that is quite correct. I think I have substantially stated it.

Now, Mr. President, it seems to me that this charge of polygamy and this charge of having taken an inconsistent oath are both absolutely unfounded in fact. That brings us back to this general protest, which contains, as I have already said, the significant statement, "We charge him with no offense cognizable by law." What, then, are the offenses not cognizable by law which are deemed to be sufficiently grave to justify the Senate in depriving a Senator of his seat?

I think everyone who will read this record will discover that it evidences a good deal of confusion of mind on the part of those representing the protestants as to the precise nature or extent of these offenses. It must be manifest that any offense which would warrant the Senate in declaring that a duly elected, duly accredited, and constitutionally qualified Senator was not entitled to retain his seat must be of the gravest possible character, and such as to evidence beyond all cavil that he was utterly unfit to sit here.

This Senate is not a voluntary association from which members may be expelled because we do not like them, or because other people, however numerous, do not like them. Membership in this body is a matter not of grace, but of right, and whoever challenges the right takes upon himself the burden of establishing beyond all reasonable question the justice of his challenge.

It seems to me that the offenses not cognizable by law may be discussed under two propositions: First, that polygamy and polygamous cohabitation are still practiced by some members of the Mormon Church, of which church Senator SMOOT is an apostle; second, that this church claims the right and exercises the authority of dictating to its members in political and temporal affairs.

I shall first discuss the question of polygamy, and it will probably tend to a better understanding of that subject if I shall begin by stating some facts and pointing out some distinctions well enough understood in Utah, but which are often lost sight of elsewhere.

Until 1862, although polygamy had been openly practiced in the Territory for twelve or fourteen years before and had been openly proclaimed by the president of the church ten years before, there was no law, either Federal or Territorial, upon the subject. So far as penal consequences were concerned, polygamy in Utah was just as lawful as monogamy, because while it may be true, as some have contended and about which I do not express any opinion myself, that bigamy or polygamy was a crime at common law, there are no common-law crimes against the United States, and from the Mexican treaty of Guadalupe Hidalgo in 1848 until the admission of the State in 1896 the Territory of Utah was under the sole and exclusive jurisdiction of the Government of the United States.

In 1862 a law was passed defining and providing for the punishment of the crime of bigamy. It will thus be seen that for a period of at least ten years Congress and the Government acquiesced in this practice with positive and official knowledge of the fact. In 1850 Capt. Howard Stansbury, having been directed by the Government to do so, went to Utah for the purpose of making a survey and reconnoissance of that then little-known section. He spent something like a year among the Mormon people, making a rather close study of their social and religious institutions. Early in 1852 he made a report, in the course of which he called the attention of the Government to the fact that polygamy was being openly practiced in that Territory.

In 1852 the president of the church, in a great public meeting held in the Salt Lake tabernacle, openly proclaimed to the world that polygamy was a doctrine and a practice of the church. Yet, not only did the Government fail to do anything in the way of suppressing that practice, but Brigham Young was actually appointed governor and reappointed governor of that Territory by the President of the United States once before and once after he had made this public proclamation.

The law was passed in 1862, but it remained practically a dead letter upon the statute books. Substantially nothing was done in the way of enforcing it. Personally I have always regarded that as being a distinct misfortune, because I believe that had the Government at once and vigorously enforced the law and supplemented it by such legislation as might have been found necessary we would not be here to-day discussing this question. Polygamy would long since have ceased to be anything but an unpleasant memory.

There was never a prosecution at all under the law until fourteen years after it was passed. In 1876 a prosecution was instituted against one George Reynolds. Mr. Reynolds himself furnished the testimony necessary to bring about his own conviction, contenting himself by defending upon the sole ground that the law was invalid and unconstitutional, as being an interference with his mode of religious worship. He was convicted, and he appealed to the Supreme Court of the United States. That tribunal very promptly held that his position was untenable and that the law was valid and constitutional—a holding which it is a little difficult to understand how anybody could have expected would be otherwise. There were probably one or two other prosecutions under the law.

In 1882 Congress passed the so-called "Edmunds law," which, in addition to reenacting the provisions of the law of 1862 on the subject of polygamy, defined and provided for the punishment of the crime of polygamous cohabitation. By section 6 of that act the President was authorized to grant amnesty to offenders under the law upon such terms and conditions as he might see fit to prescribe. By section 7 of the act, children born of these polygamous marriages—and Congress was careful to say in the legislation "Mormon marriages or marriages performed according to the ceremonies of the Mormon sect"—prior to the passage of the law and for some definite period afterwards were legitimated.

In 1884, about two years after the passage of the Edmunds law, prosecutions under it began in earnest, and so vigorously was it enforced—more than 2,000 persons in Utah being convicted and sent to prison—and so strong became the pressure, not only from without, but from within the church, that in the comparatively short space of six years the church issued its famous manifesto forbidding polygamy for the future, which manifesto was subsequently ratified by the Mormon people in conference assembled.

In 1891, following this manifesto, the pro-church or so-called "people's party" was disbanded and political parties were organized throughout the State upon national political lines.

In 1896 the Territory was admitted on a footing of equality with the other States of the Union. By the enabling act, which was adopted by Congress in 1894, it was provided that the constitution of the new State by an irrevocable ordinance should provide "that there shall be perfect toleration of religious sentiment; that no inhabitant of the said State shall ever be molested in person or in property on account of his or her mode of religious worship, provided that polygamous or plural marriages are forever prohibited." This provision of the enabling act, to my mind, is significant in two respects.

In the first place, it will be observed that the prohibition of polygamous or plural marriages is in the form of a proviso to the paragraph or section which guarantees perfect toleration of religious sentiment and noninterference with the mode of religious worship. The office of a proviso is perfectly well understood and settled. It has the effect to carve out of the main provision to which it is a proviso an exception which but for the proviso might be held to be included within the terms of the paragraph or section to which it is attached. Ordinarily a proviso is to be strictly construed. Ordinarily it is to be construed with strict reference to the subject-matter of the paragraph to which it is attached.

Congress knew when this enabling act was adopted, as the country knew, that the Mormon people, who would constitute the majority of the inhabitants of the new State, had for many years insisted and stubbornly contended that polygamy was a part of their religious faith, and that any interference with the practice of polygamy was an interference with their mode of religious worship.

Congress desired to guarantee, or rather to permit the people of the State to guarantee to themselves, by their fundamental

law, perfect toleration of religious sentiment and noninterference with the mode of religious worship; but Congress also desired that that guaranty should never be construed so as to include polygamous marriages in the future. It was therefore as though Congress had said: "You may theorize as you please; you may believe as you please; you may assert such opinions as you please upon the subject of polygamy; but you shall not practice it."

I speak of this because it has been said that some of the Mormon people, some of the leaders, still believe and still assert a belief in polygamy. Whatever we may have to say about the good taste or the propriety or the wrongfulness of that kind of a belief or that kind of an assertion (and I have as positive opinions about that as anybody here), they are within their rights in believing it and in asserting the belief, if they choose to do so. The only thing this enabling act or this compact made between the Government of the United States and the State inhibits is the practice of polygamy.

And so no man can be punished and no man can be deprived of a right because he may believe or because he may assert a belief, or the people or some of the people with whom he may be associated may believe or assert a belief in the abstract rightfulness of polygamy. He can only be held responsible for what he *does* or at most for what *they do* in that respect.

In another respect this language is significant. It is "provided that polygamous or plural marriages"—not polygamous cohabitation—"are forever prohibited." When that language was adopted by Congress, Congress knew, as the people of the State knew, and as the people of the country who had paid any attention to the subject knew, that there was a difference between polygamy and polygamous cohabitation.

A man committed the crime of polygamy when, having a wife living and undivorced, he went through the ceremony of marriage with another woman. He committed the crime of unlawful cohabitation or polygamous cohabitation when, having previously married two or more wives, he continued to live with them in the habit and repute of marriage.

At the time the enabling act was adopted there were more than 2,000 polygamous households in the State of Utah, 2,000 men whose status as polygamists had already been fixed and established. Congress must have known that under a law simply prohibiting polygamy every one of those men might have returned to living with his wives, and not a single one of them could be punished. Under a constitutional provision simply declaring that polygamous marriages should be prohibited not one of those men could be interfered with. It required something else in addition. But understanding that, Congress deliberately omitted from this provision any requirement whatever upon the subject of polygamous cohabitation, contenting itself with putting into the enabling act a requirement simply that polygamy or polygamous marriages should be prohibited.

So if the legislature of the State of Utah, immediately after the State came in, had seen fit to pass a law legalizing every one of these existing polygamous marriages, I do not well see how it could have been charged that in doing so they were violating the compact made between the United States and the Territory of Utah, whatever might have been said as to the wrongfulness, and I think a great deal might well have been said against the rightfulness of that kind of legislation. It is sufficient, however, to say that the legislature of Utah never attempted to do that, but, on the contrary, not only adopted the previous provision of the law with reference to polygamy, but also incorporated in the statutes of Utah, where it remains to this day, a provision prohibiting polygamous cohabitation and kindred offenses as well.

Mr. President, in this rather brief review that I have given of this situation it will be seen that Congress in dealing with this question has dealt with it in its social rather than in its criminal aspect. The object of Congress seems to have been to get rid of the institution of polygamy rather than to punish individuals who were guilty of the practice. In other words, the desire was not so much to punish the sinner as it was to eradicate the sin. This is borne out by a variety of considerations. I will not stop to mention more than a few of them.

In the first place, the penalties of the Edmunds law are visited upon the husband only. The plural wife is not made guilty of any offense whatever.

In the second place, children that were born of these polygamous marriages, these "Mormon marriages," prior to the passage of the law and for a definite period thereafter are legitimated.

In the third place, the President is authorized to grant amnesty to offenders against this particular law on such terms and conditions as he may prescribe, and in granting amnesty either to individuals or to classes the condition which he did prescribe was that they should refrain from violating the law in the future.

In the fourth place, in the administration of the law in the courts, whenever a man was brought before a judge for sentence it was the invariable custom and practice to inquire of him whether he would promise to obey the law in the future. If he gave the promise, he was permitted to go invariably without any punishment at all. If he declined to give the promise, almost invariably the full penalty of the law, both as to fine and imprisonment, was visited upon him.

Mr. President, this was also the feeling of the people of that State. The thing which we demanded—and I say "we" because I was one of them from the time I was old enough to have any opinion on the subject at all—the thing which we demanded was that the institution of polygamy, the system of polygamy, should be abandoned, and the punishment of the offender was of secondary importance. It was adopted, I might say, rather as a means to the end of getting rid of the system than as the end itself.

And so when the church issued this manifesto forbidding polygamy in the future and the people ratified the manifesto, and it was believed by the Gentile people in that State that it was issued in good faith and that future plural marriages would no longer occur, there was a pretty general disposition to overlook a good many things in the conduct of those who were already in this relation.

It is a pretty difficult thing for people to understand—there are a great many people in this world who are unable to understand—how any pure-minded person can conscientiously believe in the doctrine of polygamy. It is contrary to their teaching and training, as it is to mine. It is contrary to their fixed, to their instinctive feelings and opinions, as it is to mine. And yet there is absolutely no doubt that the people who entered into this relationship did so believing in its rightfulness, and not only that, but believing that it was ordained by the Almighty Himself. They were as sincere in their belief in its rightfulness as I was sincere in my belief in its wrongfulness.

Mr. President, an erroneous religious idea is the most difficult thing in the world to combat. It submits to no rule of logic. It fits into no syllogistic form. It is major and minor premise and conclusion rolled into one dogmatic declaration—"thus saith the Lord."

Civilization from the beginning of history has been covered with the crazy patchwork of the unreasoning foibles of theology. A thousand years ago Peter the Hermit set all Europe in a blaze of religious fervor with the demand that the Holy Sepulchre should be wrested from infidel hands. The mad crusades which followed resulted in immeasurable suffering and in the loss of hundreds of thousands of lives, Christian as well as infidel. Carrying aloft the banner of the cross of that Christ whose very birth signalized "peace on earth, good will toward men," and whose imperative command was "love your enemies," the Christian armies of the crusades threw themselves with savage and bloody fury upon the Moslem world in response to an appeal to their religious passions.

Almost within the memory of our grandparents old England and New England were lashed into a superstitious frenzy over witchcraft. The belief filled a century with gloom and horror. The story of its cruelties makes a dark and sinister chapter in the otherwise magnificent history of Massachusetts. If some poor woman, borne down by poverty, filled by a sense of injustice, walked the path of life apart; if some child, undersized, crippled, deformed, exhibited unusual precocity of mind, at once the finger of public suspicion was pointed and the horrifying cry of witchcraft was raised.

As late as 1768, less than one hundred and forty years ago, within the memory of some men living at the time the Mormon Church was organized, John Wesley solemnly declared that the giving up of the belief in witchcraft was in effect the giving up of the Bible. From that time, Mr. President, when the King of Moab, besieged by the armies of Israel, offered his eldest son, that should have reigned in his stead, as a burnt offering upon the walls of the city—from that far day when the Hindoo mother, stifling the earliest as well as the holiest and strongest passion of the human heart, consigned to the sacred waters of the Ganges the loved child of her body in obedience to a religious delusion—to this hour of enlightenment and civilization, the melancholy fact runs through all history that nothing has been too absurd, nothing too cruel, to be believed and taught and done in the name of religion. And even in our own day, at the very noon time of sane and rational thought, a score of illogical religious fads have their thousands of fatuous adherents.

So I say, Mr. President, that you can not reason with a false religious belief any more than you can argue with a case of

typhoid fever. It simply runs its course and mental health returns, not when the intellect has been convinced by the appeal of reason, but when by the process of time and by the slow attrition of opposing thought the intellect has so far changed that the false belief no longer appeals to it. So the fact that polygamy has been opposed to practically the unanimous thought of the American people—has been opposed to the almost unanimous thought of the Christian world—is no argument whatever that the people who practiced it and taught it did not believe sincerely in its rightfulness.

Mr. President, polygamy having been abandoned by this manifesto, and there being in the State of Utah this large number of polygamous households, these men whose status had already been fixed, the question at once arose what was the wise thing to do about it, and the feeling which was entertained by the Gentiles generally, while they did not approve, while they would have infinitely preferred that it should have been otherwise, nevertheless the feeling was that, all things considered, the wisest and best thing was to see as little of it as possible, to let those people live out their lives, and thus get through with it. This is practically the unanimous testimony in this record. For example, I call attention to the testimony of two witnesses on the part of the protestants. Mr. Critchlow, who prepared this protest and who was the principal witness against Senator SMOOT in the hearings upon that subject, testified as follows:

Mr. VAN COTT. Mr. Critchlow, is it not the fact that the general feeling in Utah, among non-Mormons—leaving the Mormons out of view—has been that if all plural marriages had ceased since the manifesto, these relations of unlawful cohabitation they were practically willing to close their eyes to?

Mr. CRITCHLOW. I think so, except in cases where they were really absolutely offensive, or where they occurred in such a manner as to be really examples to the people. Amongst the higher officials, and even with them, I think it would be fair to say that people were inclined to minimize these things as much as possible for the peace of the State and the community and for its upbuilding, and to remove the reproach of it before the country.

Mr. VAN COTT. Now, as to John Henry Smith, the fact that a child was born to one of his plural wives during the time of the constitutional convention, non-Mormons, as a general rule, were disposed to overlook if they felt satisfied that there were no more plural marriages?

Mr. CRITCHLOW. Yes, sir; I think so, and felt that the thing would work itself out in the future.

Mr. VAN COTT. Now, the other matter that you spoke of—this offensive flaunting. I wish you would give to the committee a little more in detail what you understand by that, and I call your attention now to the language used by the Supreme Court of the United States where it has quoted that particular phrase.

Mr. CRITCHLOW. What would be offensive to one person of course might not be to another. If a man had a polygamous wife and family right by my door side, and his children associated with mine, and he visited a half or a third of his time there and a half or a third of his time somewhere else, and it was placed there under my face, it might be offensive to me, while to you or to somebody else, living in another part of the town, it might not be offensive.

Again, where a man takes two sisters under the same roof, that might be offensive to the whole community. Then again, it might be entirely innocent and unoffensive to a great class of people who do not care anything about those things.

Again, I may say, where a man has a polygamous wife in a community and brings other polygamous wives there and makes a sort of a colony of it, then it becomes offensive even to a whole community. That sort of thing becomes offensive, in a greater or lesser extent, dependent entirely upon the sensibilities of the people immediately affected.

Mr. VAN COTT. But where the polygamists have had their wives living in separate houses, and have simply kept up the old relations without an offensive flaunting before the public of the relations, it has been practically passed over, has it not?

Mr. CRITCHLOW. Yes, sir; as a matter of fact it has been. A man——

Mr. VAN COTT. Is not this the fact also, that you did not deem yourself as being lowered in the community in any way when you went on the stump with John Henry Smith?

Mr. CRITCHLOW. I certainly did not, or I should not have gone.

Mr. VAN COTT. No; I mean that was the general feeling with the non-Mormons?

Mr. CRITCHLOW. Yes, sir; I think so.

Mr. VAN COTT. And in the questions I have put to you, you understand that I do not mean to say that you belittled yourself or that you lowered yourself in any way by doing those things. You did not consider it so?

Mr. CRITCHLOW. I did not.

Then Mr. Critchlow goes on and says:

Mr. CRITCHLOW. I think that in all probability, as near as I can get at my state of mind at that time, it was, that very shortly after the manifesto, under the conditions that existed and that we thought were going to exist, there was no inclination on the part of the prosecuting officers to push these matters as to present cohabitation—I think that is so—thinking it was a matter that would immediately die out.

Mr. VAN COTT. John Henry Smith was there?

Mr. CRITCHLOW. I think so.

Mr. VAN COTT. It was well known that he was living in unlawful cohabitation?

Mr. CRITCHLOW. That was our understanding of it.

Mr. VAN COTT. So well known was this, was it not, to non-Mormons there generally, that where they knew that a prominent Mormon was living in unlawful cohabitation they made no objection to it in the way of protesting to the officers? Is not that true?

Mr. CRITCHLOW. Do you mean the non-Mormons generally?

Mr. VAN COTT. I mean the non-Mormons generally.

Mr. CRITCHLOW. I think that is true.

Mr. VAN COTT. They were disposed to let things go?

Mr. CRITCHLOW. Yes, sir; I think so.

Mr. VAN COTT. That was the general feeling?

Mr. CRITCHLOW. Yes, sir; I think so.

Senator OVERMAN. When was that?

Mr. CRITCHLOW. During the time of the manifesto, in September, 1890, on down to very recent times; pretty nearly up to date, or practically up to date. Perhaps even now, if I was going to say what was the general inclination——

Senator OVERMAN. The general inclination in Utah is not to prosecute Mr. Smith?

Mr. CRITCHLOW. The general inclination in Utah is not to prosecute Mr. Smith.

Senator BEVERIDGE. Then what more have you to say on that point as showing the great popular indignation?

Mr. CRITCHLOW. There is no inclination on the part of the non-Mormons, and I suppose the Senator refers to non-Mormons, rather than to Mormons—there is no sentiment there in Utah, no great amount of sentiment there in Utah, that would favor putting Joseph F. Smith in the attitude of being persecuted for his religion.

Mr. VAN COTT. You speak of the general disinclination to prosecute Mr. Smith at the present time. That is true generally of polygamists who were such before the manifesto, is it not?

Mr. CRITCHLOW. Yes, sir; it is so.

I have extracts from the testimony of some twelve or fifteen other witnesses, perhaps thirty, who all testified about it. These extracts are from the testimony of Gentile witnesses, all substantially testifying to the same thing with reference to this matter. I will ask, Mr. President, to incorporate those extracts in my remarks, without stopping to read them now.

The VICE-PRESIDENT. Without objection, permission is granted.

The extracts referred to are as follows:

Judge O. W. Powers, a Gentile Democrat, and one of the principal witnesses against Senator SMOOT, testified as follows:

The CHAIRMAN. Will you state why it is that those who live in polygamous cohabitation to-day are not prosecuted?

Mr. POWERS. I will do so as well as I can, and I simply state here the views, as I know them, of what are termed the "old guard" of the Liberal party, Republicans and Democrats, who fought the church party in the days when it was a power. Those men have felt, and still feel, that if the church will only stop new plural marriages and will allow this matter to die out and pass away, they will not interfere with them. First of all, of course, we want peace in Utah. We would like to be like the rest of the country. We want to make of it a State like the States of the rest of the Union. We want the Mormon people to be like the rest of the American people; but we realize that there is a condition there which the people of the East do not—and, I presume, can not—understand. You can not make people who have been brought up under our system of government and our system of marriage believe that folks can sincerely and honestly believe that it is right to have more than one wife, and yet those people believe it. They are a God-fearing people, and it has been a part of their faith and their life.

Now, to the eastern people their manner of living is looked upon as immoral. Of course it is, viewed from their standpoint. Viewed from the standpoint of a Mormon it is not. The Mormon wives are as sincere in their belief in polygamy as the Mormon men, and they have no more hesitation in declaring that they are one of several wives of a man than a good woman in the East has in declaring that she is the single wife of a man. There is that condition. There are those people——

Senator HOPKINS. Do you mean to say that a Mormon woman will as readily become a plural wife as she would a first wife?

Mr. POWERS. Those who are sincere in the Mormon faith—who are good Mormons, so called—I think would just as readily become plural wives (that has been my experience) as they would become the first wife. That condition exists. There is a question for statesmen to solve. We have not known what was best to do. It has been discussed, and people would say that such and such a man ought to be prosecuted. Then they would consider whether anything would be gained; whether we would not delay instead of hastening the time that we hope to live to see; whether the institution would not flourish by reason of what they would term persecution. And so, notwithstanding a protest has been sent down here to you, I will say to you the people have acquiesced in the condition that exists.

Mr. VAN COTT. You mean the Gentiles?

Mr. POWERS. Yes; the Gentiles.

The CHAIRMAN. Have you any knowledge of the extent to which polygamous cohabitation exists in the State to-day?

Mr. POWERS. I have tried not to know about it. When it has come under my immediate observation I have known about it. I do not know to what extent it exists. I want to see it pass away.

The CHAIRMAN. Does it exist outside of the city of Salt Lake?

Mr. POWERS. Oh, without doubt.

The CHAIRMAN. Have you any idea as to the extent?

Mr. POWERS. No; I could not give an idea as to the extent, because, as I tell you, I have honestly tried not to know about it.

Mr. McConnell, formerly governor of the State of Idaho, testified that the foregoing extracts from the testimoy of Mr. Critchlow and Judge Powers also expressed the state of feeling in Idaho.

Mr. Holzheimer, also a Gentile resident of the State of Idaho, testified as follows:

Mr. HOLZHEIMER. At the time the manifesto was issued and up to that time the question of polygamy had caused considerable agitation. It brought about a very peculiar state of affairs, because the rank and file of the Mormon people had been taught that polygamy was right, and many of them believed it was right; and it left a condition of affairs after the issuance of the manifesto—family affairs—that was an anomaly, to say the least, and the question of how to handle and take care of the problem was one which confronted the people of that State, and I do not believe they ever did really solve the problem. It was a very difficult one, as to what should be done for the best interests of all concerned.

The consensus of opinion at that time was that those who had contracted marriages prior to the manifesto should be left alone. It was not, however, believed that they should openly violate the law and

unlawfully cohabit with their numerous wives. I will say this, that where that has occurred it has been mostly in isolated cases. There have been a number of cases where children have been born, but in no case that I know of has it been done openly. It is true it is against the law, but it has not been done in such an open, lewd manner as has been intimated, nor has it been general. And because of the peculiar state of affairs it was the opinion that the whole thing would die out; that it was only a matter of a short time when the question would be entirely settled, because there would be no new marriages. I do not know; possibly there are some. I do not know how many cases there are in Idaho—possibly twenty or thirty; maybe more.

Mr. Martin, another Gentile resident of Idaho, testified:

I wish to say for myself that I would punish, if I was doing it, those old cases. I believe they ought to be punished; but a majority of our people seem to think that the best way, as far as concerns those old fellows who contracted these relations before the manifesto, as long as they stop it and do not take any new wives, or as long as no new wives are taken, is to let it go, to let it gradually die out, to let the old ones die.

Mr. Brady, another Gentile resident of Idaho, testified:

Mr. VAN COTT. What is the sentiment in Idaho regarding disturbing or leaving undisturbed those men who went into polygamy prior to the manifesto of 1890?

Mr. BRADY. To be absolutely frank in the matter, my judgment is that a majority of the men in Idaho would favor leaving those old men to live out their lives just as they have started in.

The following witnesses among a very large number of the Gentile residents of the State of Utah gave the following testimony. Mr. J. W. N. Whitecotton said:

While the people of Utah—all the Mormons; I will speak with reference to them rather than Gentiles in that regard—are sick and tired and disgusted with polygamy; they want to be rid of it; they want to wipe it out and get it under their feet; at the same time when it comes, for instance, to myself or any other person going and making complaint against a neighbor because he is living in unlawful cohabitation, it calls up to us all these things of an unpleasant character among neighbors; throwing the only support the women have into the penitentiary maybe, or taking the substance of the man to pay the fine. It makes a man hesitate, and a man who would do that must be a man peculiarly made for seeing nothing but the law. He must be a Javert. No other man can do it. That is what I mean by taking nerve. He must recognize nothing but the anangke of the law. Nothing else must appear. He can not take into account the surrounding circumstances and the atmosphere in which he lives.

Mr. Hyrum E. Booth testified:

Mr. WORTHINGTON. Now, I want to ask you, Mr. Booth, to explain why it is that if the people of Utah, and the Mormon people included, a large part of them, are so opposed to polygamy, how you account for what is the acknowledged fact here, that a good many of them are living in polygamous relations and are not interfered with.

Mr. BOOTH. Well, my explanation of that is that the principal fight of the Gentiles has been to do away with polygamous marriages. While, during many years, there were numerous prosecutions for unlawful cohabitation, it was not for the purpose of punishing, so much, those people who lived in unlawful cohabitation, as it was to bring about a cessation of polygamous marriages. That was the principle for which we strived, to stop people from marrying in polygamy. This was finally brought about in 1890 by the manifesto of the president of the church, which was affirmed, or sustained as they call it, by the conference on October 6, 1890, and again in 1891. We did not accept that in good faith at that time. That is, we were somewhat skeptical about it; but later he did. Now, there has been since that time a disinclination to prosecute men and women who live in unlawful cohabitation. One of my own reasons—the way I looked at it—was this: My sympathy was with the plural wife and her children. By these prosecutions she suffered more really than the husband did. In nearly all of the cases I may say the plural wife is a pure-minded woman, a woman who believed that it was right according to the law of God for her to accept that relation, and that she can not be released from her obligations, when they are once entered upon.

Mr. WORTHINGTON. You mean by the rule of her church?

Mr. BOOTH. By the rule of her church, not by law. I am looking at it from her standpoint now—that when once that relation is entered upon there is no way of divorcing her from it.

Mr. TAYLER. Not by the church even?

Mr. BOOTH. The church can, but I mean in no legal way. There is no legal way out of it. So that to enforce rigorously the law against unlawful cohabitation would mean in her case a divorcement from her husband without the right of remarrying again. She would be isolated, cut off without any husband, without any benefit of the right to social conversations with the man that she had married in good faith, and so forth. It would work a great hardship upon her and her children. And, again, if her husband is punished, she is brought to light and suffers the ignominy of the prosecution.

For that reason I have been disinclined to prosecute those cases, and many Gentiles, for like reasons, have felt that way; that it ought to be allowed to die out, as it will in time, and for the further reason, as I have stated here, that the principal thing we were fighting was the polygamous marriages and not unlawful cohabitation. We knew that if we could accomplish the destruction of the right to marry in polygamy the thing in time would cease, but so long as it went on, no matter how much you might prosecute people for unlawful cohabitation, it would continue.

Mr. WORTHINGTON. Mr. Booth, you say that is the way you felt about it, and the way many other Gentiles felt. What do you say as to the proportion of the people of your State who feel that way on that subject?

Mr. BOOTH. I should say, with Judge Powers and Mr. Critchlow, that the general sentiment among the Gentile people in Utah is a disinclination to prosecute those cases.

Judge William M. McCarty, who was a United States district attorney in Utah and prosecuted many of these cases and who is now chief justice of the supreme court of the State of Utah, testified:

Mr. MCCARTY. Well, this question was being agitated, and the air was filled with rumors that men were violating the spirit of the manifesto. Some Gentiles were insisting that prosecutions ought to follow, and, as I stated, I called a special grand jury a short time before to investigate this in connection with a few other matters; and the attitude of the press—or rather the failure of the press to assume any attitude—on the question was an indication to me that the press was against it. And, in fact, the public prosecutor, whose attention I had invited to those rumors, refused to proceed in the matter, stating that he had talked with his brother, who was then manager of the Herald, and his brother advised him to let those cases alone; that they would soon die out; that he believed it was the best and most practical solution of the question. My reason for calling the grand jury was the refusal of the public prosecutor to proceed.

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Mr. WORTHINGTON. You referred just now to something that took place subsequently which confirmed your conclusion that the general sentiment was against prosecuting for polygamous cohabitation when the parties were married before the manifesto. What was that that took place subsequently?

Mr. MCCARTY. Well, those parties, so it was rumored, continued to live in those relations, and then I got expressions from some of the leading Gentiles of the State, some of whom were Republicans and some of whom were Democrats, that the most practical solution of the question was to let these old men die off and not molest them.

Mr. WORTHINGTON. It appears here that Senator SMOOT became an apostle of the Mormon Church in April, 1900. I understand, then, from what you have said, that at that time that was the status of opinion in Utah, the body of the people, Mormons and non-Mormons, that these people who were married before the manifesto ought not to be interfered with, although they were continuing to live together?

Mr. MCCARTY. Mr. Worthington, there have been a few who insisted on a vigorous enforcement of this law. Some have been decidedly against it, but the consensus of opinion has been that the better way was to close our eyes to what was going on and let the matter die out.

Mr. Glen Miller, former United States marshal, testified as follows:

Mr. VAN COTT. Now, in your knowledge of the State and in traveling over the State and everything of that kind, I wish you would state what the sentiment is among the Mormons in regard to new polygamous marriages; that is, since the manifesto.

Mr. MILLER. The general impression has been, both among the Mormons and Gentiles, that there have been no polygamous marriages sanctioned by the church.

Mr. VAN COTT. I wish to know particularly the sentiment in regard to whether it is in favor of polygamy or against it.

Mr. MILLER. Decidedly against it.

Mr. VAN COTT. What is your opinion as to whether a sentiment of that kind existed against polygamy in the Mormon Church before the manifesto?

Mr. MILLER. Yes, sir; it did. I know that.

Mr. VAN COTT. And also as to whether the church could restore the practice of polygamy if it should so attempt.

Mr. MILLER. I do not believe it would be possible to ever restore polygamy in the State of Utah.

Mr. VAN COTT. Do you know by repute of men living in unlawful cohabitation?

Mr. MILLER. I do.

Mr. VAN COTT. What is the sentiment of Gentiles in regard to complaining or informing in regard to such matters?

Mr. MILLER. Well, there has been a sentiment against that, as there has been against any informing against any of the infractions of law generally. They felt that it was only a question of time that the practice would die out through the death of those who practiced it, and the removal of that generation. It was getting less and less all the time.

Mr. SUTHERLAND. Considering this testimony, Mr. President, it must be seen that this situation, which confronted us out in Utah after the manifesto was issued, was one which bristled with difficulties, was one which must be approached from the standpoint of practical statesmanship rather than from the standpoint of the religious reformer. Those men and women who entered into these marriages were not inspired by lust. They were good men; they were pure women. Any man who has lived in the State of Utah, who has mingled with them in their daily life, who has sat at their firesides, and who has talked with them must admit that this is a fact.

Mr. President, that is the crux of this whole situation. Any man who attempts to judge of the existing conditions without that fact before him will inevitably not judge with justice. If it had been the ordinary case of meretricious living, there would have been no difficulty in dealing with it; but it was not. It was a case where these people had entered into these relations believing the relations were just as pure as the relations existing between a man and his one wife. In the ordinary affairs of life they are good citizens, law-abiding citizens, self-respecting members of the community, and we felt, when the church issued that manifesto forbidding the practice for the future, that the time had come when we could afford to bear with the situation with some degree of patience until it finally worked itself out; in other words, we felt that we could afford to cover this remaining remnant of a passing generation with the mantle of charity (which covers a multitude of sins) until, in the course of a few years, they should be covered with the everlasting mantle of the grave. So much for the old cases of polygamy.

But it has been claimed that since the manifesto there have been instances of polygamous marriages. Of course I have not the means of knowing how many such cases there may have been, but I would not be honest with myself nor candid with the Senate if I did not say that, in my judgment, there have been some cases of that character. So far as those cases are

concerned, no word of justification or excuse or toleration can, in my judgment, be uttered by any honest man either in this country or out of it.

Mr. McCUMBER. Were those marriages in this country or out of it?

Mr. SUTHERLAND. I will discuss the question of where those marriages took place in a moment. Of course, as I say, I do not know how many such cases there may have been, but the testimony is to the effect that they have been somewhat limited. The Senator from Illinois [Mr. HOPKINS] called attention to the testimony the other day, and I have a reference to the same, that there has not been to exceed twenty cases since the manifesto was issued in 1890 in Utah; and it appears that in those cases, so far as anything appears on the subject at all, the marriages were celebrated somewhere else—in Mexico, in Canada, or somewhere out of the jurisdiction of the United States.

One Charles Mostyn Owen, who has seemed to be a sort of master of ceremonies in this whole investigation, who for many years has been conducting an investigation into this subject, and who tells the committee that he has visited personally from time to time practically every Mormon settlement in Utah and most of the settlements in Idaho and Wyoming, that he has agents practically in every settlement in those three States, gives us a list of eleven men whom he thinks have entered into polygamy since the manifesto. I think later in his testimony he gives one or two others, and there is some testimony which indicates that there are some additional ones, which brings the total number up to about, as I say, twenty. In this list of twenty there are the names of five apostles. Those apostles are Mr. Teasdale, Mr. Abraham H. Cannon, Mr. Merrill, Mr. Taylor, and Mr. Cowley.

As to Mr. Teasdale, the testimony shows that he married his wife under such circumstances as would render the marriage absolutely void. It was afterwards declared by a court of competent jurisdiction by a decree to be void. So that it seems to me, when we come to consider the entire record, his case should be laid out of consideration.

With reference to Apostle Merrill, the charge was made against him while he was lying upon what afterwards proved to be his deathbed, but before he died he made an affidavit, which was sworn to, in which he positively denied this charge and said it was utterly false, and that he had not married any wife at all since the manifesto. I believe what Mr. Merrill said about that. The testimony to the contrary was only in the nature of hearsay and rumor.

With reference to Abraham H. Cannon—Abraham H. Cannon was an apostle and married a plural wife in 1896. He died within thirty days after that marriage—I think it was twenty days. His legal wife was a witness before the committee, and she said that upon his deathbed he asked her forgiveness, and that, in her judgment—he was a conscientious man, she said—the fact that he had violated the law and violated the mandate of the church preyed upon his mind so that it worried him into his grave. What would have happened to Mr. Cannon if he had lived, of course, we do not know. He died, as I say, within a comparatively short period.

That leaves two of the apostles; and with reference to those two, if we were to consider the testimony in this record alone, I think no judge would probably hold it was sufficient to warrant a verdict of conviction by a jury. Still I have absolutely no doubt in my own mind that both those apostles have taken plural wives since the manifesto, and I think there are no words in the English language that are sufficiently severe with which to condemn their conduct.

It appears, however, that when the attention of Senator SMOOT was called to the testimony before the Senate committee, he preferred charges against those apostles to the first presidency of the church and demanded an investigation. An investigation was had, and it resulted in the removal of those two men from their offices, and they are to-day fugitives from justice in a foreign jurisdiction.

As to the character of these cases, Judge Powers, one of the witnesses for the protestants, testified that they were sporadic in character. I will not stop to read the testimony, but I will incorporate it in my remarks.

The VICE-PRESIDENT. In the absence of objection, permission is granted.

The matter referred to is as follows:

Senator MCCOMAS. Have there been many polygamous marriages lately? Of course polygamous marriages are forbidden, and it is difficult to ascertain whether there have been.

Mr. POWERS. If there are any polygamous marriages at the present time, my opinion is they are sporadic cases.

Judge McCarty, a Gentile and chief justice of the supreme bench of the State, testified to substantially the same thing, that there were only about a dozen or so of such cases. He further testified that it was his opinion that when the manifesto came there would be fanatics in the church whom no law and no church rule could keep from engaging in this kind of offense, and he expected there would be an occasional case of this character. Judge McCarty testified that the people who had violated the law in that respect were fugitives from justice.

Mr. WORTHINGTON. What town is that to which you refer?
Mr. MCCARTY. That is Monroe.
Mr. WORTHINGTON. So that there polygamy is practically extinct?
Mr. MCCARTY. Yes; and what can be said of Monroe can be said of most other towns in the State.
Mr. WORTHINGTON. Most other towns in the State?
Mr. MCCARTY. Yes.
Mr. WORTHINGTON. You think the increase [decrease], as you say, has been phenomenal?
Mr. MCCARTY. It is only a matter of a short time until it will disappear, provided there are no new marriages.
Mr. WORTHINGTON. That is what I was going to ask you about. From your knowledge—and when I speak of knowledge I mean that gained by general reputation—what is the fact as to whether there are new plural marriages in any considerable degree?
Mr. MCCARTY. It is rumored that there have been a few—some few, a dozen or more.
Mr. WORTHINGTON. As a general thing they are comparatively few—the rumors of recent plural marriages?
Mr. MCCARTY. Yes; very few. The people contracting them are keeping pretty well under cover.
Mr. WORTHINGTON. Are they not as a general thing out of the State?
Mr. MCCARTY. Yes; they are out of the State.
Mr. WORTHINGTON. Fugitives from justice?
Mr. MCCARTY. In Alberta, Canada, or down in Mexico.

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My view is this: Knowing and having lived in a Mormon community all my life; having associated with them and worked with them—in fact, it was the only community that I had associated with, with the exception that there were a few Gentiles interspersed throughout the entire State—I knew there were a great many fanatics on this question of polygamy, and I believed that some of them would still hold out, no matter what the heads of the church would say or do, and that they would insist upon living, as they termed it, their religion, and that there would probably be occasionally a case of polygamy. That was the way I regarded the situation, and, as I have already suggested, that there would be an occasional violation of the law against unlawful cohabitation and occasionally a child born.

Mr. SUTHERLAND. Mr. President, as I say, the apostles who were guilty of this thing were removed from their offices in the church, and they are to-day fugitives from justice beyond the jurisdiction of the United States. When that action of the church was taken the Salt Lake Herald, a Gentile newspaper published at Salt Lake, which has always been opposed to the practice of polygamy, had the following editorial upon the subject:

A STEP FORWARD.

One of the most notable of the Mormon Church conferences concluded its session on Sunday with the resignation of two apostles and the appointment of three new members of the quorum. Most significant of the conference acts was the retirement of Apostles Cowley and Taylor, who have been conspicuous in the public eye by their evasion of the summons to testify before the SMOOT committee of the Senate. Their retirement is significant because it is accepted as an evidence that the church authorities were disssatisfied with their failure to appear before the committee as well as with their disobedience of the manifesto of President Woodruff which forbade church members to take plural wives or perform plural marriages.

While no detailed explanation of the abdication is made, these are the reasons generally accepted as the basis of the official announcement that Cowley and Taylor were "out of harmony" with their quorum. Although the critics of the church will not concede any good motive in the action of the authorities, there is no doubt but that the discipline of the two recalcitrant apostles will be taken by the country generally as an evidence of good faith and a desire to enforce the laws of the church against further polygamous marriages. Whether their retirement was meant to influence the decision in the case of Senator SMOOT, as his opponents affect to believe, or whether it was a matter of church discipline alone, it must produce a favorable impression throughout the country as well as here in Utah, where the public is familiar with the circumstances leading up to the climax.

That the action is approved by members and nonmembers of the church here goes without saying. Messrs. Cowley and Taylor were charged with what amounted to flagrant defiance of civil and church laws since the manifesto. They were wanted as witnesses before the Senate, but choose to evade service and thus defy the Federal authorities. That they have been disciplined ought to be sufficient proof that the church means to compel observance of the manifesto and compel respect for legal authority so far as lies in its power.

There are doubtless those who will be dissatisfied with any action the church may take short of absolute submission to the men who have sought to control it politically for their own ends; but the general public, which is interested only in the settlement of the contentions that have torn the State into factions, will recognize in this change a long step in advance, one calculated to win friends for the church and curb those high officials who have betrayed it by refusal to recognize the binding force of the law, ecclesiastical as well as civil.

Mr. President, every one of these men who has taken a plural wife since the manifesto, in addition to being a violator of the law, is an enemy of his own people, who has done them a more grievous wrong than any open and avowed opponent could possibly do, because he has set them in a false light before the country and compelled every one of them, in the eyes of a large portion of the American people, to share the shame of his lawlessness. Such a man has not only broken the law of the land and the law of the church, but he has broken his own pledges, if not expressly, at least impliedly, and none the less

solemnly given to the nation. As I say, there can be no word of toleration uttered for that kind of an individual. If I had my way, every one of them would be in jail serving out the extreme penalty of the law; and, Mr. President, in my deliberate judgment, that is the feeling and the sentiment of the vast majority of the Mormon people themselves. The Mormon people are opposed to polygamy being restored. The Mormon people themselves are opposed to these violations of law. I have a number of extracts from the testimony upon that subject, and, with the permission of the Senate, I will incorporate them in my remarks without stopping to read them.

The VICE-PRESIDENT. In the absence of objection, permission is granted.

The extracts referred to are as follows:

Mr. Booth, already referred to, testified as follows:

I wish to say in that connection that I have among my acquaintances many prominent young Mormons, politicians and others, about my age and younger, and I have heard many of them say, with great emphasis, that if they believed the church sanctioned any plural marriages since the manifesto, they would leave the church immediately; that they would not continue as members of the church if the manifesto should be violated by the officers of the church. I believe them to be just as sincere as men can be sincere.

Mr. J. C. Lynch, a resident of Salt Lake City, also a Gentile, testified:

Mr. VAN COTT. What is your opinion as to the sentiment among young Mormons with respect to the perpetuation of polygamy?

Mr. LYNCH. Their opinion is that they want to do away with it.

Mr. A. A. Noon, a Gentile resident of Provo, said:

Mr. NOON. The young people that I talked with, and my family, and we talk occasionally, and most of my family—our daughters, and they are around amongst the young women more or less—from my knowledge and information and impressions, gained from remarks casually now and again, they do not indorse anything of the kind. They are glad to get rid of it. They consider it an incubus. They are glad it has gone.

Mr. John P. Meakin, a Gentile, testified:

Mr. WORTHINGTON. What have you ascertained as to the feeling of the Mormon people on the subject of polygamy of late years?

Mr. MEAKIN. Well, I have entered into conversation very much with the people, and I find that they are all very pleased that polygamy is a thing of the past; and they welcome the emancipation from the system. I speak not only for the young Mormons, but for the middle-aged. It is a matter of general pleasure, or rejoicing, that it is being obliterated.

Mr. WORTHINGTON. What would you think, from your knowledge, obtained in this way, would be the effect if the president of the church should undertake now to promulgate a new revelation, reestablishing polygamy in Utah?

Mr. MEAKIN. Knowing the men, I think it is rather a question that is not supposable; but I do not believe that the people of Utah would stand for it a minute.

Mr. WORTHINGTON. I speak of the Mormon people. Is that what you mean?

Mr. MEAKIN. I am speaking of the Mormon people.

Mr. Cole, a Gentile, testified:

Mr. VAN COTT. In going over Boxelder County, and from what you know there since you have been in office, I will ask you whether, in your opinion, the sentiment is for polygamy or against it?

Mr. COLE. Oh, it is against it, decidedly. Everywhere that I have ever been, or anything I have ever heard spoken of, it is certainly against polygamy.

Mr. VAN COTT. How is it with the younger element—the younger generation?

Mr. COLE. Well, they in particular are against polygamy.

Mr. VAN COTT. How is it with Mormons who are more advanced in years since the manifesto?

Mr. COLE. I have not heard that matter discussed very much. I do not know that there are any persons there—I never heard a person express himself in favor of polygamy since I have been in Utah.

Judge James A. Miner, former supreme court judge and a Gentile, testified:

Mr. WORTHINGTON. What have you observed as to the feeling of the Mormons themselves as to this subject of polygamy?

Mr. MINER. The younger class of Mormons are, I think, very much opposed to it.

Mr. WORTHINGTON. Do you find that to be well-nigh universal among them?

Mr. MINER. I think it is.

Mr. WORTHINGTON. What would you say would be the future of polygamy in that respect, without reference to any law on that subject?

Mr. MINER. I think in time, when these old people who are now in polygamy die off, it will entirely end. That has been my hope.

* * * * * * *

I have noticed another thing. Since the manifesto we have had Mormon jurors. Before that we had no Mormon jurors. The marshals would select Gentiles to the exclusion of Mormons. But after the manifesto we commenced having Mormon jurors instead of all Gentiles, and I found that in many cases a Mormon jury would convict anyone for adultery or unlawful cohabitation quite as well as a Gentile—that is, the feeling kept growing in that direction. And so far as the violation of the marital obligation is concerned, the Mormon people would convict a man who broke it as readily as a Gentile, and I think more so. They seem to have a feeling against Mormons who would violate that obligation, and I think among that class of young people there is more virtue than among almost any other class.

Elias A. Smith, bank cashier and business man, testified:

Mr. VAN COTT. Calling attention to any rumors that you may have heard regarding alleged plural marriages since the manifesto, I should like to know what is your position, and the position generally taken by the young Mormons on that question, and by all the Mormons on that question?

Mr. SMITH. The position of the members of the Mormon Church is that it is in violation of the spirit of the manifesto and contrary to the law.

The CHAIRMAN. What is?

Mr. WORTHINGTON. Having plural wives.

Mr. SMITH. Taking plural wives; and I have yet to talk with a Mormon who approves of it; and in every instance where I have talked with them it has been disapproved of in very strong terms.

Maj. Richard W. Young, a Mormon, and prominent in social and business circles, testified as follows:

Mr. VAN COTT. What is the sentiment of the Mormon people regarding the entering into polygamy since the manifesto?

Mr. YOUNG. It is decidedly hostile.

Mr. VAN COTT. What would you say as to whether the mere issuance of the manifesto created a sentiment against polygamy, or whether the manifesto was the mere expression of a sentiment already existing in Utah?

Mr. YOUNG. I should say that it was the result both of a sentiment and the creation of a sentiment—an additional sentiment.

Mr. VAN COTT. What are your own views as to whether it is right to practice polygamy, since the manifesto?

Mr. YOUNG. I believe it is not right.

Mr. Charles De Moisy, a Gentile and a former resident of Provo, Utah, testified:

Mr. VAN COTT. What is the sentiment among the Mormons as to new polygamous marriages since the manifesto, and what is the sentiment also of the younger Mormons as to polygamy?

Mr. DE MOISY. I think there is a growing sentiment—I have noticed it for some time—not only among the younger, but among a good many other Mormons, that they are opposed to the practice of polygamy; not only opposed to the marriage, but opposed to the unlawful cohabitation.

Mr. John W. Hughes, a newspaper man of wide experience in Utah, also a Gentile, testified as follows:

Mr. HUGHES. The Mormon people generally are as much against new polygamous marriages as the Gentiles, I believe, as a rule, especially the younger Mormons that I meet. I meet a good many of the younger Mormons, and they are absolutely against it. They would not tolerate it.

Mrs. W. H. Jones, a resident of Salt Lake City, testified:

Mrs. JONES. I have talked to a great many. I have traveled over the State a great deal with my husband in his business and in our outings, and I have talked with a great many, especially of the younger Mormons, on that subject. They have been very much opposed to it. In fact, some of them have said to me that they would like to be called on a jury.

The CHAIRMAN. Like to be what?

Mrs. JONES. Called on a jury, to convict a man who might be arrested for going into polygamy since the manifesto.

Mr. Frank B. Stephens, a Gentile lawyer and former city attorney of Salt Lake City, testified:

Mr. STEPHENS. So far as plural marriages, additional marriages, are concerned, the sentiment is unanimously against them, both Mormon and Gentile.

The general feeling is that no punishment could be too severe to be visited either upon the solemnizing officer or the contracting parties, and it is very much more pronounced in the matter of additional marriages than it is upon unlawful cohabitation.

The reason is obvious. Unlawful cohabitation will cease when these men die, if there are no more plural marriages; but if there are more plural marriages the institution will be continuous and the situation intolerable.

Mr. VAN COTT. Is that the sentiment among the Mormons themselves in regard to it?

Mr. STEPHENS. It is. I have never heard anything but words of condemnation for one who would solemnize a plural marriage, or for a contracting party. It is regarded as the grossest breach of good faith.

Mr. WORTHINGTON. You mean since the manifesto?

Mr. STEPHENS. Since the manifesto.

* * * * * * * *

Senator FORAKER. What is your judgment as to plural marriages? I understand you to have expressed one, but I want you to express it again.

Mr. STEPHENS. As to whether there will be more?

Senator FORAKER. Yes.

Mr. STEPHENS. I think they would be just as rare as bigamy among people generally. Oh, I would not say quite as rare as that; very rare. It would be only in the case of an utter fanatic, who would perhaps impose upon the officiating officer in order to get a plural wife.

Senator FORAKER. But there will be no trouble to prosecute in such cases?

Mr. STEPHENS. Not the slightest.

Senator FORAKER. In cases of that kind?

Mr. STEPHENS. No. If I were district attorney, I would be willing to submit a case of that kind to a jury of Mormons.

Senator FORAKER. To a jury of Mormons?

Mr. STEPHENS. I would, so far as that is concerned. I feel the sentiment is so general—that the contracting of new plural marriages is so generally execrated both by Mormons and Gentiles.

Mr. Martin, previously quoted, testified:

Mr. WORTHINGTON. From your acquaintance with the Mormon people in the State, have you learned anything as to their position in reference to this matter of polygamy—the younger people especially?

Mr. MARTIN. Yes; I have discussed it a good deal with them, being among them and with them in the campaign. They all expressed themselves against it—as glad that the church stopped it, and are against it.

On this subject Mr. Whitecotton testified as follows:

Mr. VAN COTT. In traveling over the State, and in your acquaintance with the Mormon people, I will ask you to state what you have

found to be their sentiment now in regard to the practice of polygamy—that is, I mean the contracting of new polygamous marriages?

Mr. WHITECOTTON. I think the decided sentiment of the Mormon people in Utah is hostile to polygamy.

All of those quoted above are Gentiles except Mr. Smith and Major Young, and all are reliable and trustworthy persons of long residence in the State.

Mr. SUTHERLAND. So much for polygamy and polygamous cohabitation. There have been two complaints which have been most strenuously urged by the opponents of the Mormon Church—polygamy and church interference in political affairs. I have already discussed the former, and I shall now direct the attention of the Senate to the remaining one of these propositions. That these complaints were well founded in the past I have no doubt; but the Senate is interested in knowing what the conditions are now, and we are only concerned with past conditions to the extent that they may reflect light upon the present.

When the Mormon pioneers, in 1847, went to Utah their movement possessed all the characteristics of a religious exodus. They met suffering and hardships and dangers at the hands of savage men and savage nature with a courage born of religious exaltation. The story of their pathetic march into the wilderness and of their early sufferings and hardships has few parallels in the history of pioneer struggles.

To them Brigham Young was more than the leader of their expedition. He was the new Moses pointed out by the finger of God to lead them through many perils to the promised land. With serene confidence in his God-given ability to conduct them in safety they followed him into the unknown with song and prayer.

In the beginning it is probable that they did not feel the need of a civil government at all. They were of one faith. Their religion was their main consideration. Everything else was of subordinate importance. When they established a civil government their religious leaders became the civil officers. As time went on the rule of the church became more and more pronounced. The disposition of the leaders to advise, counsel, and direct, and that of the people to accept direction, counsel, and advice in all things, grew stronger and stronger as time went on. In those days the government in Utah was a virtual theocracy. There was a practical union of church and state. In this document that I have called attention to before by Captain Stansbury, at page 131, there is a somewhat graphic description of this situation, which I desire to read:

> While, however, there are all the exterior evidences of a government strictly temporal, it can not be concealed that it is so intimately blended with the spiritual administration of the church that it would be impossible to separate the one from the other. The first civil governor under the constitution of the new State, elected by the people, was the president of the church, Brigham Young; the lieutenant-governor was his first ecclesiastical counselor, and the secretary of state his second counselor, these three individuals forming together the "presidency" of the church. The bishops of the several wards who, by virtue of their office in the church, had exercised not only a spiritual but a temporal authority over the several districts assigned to their charge, were appointed, under the civil organization, to be justices of the peace, and were supported in the discharge of their duties not only by the civil power, but by the whole spiritual authority of the church also. This intimate connection of church and state seems to pervade everything that is done. The supreme power in both being lodged in the hands of the same individuals, it is difficult to separate their two official characters and to determine whether, in one instance, they act as spiritual or merely temporal officers.

And so he proceeds. I will incorporate the rest of it, if the Senate please, without reading further.

The VICE-PRESIDENT. Without objection, permission is granted.

The matter referred to is as follows:

> In the organization of the civil government nothing could be more natural than that, the whole people being of one faith, they should choose for functionaries to carry it into execution those to whom they had been in the habit of deferring as their inspired guides and by whom they had been led from a land of persecution into this far-off wilderness, which, under their lead, was already beginning to blossom like the rose. Hence came the insensible blending of the two authorities, the principal functionaries of the one holding the same relative positions under the other. Thus, the bishop, in case of a dispute between two members of the church, would interpose his spiritual authority as bishop for its adjustment, while in differences between those not subject to the spiritual jurisdiction and who could not be made amenable to church discipline, he would act in the magisterial capacity conferred upon him by the constitution and civil laws of the State. Thus the control of the affairs of the colony remained in the same hands, whether under church or State organization, and these hands were, in a double capacity, those into which the constituents had, whether as citizens or as church members, themselves chosen to confide it. (From Stansbury's Expedition to the Valley of the Great Salt Lake, 1852, p. 132.)

Mr. SUTHERLAND. The Government of the United States itself gave unconscious credit to the situation by appointing and reappointing as governor of the Territory the spiritual head of the church, Brigham Young himself. In 1870 the Gentiles who had gathered in that Territory, though very few in number, organized what was called the "Liberal party." It had for its object the overthrow of polygamy and church interference in governmental matters. The Mormon people in opposition had a party called the "People's party." These two parties were purely prochurch and antichurch in character. In the Liberal party there were no Mormons; in the People's party there were no Gentiles. The fight which ensued and which lasted for the next twenty years was of the bitterest possible description. In 1891 the "People's party," so called, was disbanded, and the Democratic and Republican parties were organized throughout the Territory. Prior to that time, however, beginning probably as early as 1886, there became manifest a growing restlessness and dissatisfaction on the part of the younger men in the church, and some of the older ones as well, with reference to this condition of affairs. There began to be demands that the church should give up polygamy, and that a system of politics should be inaugurated in the State in harmony with that which existed in other communities.

As illustrative of this, in 1888 a number of young men of the church organized a Democratic party, which was called in derision the "Sage Brush Democracy," but which name they afterwards adopted in earnest themselves. This party nominated a candidate for Delegate in Congress and conducted a campaign against both of the old parties. In 1890 there occurred another instance. I happened to be living in the town of Provo, where Senator SMOOT then resided and now resides. I was nominated as the candidate for mayor of the Liberal party. A number of the younger men in the church revolted against the People's Party and supported my candidacy. Among the leaders in that revolt was Senator REED SMOOT himself.

Since 1891 it has been charged, and there is some testimony in the record tending to show, that there has been interference on the part of some of the high officials of the church in political matters. I am not going to review the instances which are referred to, because, in the first place, I have not the time, and, in the second place, in view of the general statement which I shall make, it does not seem to me important to do so. Many of the instances which are mentioned by these witnesses are based wholly upon rumor and hearsay, which is always an unsafe kind of testimony. Some of them are absolutely disproven; but there still remain some cases, and, in my judgment, there have been some instances since the division on national party lines where high officials of the Mormon Church have interfered in political matters.

But the great and important fact to me—and it seems to me it ought to be also to the Senate—is that while there have been occasional instances of this kind there has been a steady improvement in that direction; and my deliberate judgment is that since 1900 there has been no instance of that kind in the State of Utah at all. I do not mean to say that some president of a stake or some bishop in some outlying locality may not have done something; but, so far as the leaders of the church are concerned, since 1900 there has been, to my mind, no well-authenticated case of interference.

Some reference has been made to the city election of 1903, when Mr. Knox, candidate on the Republican ticket, was defeated, and it was claimed that that was due to the interference of the church. The testimony is overwhelming, to the effect that it was not due to that at all. It was charged that Mr. Knox was nominated in the convention by improper and corrupt methods. It was insisted that delegates in the convention had been purchased, and there was a general revolt against those kinds of methods. I do not think that Mr. Knox himself was charged with having been a party to those transactions; but those charges were made, and there was a very bitter feeling in the Republican party with reference to them, and Mormons and Gentiles alike revolted and voted against Mr. Knox's candidacy.

Judge Charles S. Zane, who was one of the judges all through the prosecution of these polygamy cases, and who certainly can not be charged with being in any manner under the control of the Mormon Church, was one of the men who fought Mr. Knox's candidacy, and did it openly. O. J. Salisbury, a Gentile and national committeeman, was another. There were scores of prominent Gentiles who did the same. So I might go on with these other instances in the testimony as to the facts. But I will incorporate some extracts from four or five witnesses to the effect that since the present head of the church has been president he has not only kept out of politics himself, but he has kept the church out of politics; and my observation as to what has been going on in that State during the last five or six years—and it has been a somewhat close observation—leads me to believe that that is true. Since that president has been at the head of the church the church and the president of the church have been kept out of politics.

There has been an advance in other respects. Mr. President,

I will ask to incorporate in my remarks, without reading, some extracts from the testimony of Judge Powers, Judge McCarty, Mr. Cole, Mr. Candland, and Mr. Stephens with reference to this advance, and also some extracts with reference to President Smith having kept out of politics.

The VICE-PRESIDENT. In the absence of objection, permission is granted.

The testimony referred to is as follows:

Judge Powers testified:

Mr. POWERS. Well, there has been progress made that to me is, in view of the conditions that existed prior to that time, somewhat surprising as well as satisfactory. For instance, along about 1892 and prior to that time, and after that, but not to so great an extent, it was not an unusual thing; in fact, it was expected by those living in Utah that at the religious meetings held on Sunday nights preceding the election there would be political talks, and an indication given by the tenor of those talks as to how the people should vote. Now, we do not have those Sunday night talks just prior to the election. Of course we still have an editorial in the Deseret Evening News on the Saturday preceding the elections, generally, that we look for, but we do not have those talks. The people have progressed politically. They have progressed socially. The bitterness that was so intense between Mormons and Gentiles that it is hard to describe it, has in a great measure passed away, although it exists, unfortunately, to some extent yet. Take it socially. Prior to 1892 I do not know that any Mormons were members of the Alta Club, the leading social club of that city. At the present time there are Mormon members of that club, and as I say there has been an advance.

Mr. VAN COTT. What have you to say, in your judgment, as to the honesty and sincerity of the Mormon men and women?

Mr. POWERS. I believe the Mormon men and women are as honest and as sincere—I am speaking of the great mass of the people now—as any other people on earth.

Judge McCarty testified:

Mr. MCCARTY. I say the Mormon people, if they were to combine, would have the absolute control of the State and could nominate whomsoever they desire. They could exclude every Gentile from the ticket if they were so disposed. Realizing that they have this power, Gentiles are somewhat cautious about their candidacy, or somewhat apprehensive until they know whether there is going to be a fight against them or not. Now, I think a great deal too much prominence is given the church in these matters. I do not think the church is taking or has been in the last few campaigns taking the active part that has been attributed to the church; but candidates usually want to know whether there is going to be a fight made against them, realizing that if the church so desires or the people who compose it they could defeat them. A great many of them, I understand, have solicited and gone and conversed with the first presidency and others, but those Gentiles have proved to be generally the weakest candidates that have been placed on the ticket.

Senator DUBOIS. But they are anxious, are they not; they are solicitous to find out whether the church is going to oppose them or whether they will favor their candidacy?

Mr. MCCARTY. Yes. Owing to this continual agitation there and recognizing that the church is a factor that must be reckoned with, there is always an air, an atmosphere of uncertainty in every campaign.

Senator DUBOIS. What, in your judgment and in the judgment of men like you, is now and has always been the greater evil there, polygamy or church dictation in politics?

Mr. MCCARTY. Well, I do not know of any direct church dictation in politics. Of course I have always thought that this question of polygamy has been used a great deal as a mask with which to attack the church for supposed or alleged interferences, and so forth, in those matters. The only instance that I know of in the way of church interference, if it could be called such, was the Thatcher episode.

Mr. Samuel N. Cole, Gentile, of Corinne, Utah, testified as follows:

Mr. VAN COTT. How did you hold up in your vote with the Republican Mormons on the same ticket?

Mr. COLE. I ran right along with them, as near as I could make out, with the exception of this Petersen on the Democratic ticket against me. He was a Brigham City man. That is the greatest vote that is cast, at Brigham City. In his ward, the ward he lives in, I understand he ran a little ahead, but outside of that I ran with the ticket, right through the county.

Mr. VAN COTT. Did you run a little ahead of your own ticket in Corinne precinct, where you live?

Mr. COLE. Yes; a little.

Mr. VAN COTT. While you have lived in Boxelder County, have you seen any interference on behalf of the Mormon Church with the politics of the people or of the voters of either party?

Mr. COLE. No; I have not.

Mr. VAN COTT. How have you found the Republican Mormons and the Democratic Mormons in regard to being independent in politics?

Mr. COLE. You mean whether they stay by the ticket?

Mr. VAN COTT. Yes.

Mr. COLE. I believe they will, certainly. There is no question about that. They stay by the ticket in our county as well as any people I know.

Mr. VAN COTT. Calling attention to the time that you have been in Utah, what is your opinion as to the manner in which the Gentiles have been treated in the Mormon county you refer to, namely, Boxelder County, in regard to offices and officers?

Mr. COLE. Well, they have been treated real well. The fact of the matter is, I can't notice where they make any distinction. Of course, there are generally some Mormons on the ticket. In fact, there are always some Mormons on the ticket, but there is a big majority of Mormons in the county. There are always some Gentiles on the ticket ever since I have been there.

Mr. VAN COTT. Are the principal affairs of the county administered by what are called "county commissioners?"

Mr. COLE. Yes.

Mr. VAN COTT. Is one of them a Gentile?

Mr. COLE. We have one a Gentile, one a Mormon, and one that seems to be neither one, I believe.

Mr. VAN COTT. The Gentile that is known as a Gentile—does he belong to any church?

Mr. COLE. Yes; I think he is a Baptist.

Mr. VAN COTT. Do you know whether this is his first term?

Mr. COLE. No; this was his second term. He was elected last fall to his second term.

Mr. VAN COTT. How did he go along with his comrades on the Republican ticket? Did he hold up with them?

Mr. COLE. He held right up with the ticket everywhere as near as I can make out. I inquired into it a little just to see how it was running.

Mr. Candland, Mormon, of Mount Pleasant, Utah, testified:

Mr. VAN COTT. Calling your attention now to politics, what is your opinion as to the independence of the Mormon people in voting?

Mr. CANDLAND. I know that they are independent, judging others from myself.

Mr. VAN COTT. Well, from your observation?

Mr. CANDLAND. My observation has been that they voted as they pleased, without any interference; that they would brook no interference.

Mr. VAN COTT. Now, in the actual conduct of political campaigns, have there been Gentiles elected over Mormons in that county?

Mr. CANDLAND. In some instances, yes.

Mr. VAN COTT. Will you give a few of them, please?

Mr. CANDLAND. I remember where bishops or presidents of stakes have been on the ticket and have been defeated by Gentiles who were quite bitter anti-Mormon at times. I remember that Mr. J. D. Page was elected to the constitutional convention over Mr. C. N. Lund, a very prominent Mormon, who was a Democrat.

Mr. VAN COTT. Any others?

Mr. CANDLAND. I know that Mr. George Christensen, a member of the stake presidency, has been repeatedly defeated by Gentiles. If you like, I can give you several instances.

Mr. VAN COTT. I would like you to name a few more.

Mr. CANDLAND. In 1895, I think—I am not quite positive as to that year; it was a city election—Mr. Andrew Neilson, a Gentile Republican, was elected over Bishop Lund, a Democrat, for justice of the peace. In 1902 Mr. A. L. Larsen, a Republican, was elected over George Christensen, of the stake presidency, for superintendent of schools.

Mr. VAN COTT. What was Larsen?

Mr. CANDLAND. Larsen was a Mormon, I think. I am not positive as to that. I never knew whether he was a Mormon or not.

Mr. VAN COTT. All right.

Mr. CANDLAND. In 1902 Mr. Owen, a Mormon holding no particular office, was elected over Mr. Petersen Mattson, of the stake presidency, for justice of the peace. In 1903 Mr. Bowman, a Gentile, was nominated for mayor over Mr. Mattson, and he was elected over George Christensen, a member of the stake presidency, for the office of mayor. That year we also elected two Republican councilors—one of them was the principal of a Presbyterian high school—over Mormons.

Mr. Stephens testified:

Mr. STEPHENS. I would say that there are various kinds of church influence. There is, first, the influence which any man has. I would say "influence" without saying "church." There is, first, the influence that any man has who is respected in the community and whose judgment is respected by those who know him; and when it comes to a church, if he is a member of a church, undoubtedly he would have an additional influence among the members of that church by reason of being a member; and that would be true in the Mormon Church, and, perhaps, to some extent a little greater than in the other churches. I would call that, perhaps, legitimate church influence. That is the natural influence which follows from a man's standing in the community. If, however, a question came up which involved the interest of the Mormon Church, I would say, for instance, take the election of 1900, when the question of protection was quite prominent, and the Mormon Church is interested in the sugar business—I think if the leaders of the church would go out and say "We feel that our interest is in having the protective tariff continued," it would have great weight; and I would compare it, I think, to the influence of a manufacturer who would say to his workmen, "I can not dictate to you how you shall vote, but I think our interests lie this way;" and I think it would have its influence.

I think there are probably 25 per cent of the Mormon voters who could be swung one way or the other, and possibly might be, where there was something vital that came up.

Mr. VAN COTT. You think that 75 per cent are beyond any kind of influence at all?

Mr. STEPHENS. No; I would not say that they were beyond any kind of influence at all. I do not think any man is beyond any kind of influence.

Mr. VAN COTT. You mean——

Mr. STEPHENS. I would say this: I believe the great majority of the members of the Mormon Church are opposed to church domination in politics and want it to be a thing of the past. They are very much opposed to it, and resent it, I think.

Mr. VAN COTT. And——

Mr. STEPHENS. Excuse me.

Mr. VAN COTT. Proceed. I thought you had finished.

Mr. STEPHENS. I was going to say, I think if the first presidency should openly advocate or dictate to the people how they should vote it would be resented and sat down upon. I think, as I said, that their influence would have weight in matters which affect the church or its interests.

Mr. VAN COTT. Now, referring to the practical side of voting, what have you noticed in regard to Mormon voters being independent in politics?

Mr. STEPHENS. You mean with reference to voting for a Gentile?

Mr. VAN COTT. Yes.

Mr. STEPHENS. Where a Mormon was on the ticket?

Mr. VAN COTT. Yes.

Mr. STEPHENS. A case simply of two men—a Mormon on one side and a Gentile on the other?

Mr. VAN COTT. Yes.

Mr. STEPHENS. In cases of that kind they are loyal to the ticket. I think at the time when Judge Morse was a candidate for city attorney against me that was quite apparent. He and I analyzed the vote together with that idea in view. I think a Mormon votes for a Gentile, where there is nothing else to influence him, just as readily as he would vote for a Mormon, and possibly in some cases more readily than a Gentile would vote for a Mormon.

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Mr. VAN COTT. You have expressed yourself along the line from the time you went to Utah up to the present, in a general way. What is your opinion now, after the experiment of fourteen years, as to the

result that has been attained up to this time in the solution of the difficulties that have existed in Utah?

Mr. STEPHENS. I think the progress has been very satisfactory.

Mr. WORTHINGTON. I should like to ask a question or two.

Mr. STEPHENS. Just a moment, Colonel Worthington, on the matter of church influence.

I do not want to be understood as saying that there have not been some notable instances of what I would term "church influence," but I will say they are deprecated, and we very strongly disapprove of anyone seeking it, whether it be a Mormon or Gentile.

Mr. VAN COTT. What is the feeling of the Mormon people themselves on that point?

Mr. STEPHENS. I think they resent it fully as strongly as do the Gentiles. It was promised them that they should be independent in politics when the manifesto was issued, and when we divided upon party lines, and I think that having tried their wings they do not want them clipped.

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Mr. Arthur Pratt, a Gentile, testified:

Mr. VAN COTT. What is your opinion as to the sincerity of Joseph F. Smith to keep the church out of politics, and his resolution to accomplish it?

Mr. PRATT. I think it has been his intention from the first, from the time that he assumed the reins of government—that is, his position as president of the church.

Mr. VAN COTT. Yes.

Mr. PRATT. That it has been his intention, and that he has directly followed it, to keep the church out of politics.

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The CHAIRMAN. I want to ask you one question. I understand you to say "When the present president, Mr. Smith, took the reins of government." When was that? Do you remember?

Mr. PRATT. I think about three years ago.

The CHAIRMAN. In 1901?

Mr. PRATT. Yes; I think so.

The CHAIRMAN. Since that time, since he took the reins of government, he has attempted to keep the church out of politics?

Mr. PRATT. I think so.

The CHAIRMAN. How was it before?

Mr. PRATT. Well, as far as he was concerned——

The CHAIRMAN. I am speaking about the attitude of the church.

Mr. PRATT. The head of the church?

The CHAIRMAN. Yes, and the attitude of the church previous to that time.

Mr. PRATT. Well, I do not think they were as particular about it some years before that.

The CHAIRMAN. What do you mean by not being particular about it?

Mr. PRATT. Well, I think there were a great many Gentiles who were seeking that influence, and I do not think President Snow was near as particular as President Smith has been.

The CHAIRMAN. Before that time it was a factor in politics, I suppose.

Mr. PRATT. I am inclined to think so.

The CHAIRMAN. But since Mr. Smith has taken the reins of government there has been a change?

Mr. PRATT. There has been a change; yes, sir.

Mr. H. M. Dougall, Gentile, of Springville, Utah, testified as follows:

Mr. WORTHINGTON. Let me ask you, particularly during the last few years, since Joseph F. Smith became president of the organization, whether you have observed any indication at all that the church, as a church, has interfered in politics?

Mr. DOUGALL. The reputation in our end of the country is that Joseph F. Smith keeps strictly out of politics.

Mr. WORTHINGTON. According to what you have learned by common repute, is that true?

Mr. DOUGALL. Yes, sir.

Mr. WORTHINGTON. How do you find the Mormons as voters, so far as regards standing by their party?

Mr. DOUGALL. They usually stand pat.

Mr. WORTHINGTON. You can usually count upon a Mormon Republican to vote the Republican ticket?

Mr. DOUGALL. Yes, sir.

Mr. WORTHINGTON. And a Mormon Democrat to vote the Democratic ticket?

Mr. DOUGALL. Yes, sir.

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Mr. W. P. O'Meara, a Gentile, testified:

Mr. VAN COTT. What is the sentiment there, and your own opinion, as to the sincerity of Joseph F. Smith to keep the church out of politics, to do away with new polygamous marriages and to prohibit them, and also of his resolution and ability to execute what you believe is his good faith in the matter?

Mr. O'MEARA. So far as Joseph F. Smith is concerned interfering in politics, I think it is generally understood that when Gentiles, or even Mormons, go to him for support they get anything but encouragement; and as far as carrying out his own intentions is concerned, I have always found him in a business way—in the business I have had to do with him—a very fair, honest, and conscientious man. So far as carrying out the mandates of the church, of course I know nothing about that.

Mr. Hughes testified:

Mr. VAN COTT. Do you know Joseph F. Smith or do you know of him?

Mr. HUGHES. I know him by sight, and have known him for years. I never spoke to Mr. Smith.

Mr. VAN COTT. What is the sentiment among Gentiles as to whether he is sincere in keeping the church out of politics?

Mr. HUGHES. The sentiment is that he is exceedingly sincere and very honest in that regard, and in all regards, in fact. They think he is a fanatic in religion, but very honest, and that he is determined to keep the church out of politics, and has done so since he has been president. That is a strong feeling among the Gentiles.

Mr. Stephens testified:

Senator OVERMAN. Will you tell me, Mr. Stephens, why it was that the church interfered in behalf of Kearns when he was elected and why they were not for him this time? Was there any reason?

Mr. STEPHENS I can not say why President Snow, if he was for him, was for him; but at the present time there is a different president. President Smith is generally understood to be unfavorable to the church mixing in political affairs.

Mr. SUTHERLAND. Now, in another respect the progress has been exceedingly satisfactory. In the constitutional convention which assembled in 1895, out of a total membership of 107, there were 30 polygamists. In the first State legislature, out of a total membership of 63, there were 6 polygamists. In 1899 there were 5 polygamists in the legislature. In 1903 there were 3 polygamists, and in 1905, two years ago, there was only 1 polygamist, and in the present legislature, according to the information I have, which I think is reliable, although I do not absolutely vouch for it, there is no polygamist at all.

The same progress is manifest in the church. It is true, as the Senator from Michigan [Mr. BURROWS] said the other day, that when Senator SMOOT was elected a member of the apostolate a majority of the apostles were polygamists. In 1896, out of the 15 who constitute the governing heads of the church—the presidency and the twelve apostles—there were only 3 monogamists. In 1900 a majority of them were polygamists, while to-day out of the 15 members there are only 5 polygamists, while 10 are monogamists.

The same radical change is to be seen in the subordinate officers of the church. Out of something over 800 subordinate officials of the church, presidents of stakes and bishops, there were two years ago, when the testimony was given, only 53 polygamists. There are to-day probably, according to my information, not to exceed about thirty-five.

Mr. President, the Mormon Church, like every other church and every other thing in the universe, is subject to the law of evolution. I am glad to believe that in some way I do not understand there is at the very heart of things some mighty power which silently and surely, if slowly, works for the exaltation and uplifting of all mankind. I am not religious in the ordinary acceptation of the term; I have no patience with mere forms or mere creeds or mere ceremonies; but I do believe with all the strength of my soul that "there is a power in the universe, not ourselves, which makes for righteousness." I am an optimist in all things. I do not believe that the world is growing worse. I feel sure it is getting better all the time.

I am no believer in the doctrine of the fall of man. Man has not fallen. He has risen and will rise. In the process of evolution he has so far progressed that he is able to stand erect and look upward, but his feet are still upon the earth, and so while he sees the heights he ascends them only with slow and toilsome effort. But he does ascend.

In that great masterpiece of imaginative writing, Les Misérables, the immortal Victor Hugo, with marvelous and consummate skill, has traced for us the gradual uplifting of his principal character from a condition of sordid poverty and sin and misery and crime and vileness to a position of honor and trust and confidence and power for good and purity of life, and thence to his final apotheosis in an act of sublime self-sacrifice which challenges the profoundest admiration of our souls. To my mind the most magnificent figure in all the literature of fiction is that of Jean Valjean, not because he finally stood upon the heights, but because with infinite toil and struggle he came upward from the abyss. And so, in measuring the progress of any man, as it seems to me, the question is not so much upon what height does he stand as it is, How far has he climbed? I would apply the same test to a community.

I do not say that conditions are perfect in Utah; they are not perfect anywhere; but I do say that conditions to-day are immeasurably better than they have ever been before, and that, in my judgment, they will be better to-morrow than they are to-day. I do not claim that there are no evils among the people. Some remnants of the old objectionable conditions still exist. But I do claim that those evils are fewer in number and less in extent by far to-day than they have ever been before, and, in my judgment, it will be but a short time until they are eradicated altogether.

A community, Mr. President, like an individual, does not overcome its bad habits without a struggle. Indeed, the struggle is more difficult because the number of individuals who are concerned, with their varying degrees of self-restraint and desire for reform and strength of purpose, renders the problem more complex. As with an individual, so with a community. There are the occasional lapses, the goings forward and the slippings back, the fallings down and the risings up, and, thank God, the same ultimate triumph if the resolution be sound at the core.

Mr. President—

> I hold it truth, with him who sings
> To one clear harp in divers tones,
> That men may rise on stepping-stones
> Of their dead selves to higher things.

Upon stepping stones of its old self Utah has risen and will rise. We must not forget that the conditions of which the American people justly complained were nearly fifty years growing the wrong way; they have been only fifteen years growing the right way, but the great and important and splendid fact is that they have been growing the right way. And I say to you, Mr. President, and to the Senate, and to the country, with what I believe to be the words of soberness and truth, that the people of that State are ridding themselves of these objectionable conditions just as rapidly and just as effectually as any far-sighted man, knowing the circumstances, could reasonably have expected they would, and that we are to-day far beyond the slightest danger of any successful reactionary movement.

And let me say further——

Mr. DUBOIS. Mr. President——

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

Mr. SUTHERLAND. Yes.

Mr. DUBOIS. Will it disturb the Senator if I ask him a question?

Mr. SUTHERLAND. I hope the Senator will make it as short as possible. I am very tired and am anxious to get through.

Mr. DUBOIS. The Senator said that the People's Party and the Liberal party disbanded, and that the members of those parties joined the Republican and Democratic parties, which condition continued for a number of years. But is it not true that recently the Gentiles have been uniting again in Utah? In Salt Lake City, where the Senator lives, there is an American party, and I understand 80 per cent of that party is composed of Republicans. That party has been organized, as I understand and as is understood out there, to protest against the domination of the Mormon Church in political affairs, to bring about a separation of church and state.

I would be glad if the Senator would explain what his idea is in regard to the organization of this American partisan party and of the tendency of the Gentiles in Utah to revert to the old Liberal party. Is there any justification for it?

Mr. SUTHERLAND. The American party was organized after my predecessor in the Senate, who came here, in my deliberate judgment, partly as the result of the assistance given him by the then president of the Mormon Church—that is one of the instances of church interference that I have in mind—that party was organized after this, and after that ex-Senator had endeavored to get the help of the Mormon Church again and it had been refused. There are Senators within the sound of my voice who know, or have every reason to believe, that what I say about it is true.

Mr. DUBOIS. Mr. President——

Mr. SUTHERLAND. I hope the Senator will not interrupt me. Let me answer his question.

Mr. DUBOIS. I beg pardon.

Mr. SUTHERLAND. When the ex-Senator, my predecessor—and I should not have spoken of this but for the question of the Senator from Idaho—when that ex-Senator desired to come back to the Senate, according to the statements which are made in Utah, and which I have no reason to doubt, he went to the present head of the church and sought his aid, and that president told him that he was not in politics, that the church was not in politics, and that neither of them would be dragged into politics by him. The head and front of the American party in Utah is ex-Senator Thomas Kearns, and the Salt Lake Tribune and the Salt Lake Telegram are his personal organs.

Mr. DUBOIS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield further to the Senator from Idaho?

Mr. SUTHERLAND. I will yield for a question only.

Mr. DUBOIS. Very well.

Mr. SUTHERLAND. I want to get through.

Mr. DUBOIS. I should like to ask the Senator if the most splendid Gentiles in Salt Lake do not belong to this party and if it is not the dominant party in Salt Lake?

Mr. SUTHERLAND. That some of the most splendid Gentiles in Salt Lake do belong to that party I think is true. There are a great many Gentiles who have carried along their bitterness from the old days and who have always been waiting for an opportunity—they are unreconstructed and never will be reconstructed—to slap the Mormon Church, and they have taken advantage of this situation. They are good men, among the best citizens we have there. The rank and file of the American party are good people, but I say the leadership, the people responsible for the American party, are this man whom I have mentioned and his lieutenants.

Mr. DUBOIS. To return——

Mr. SUTHERLAND. I do not care to yield further.

The VICE-PRESIDENT. The Senator from Utah declines to yield further.

Mr. SUTHERLAND. I wish to finish what I have to say on this matter.

The other branch of the question which the Senator asked me was whether they were not the dominant party. They are not the dominant party. At the last election there were in the neighborhood of 35,000 Gentile votes cast——

Mr. DUBOIS. I said in Salt Lake City.

Mr. SUTHERLAND. I say in Utah. I am not speaking of Salt Lake. I speak of Utah. The Gentiles in other parts of the State are just as good as the Gentiles in Salt Lake. Out of 35,000 Gentile votes cast in the State of Utah, the American party cast 11,000. The American party did not elect a single candidate in Salt Lake County at the last election. Two years ago there was a division between Democrats and Republicans—this was the third party—and it slipped in between and elected a city ticket. But at the last county election which we held there it did not elect a single man upon its ticket. The American party is growing less and less all the time. At the last school election, which was held in Salt Lake City within the last two or three months, it did not elect, although it had candidates in every precinct, a single candidate to the board of education. The American party is not the dominant party either in Salt Lake County or in the State of Utah.

Mr. President, let me resume where I left off. I want to say further that any man who asserts—and I care not who he may be—that there is any feeling of hostility on the part of the people or any of the people of the State of Utah toward this Government either speaks with inexcusable ignorance or he misstates the facts.

When the war broke out with Spain, and the call for volunteers was made, Utah was among the first of all the States to respond. Mormons and Gentiles alike freely offered their services to their country. Mormons and Gentiles together marched away to the music of the same drum tap, with the same love and reverence for the flag, which floated impartially above them both and found equal loyalty beneath its folds. The Utah batteries—commanded by Maj. Richard W. Young, himself a Mormon, a grandson of Brigham Young, a graduate of West Point, and as brave and loyal and splendid a gentleman as ever wore the uniform of a soldier—won for themselves in the Philippines a name of heroic and imperishable glory. Mormon and Gentile fought side by side in the swamps and the rice fields, and gave up their lives and lay with their silent white faces upturned to the pitiless sun of Luzon with the same patriotic devotion to the cause of their country. Not a man of them—Mormon or Gentile—but honored and glorified the uniform he wore.

In the terrible flood and cyclone which occurred in the Society Islands within a year the young Mormon missionaries stationed in those islands, at the risk of their lives, helped save the property of the Government, the archives and records of the Government. I have here a copy of a letter written by the consul in those islands to President Smith, and published in a newspaper in Salt Lake, in which he speaks of that incident. He says:

DEAR SIR: It gives me great pleasure to inform you that during the cyclone and high water at Papeete, Tahiti, February 8, the Mormon elders rendered conspicuous service at the American consulate, at the risk of their lives, to rescue the archives. The elders were Messrs. Hall, Peck, Clawson, Pierson, Tibbetts, Miner, Wilkinson, Noall, and Huffaker. Mrs. Hall and Mrs. Wilkinson also were kind and hospitable to myself and my relatives during three days while we were their guests.

The elders have produced a splendid example of loyalty to the interests of their country abroad. I have reported their bravery and successful service to the Department of State.

I congratulate you upon such noble representatives in this insular community.

Respectfully, yours, WM. F. DOTY,
Consul.

In the report to the War Department he states:

In the work of rescue conspicuous service was rendered, at the risk of life, by the following American Mormon missionaries—

And then he names the same ones named in the letter to the president of the church.

Mr. President, it is time that the voice of calumny should be silent. It is time that the tongue of slander should cease. Let us have the truth about Utah by all means, but in God's name let it be the truth; and when any man says that the people of the State are not loyal, that they are not patriotic, that they have any feeling of hostility toward this Government, that life or property is unsafe in any part of the State, that any of them teach their children to disrespect the flag, he utters a falsehood as cruel and as foul and as foundationless as any ever concocted by the father of lies himself.

Mr. President, just a word or two personal to Senator SMOOT. It is shown by the testimony that not only is Senator SMOOT not a polygamist, but it is also shown that he has been opposed to the practice of polygamy since he was a young man. There is testimony in this record to that effect, and there is no testimony from any witness that I recall to the contrary.

I wish very briefly to call attention to one or two extracts, taking first the testimony of Judge James A. Miner, a Gentile, who was a judge on the bench, appointed by Mr. Harrison, from Michigan, and who went there as early as 1889. At page 831 of the second volume Mr. Miner says:

Mr. VAN COTT. Do you know anything about the reputation he bore—

Referring to Senator SMOOT—

in those early days in regard to the practice of polygamy?

Mr. MINER. Yes, sir.

Mr. VAN COTT. What was it?

Mr. MINER. My deputies were deputies for that district, which included Mr. SMOOT's residence—that is, Utah County, and those deputies, during the year 1890, from July on, were over the entire district, and before I personally became acquainted with Mr. SMOOT—during the time of these prosecutions or about the time of the manifesto—they reported to me, and I obtained from that reputation and from others, in speaking of him, that he was an active, bright young man from Provo, and his leanings were strongly in favor of the enforcement—that is, the people should obey the law. He was against the practice of polygamy. They regarded him as the coming young man of the State. He was so regarded, I think, from that time on as a bright, active, law-abiding man, of excellent character and habits.

Mr. Whitecotton, a Gentile lawyer, who lives at Provo, testified upon the same subject. After he had explained that one of Senator SMOOT's heresies was that he belonged to the Republican party and believed in protection, he was asked this question:

Senator FORAKER. What are some of the other heresies he had?

Mr. WHITECOTTON. That is the chief one; and he always voted the Republican ticket. It is a kind of an unpleasant thing for us Democrats to have too many fellows do that. But they do it.

Mr. VAN COTT. Speaking of the other heresies that Mr. SMOOT had, what was the general understanding in the community in Provo about any heresy that Mr. SMOOT had as being opposed to the practice of polygamy in those early days?

Mr. WHITECOTTON. He was a heretic on that, too.

Mr. VAN COTT. He was opposed to polygamy?

Mr. WHITECOTTON. He was opposed to polygamy; he was understood so to be. He was looked upon as one of the young men in Utah who were to redeem Israel.

I call attention to the testimony of Mrs. Coulter to the same effect, on page 173 of volume 3, without stopping to read it.

I also have here a piece of testimony that is peculiarly and strongly corroborative of the testimony of these witnesses. In 1892 there was a hearing before the Senate Committee on Territories with reference to whether or not a bill for the local government of the Territory of Utah should be passed. Among the witnesses who appeared before that committee was Judge John W. Judd. Judge Judd was a Gentile, a Democrat, who had been appointed by President Cleveland back in 1885 to go to Utah as judge, and he remained there for a great many years. As I say, this was in 1892, fourteen years ago. As the Senator from Vermont [Mr. DILLINGHAM] suggests, a very large number of these cases came before him, and he probably personally sentenced to imprisonment hundreds of persons convicted of polygamous cohabitation.

Judge Judd, in the course of his testimony given fourteen years ago, when Mr. SMOOT was a young man, said:

Now the facts. The Mormon people, when they settled that country out there, settled it with an attempt to plant upon American soil a civilization of three thousand years ago. Their system of priesthood, for I have studied their theology, and their system from their own standpoint, reading their own literature, was undertaken to be patterned after that of the ancient Jewish priesthood, and included in it, like the latter, the polygamic relation. When they undertook this thing, of course, in the estimation of the civilization of America and of its laws—the first one being passed, however, in 1862—it became a criminal institution. No one recognized that more thoroughly than did Brigham Young, the leader of the Mormon people, and the Mormon people themselves.

Now, omitting some:

I began then to talk to the younger men and the younger women, and to see if I could discover whether there was back of that an absolute sentiment in favor of polygamy. I had been told, and the estimates demonstrated beyond doubt that there was probably not over 2½ or 3 per cent of the male population in polygamy. The settlement of Utah was forty or forty-five years old, and many of the men and women born there were grandfathers or grandmothers. I could not understand how it was that those people were consenting to such continual attacks, to such deprivations, and to such odium in the estimation of their fellow-citizens in the United States in this condition of things. And, gentlemen, I discovered as clearly a marked line between those who favored polygamy and those who did not as the banks of the Mississippi River.

The younger people would come to me in my room in private and talk to me about it. I could give names and incidents of Mormons high in life, some of whom the chairman of this committee is acquainted with, who came to me and urged me, saying, "Judge, for God's sake, break this thing up. We have had enough trouble. We have had all we can possibly stand of it. We have had one right after another taken from us. We have been put in an awkward attitude before our fellow-citizens of the United States, and for God's sake break it up." *Others said to me, notably* REED SMOOT, *son of the president of a stake, and the Republican candidate for mayor, and himself the product of a polygamous marriage, "Judge, we can not stand this thing, and we will not stand it; it must be settled."*

Judge Judd is quite correct about that. When polygamy was given up by the church, it was owing to a demand coming from within the church quite as much as it was to a demand coming from without, and among the men who stood in favor of that sort of thing, in favor of compelling the church to conform its practices to the law, none stood more firmly than did Senator REED SMOOT.

Reduced to the last analysis, then, we have a man here who has never violated any law so far as we know; whose conduct in every respect is above reproach; who has been opposed to the practice of polygamy ever since he was a boy, and yet whose expulsion from the Senate is demanded upon the ground that he shall not be permitted from this exalted place to make war upon the American home. Such a demand to me seems hysteria pure and simple.

Mr. President, there are many things that ought to be discussed in this connection—many things that I intended originally to discuss—but I have already taken too much of the time of the Senate. I have spoken to my own weariness and no doubt to the weariness of the Senate as well. Just a word more and I am through.

Mr. President, it is asserted by this original protest in the most positive terms that Senator SMOOT is not charged with any offense cognizable by law. In all the things which constitute the decencies and moralities of life he stands here, as he stands everywhere he is known, beyond criticism and above reproach. Day after day and month after month for nearly four years he has met the shafts of ridicule, falsehood, and slander that have been directed against him, and he has faced them all with serene and patient courage. However much he may have chafed inwardly, he has borne himself outwardly with rare composure and self-restraint. He believes that the day of his vindication is at hand. But if it shall be otherwise, if the verdict of this great jury shall be against him, if the long struggle shall end not in vindication, sweeter than the honey of paradise, but in a pitiful defeat more bitter than death itself to an honorable man, he will, in my judgment, step from this august Chamber with anguish unspeakable in his heart, but with no stain upon his soul, because no man's soul can be stained save by himself.

During the delivery of Mr. SUTHERLAND'S speech,

The VICE-PRESIDENT. The Senator from Utah will kindly suspend while the Chair lays before the Senate the unfinished business, which will be stated by the Secretary.

The SECRETARY. A bill (S. 7709) to revise, codify, and amend the penal laws of the United States.

Mr. FULTON. I ask unanimous consent that the unfinished business may be temporarily laid aside.

The VICE-PRESIDENT. The Senator from Oregon asks unanimous consent that the unfinished business of the Senate be temporarily laid aside. Is there objection? The Chair hears none, and it is so ordered. The Senator from Utah will proceed.

Mr. SUTHERLAND. I thank the Senator from Oregon for his courtesy.

After the conclusion of Mr. SUTHERLAND'S speech,

HOUSE BILLS REFERRED.

H. R. 15242. An act to confirm titles to certain lands in the State of Louisiana was read twice by its title, and referred to the Committee on Public Lands.

H. R. 24103. An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1908, and for other purposes, was read twice by its title, and referred to the Committee on Appropriations.

H. R. 24111. An act to authorize the Norfolk and Western Railway Company to construct a bridge across the Potomac River, at or near Shepherdstown, W. Va., was read twice by its title, and referred to the Committee on Commerce.

H. R. 24122. An act in reference to the expatriation of citizens and their protection abroad was read twice by its title, and referred to the Committee on Foreign Relations.

FORT WRIGHT MILITARY RESERVATION, WASH.

The bill (H. R. 24048) authorizing and empowering the Secretary of War to locate a right of way for and granting the same and a right to operate and maintain a line of railroad through the Fort Wright Military Reservation, in the State of Washington, to the Spokane and Inland Empire Railroad Company, its successors and assigns, was read the first time by its title.

Mr. PILES. I ask for the present consideration of the bill, inasmuch as a similar bill has been favorably reported by the Committee on Military Affairs.

The VICE-PRESIDENT. The bill will be read for the information of the Senate.

The bill was read the second time at length, as follows:

Be it enacted, etc., That the Secretary of War is hereby authorized and empowered to locate a right of way, not exceeding 100 feet in width, through the lands of the Fort Wright Military Reservation, if, in his judgment, it can be done in such a manner as not to interfere with the uses of said reservation for military purposes by the United States; and when said right of way shall be so located it is hereby granted during the pleasure of Congress to the Spokane and Inland Empire Railroad Company, a corporation organized under the laws of the State of Washington, its successors and assigns, for the purpose of constructing a railroad and telegraph line thereon: *Provided*, That the said right of way and the width and location thereof through said lands, the compensation therefor, and the regulations for operating said railroad within the limits of the said military reservation so as to prevent all damage to public property or for public uses shall be prescribed by the Secretary of War prior to any entry upon said lands or the commencement of the construction of said works: *Provided, also*, That whenever said right of way shall cease to be used for the purposes aforesaid the same shall revert to the United States.

SEC. 2. That Congress reserves the right to alter, amend, or repeal this act.

The VICE-PRESIDENT. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered as in Committee of the Whole.

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

CONTRIBUTIONS FOR POLITICAL ELECTIONS.

The VICE-PRESIDENT laid before the Senate the amendment of the House of Representatives to the bill (S. 4563) to prohibit corporations from making money contributions in connection with political elections, which was, on page 2, line 2, to strike out all after the word "shall" down to and including dollars," in line 3, and insert "upon conviction be punished by a fine of not exceeding one thousand and not less than two hundred and fifty dollars, or by imprisonment for a term of not more than one year, or both such fine and imprisonment, in the discretion of the court."

Mr. FORAKER. I move that the Senate concur in the House amendment.

Mr. BURROWS. I should like to inquire if that is the bill which was reported originally by our Committee on Privileges and Elections?

Mr. FORAKER. Yes; it came originally from the Committee on Privileges and Elections, and there is an amendment from the House which is in entire harmony with the bill.

The VICE-PRESIDENT. The question is on agreeing to the motion of the Senator from Ohio to concur in the amendment of the House.

The motion was agreed to.

DONATION OF OBSOLETE CANNON.

The VICE-PRESIDENT laid before the Senate the amendment of the House of Representatives to the bill (S. 4423) providing for the donation of obsolete cannon with their carriages and equipments to the University of Idaho, which was, to strike out all after the enacting clause and insert:

That the Secretary of War be, and he is hereby, authorized to deliver to the University of Idaho, at Moscow, Idaho, two obsolete cannon, with their carriages and equipments, now in possession of said University of Idaho, to become the property of the said university for ornamentation of the grounds of the said university: *Provided*, That no expense shall be incurred by the United States in the delivery of said cannon.

Mr. HEYBURN. I move that the Senate concur in the amendment of the House of Representatives.

The motion was agreed to.

DISMISSAL OF THREE COMPANIES OF TWENTY-FIFTH INFANTRY.

The VICE-PRESIDENT. The Chair lays before the Senate a resolution, which will be stated.

The SECRETARY. Senate resolution 208, by Mr. FORAKER.

Mr. TELLER rose.

Mr. CULLOM. If the Senator will allow me, I understand that the Senator from Ohio is bringing up the resolution about which there has been a long discussion. I have yielded the appropriation bills, so far as I am concerned, so that this subject may be taken up and gotten out of the way.

Mr. TELLER. I do not know what the order is. I am trying to find out.

The VICE-PRESIDENT. By virtue of the unanimous-consent agreement made this morning, the Chair has laid before the Senate resolution No. 208, introduced by the Senator from Ohio, respecting the Brownsville matter. The Senator from Colorado is recognized.

Mr. TELLER. I yield to the Senator from Florida [Mr. MALLORY].

Mr. MALLORY. Mr. President, the questions presented by the various resolutions that have been pending for several weeks past relating to what is commonly known as the Brownsville incident involve a question of the power of one of the coordinate branches of the Government, the authority and power of the President to do what was done by his order, namely, the discharge of the enlisted men of a battalion of the Twenty-fifth Infantry, stationed at Brownsville at the time of the attack on that sleeping town. The Senate has had the benefit of the views of some of its ablest members upon that question. The discussion has revealed not only a great diversity of view, but has revealed the fact that views here are entertained regarding the power of the President that are utterly inconsistent with and contradictory of each other.

A portion of the membership of this body believe that the President has the power, under the authority conferred on him by the Constitution in making him Commander in Chief of the Army, to discharge a soldier at any time, whenever, in the judgment of the President, it is for the good of the service that such action should be taken. Another part of the membership of this body hold the view that under the fourth article of war, an enactment of Congress, the President possesses the same power, vested in him by the will of both bodies of the Congress of the United States; that he has been invested with a discretion to act or not act, as in his judgment seems proper; and that when he does exercise that discretion it is beyond the power of anyone or any set of men to question his authority and his right to so act.

This proposition, Mr. President, is one that is not confined to the personality of any Executive. It is a broad question of power to be exercised by one of the coordinate branches of the Government. If that coordinate branch possesses that power, then I have no hesitation in laying down as a proposition which can not be disputed that it is beyond the scope and authority of either of the other branches of the Government to question that authority.

Therefore, Mr. President, it becomes a most important step to be taken at the outset to determine whether the President in acting as he did was within the scope of his power and authority.

A third element of the composition of this body hold the view that the President has no power, either under his constitutional designation as Commander in Chief or under the fourth article of war, unlimited and unqualified as it is, to dismiss a single enlisted man of the Army without giving him an opportunity to be heard.

Those of us who stand in the second category I have indicated and those who stand in the first can not, in my judgment, consistently vote for this resolution. If they believe, as they claim they do believe, that the President acted within the scope of his power and authority, then they will place themselves in an attitude that can not be justified or explained if they vote for this resolution.

But, Mr. President, there is another point of objection to it, and that lies in the fact that whether it is in fact or not an equivocal use of language, it nevertheless has impressed Senators of great learning and ability, lawyers of standing and reputation, as being susceptible of two very different and conflicting interpretations. To illustrate that I will read an extract from some remarks made by the brilliant Senator from Ohio [Mr. FORAKER] on yesterday, when called upon to give his construction of the meaning of his resolution. He said:

Mr. President, I want to say, in answer to the suggestion of the Senator from Massachusetts [Mr. LODGE], that my understanding of this language is that it does not commit the Senate on this proposition in any sense whatever, except only to let the whole matter stand in abeyance so far as this investigation is concerned. That is the theory upon which I am willing to modify the resolution, with that understanding. In other words, the effect will be precisely the same as though we were to say "neither affirming nor denying the legality."

There is a clear-cut exposition of the meaning, purpose, and intent of this resolution, and, coming from the distinguished gentleman who has offered the modification, which seems to have met the approval of a majority of this body, it must be given the weight which it necessarily derives from such a source.

On the opposite page of the RECORD I read from the remarks of the very able and clear-headed Senator from North Dakota [Mr. MCCUMBER], who, after discussing at some length the meaning of the resolution, closes his remarks in the following language:

I can vote for this, not on the false assumption that it means something else than what its words are, but I can vote for it upon the assumption that it means that we do not question in any way, so far as this case is concerned, the legal power or the constitutional power of the President of the United States to dismiss without honor either in time of peace or in time of war.

Mr. President, it is true, if we are to believe the statements made in the press, that the amicable arrangement whereby this resolution seems to have been accepted by a majority of this body has been inspired by information received to the effect

that the Executive is willing for it to be adopted in its present shape. I for one do not wish to be understood as permitting an Executive or anyone else to shape my action in this body on a matter of this supreme importance. We are not legislating here for any particular Executive; we are not legislating here in the interests of any particular party; we are enacting laws and passing resolutions for the purpose of doing all that is necessary for the good and the welfare of the people of the country. Our action upon this resolution is not limited and will not stop at Theodore Roosevelt. It goes beyond and will stand as a guide and a mark for his successors for generations to come. Therefore, viewing it as I do, I have no hesitation in saying that I would feel that I had stultified myself if when this vote is had it would appear that I had cast my vote in favor of the resolution.

Viewing it, therefore, Mr. President, as I do, and desiring to give an opportunity to those who agree with me to give an expression to their best judgment upon those views, I have drawn up a resolution which at the proper time I shall propose as a substitute for that of the Senator from Ohio, and for the information of the Senate I will read it now:

Resolved, That in the judgment of the Senate the recent action of the President in discharging without honor enlisted men of Companies B, C, and D of the Twenty-fifth Infanty was within the scope of his authority and power and a proper exercise thereof.

Resolved further, That the Committee on Military Affairs is hereby authorized and directed, by subcommittee or otherwise, to take and have printed testimony for the purpose of ascertaining all the facts with reference to or connected with the recent attack on the town of Brownsville, Tex., on the night of August 13–14, 1906. Said committee is authorized to send for persons and papers, to administer oaths, to sit during the sessions of the Senate, and, if deemed advisable, at Brownsville or elsewhere, the expenses to be paid from the contingent fund of the Senate.

Mr. President, I have thought proper to authorize the committee to go into an inquiry into the facts after I have provided for a declaration that, in the judgment of the Senate, the President has acted within the scope of his powers and has acted properly. My reason for doing that is that the Senator from North Dakota [Mr. McCUMBER] said yesterday it is possible that in a case of the importance this one is it may be proper and right for the Senate to investigate the facts, not for the purpose of hereafter questioning the power and authority of the President, but for the purpose of gaining all information that may hereafter be useful in legislation pertaining to the Army; and with that purpose in view and with that purpose only justifying such an addendum to the first part of the resolution, I have thought proper to permit the investigation.

Mr. President, I offer the resolution I have just read as a substitute for that of the Senator from Ohio.

Mr. TELLER obtained the floor.

Mr. FORAKER. I move to lay the resolution on the table.

Mr. BACON. I ask the Senator to withhold that a moment. I wish to say a few words.

Mr. FORAKER. I will do so. I enter the motion, but I will withhold it.

The VICE-PRESIDENT. The Secretary will read the amendment proposed as a substitute by the Senator from Florida.

The Secretary read as follows:

Resolved, That in the judgment of the Senate the recent action of the President in discharging without honor enlisted men of Companies B, C, and D of the Twenty-fifth Infantry was within the scope of his authority and power and a proper exercise thereof.

Resolved further, That the Committee on Military Affairs is hereby authorized and directed, by subcommittee or otherwise, to take and have printed testimony for the purpose of ascertaining all the facts with reference to or connected with the recent attack on the town of Brownsville, Tex., on the night of August 13–14, 1906. Said committee is authorized to send for persons and papers, to administer oaths, to sit during the sessions of the Senate, and, if deemed advisable, at Brownsville or elsewhere, the expenses to be paid from the contingent fund of the Senate.

Mr. FORAKER. Mr. President——

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

Mr. TELLER. I yield for a moment.

Mr. FORAKER. It has been suggested that I made my motion out of order, the Senator from Colorado having the floor and it not having been yielded to me. Now that he yields to me the floor for that purpose, I enter my motion to lay the resolution on the table.

Mr. BACON. I wish to suggest that the entering of a motion necessarily would preclude debate.

Mr. TELLER. That is a fact.

Mr. FORAKER. I withhold the motion.

Mr. BACON. The Senator can reoffer it at any time.

Mr. FORAKER. I enter the motion, but withhold it until Senators can discuss the amendment.

The VICE-PRESIDENT. The Senator from Colorado will proceed.

Mr. TELLER. The amendment of the Senator from Florida [Mr. MALLORY] is to do what it has been claimed the resolution which the Senator from Ohio [Mr. FORAKER] offered yesterday would do. I wish to call the attention of the Senate for a moment to the wording of his resolution:

That, without questioning the legality or justice of any act of the President, etc.

That is a negative form of indorsing the President's action, in my judgment. The Senator from Ohio, who sits some distance from me, shakes his head; but it certainly was claimed on the floor of the Senate here yesterday that those words meant or were equivalent to saying, "We do not question your authority; we leave that; we admit your authority."

Mr. President, this debate began about the 3d of December, and every resolution that was put in here except one proceeded upon the theory that they only wanted the facts, and the question of law was not to be and ought not to be considered. I made up my mind in the beginning that I would vote for getting the facts, and I am not concerned about the law at the present time. I thought at a later time we might determine that phase.

I read over some of the arguments made by the friends of the President's authority, and I was particularly struck by a statement made by the senior Senator from Massachusetts [Mr. LODGE], that the President had the authority without any statutory or constitutional authority by way of inheritance from the King of Great Britain. I have an idea myself that there is not anybody in any official position anywhere who can fall back upon the inherited right to do certain things. I believe that when we cut loose from Great Britain we cut loose from the prerogatives of the King; and if we did inherit them, we certainly inherited them by mistake, because we did not intend to do it. If anyone will take the Declaration of Independence and read it over, he will see that the authors of the Declaration certainly were not anxious to inherit anything from the King, whom they denounced from the beginning to the close of the Declaration.

Mr. President, it is a new doctrine that you are inheriting from the King, though I expect to live long enough to see that doctrine become popular in certain circles and in certain political parties. A year ago last fall I was present in the supreme court of Colorado when a lawyer of great ability, who could make a speech on one side as good as he could on the other, who could defend a law that he did not believe in as well as he could one that he did, stated to the court that they had inherited all the prerogatives of the King's court. He said that when we went into the organization of the United States in the shape we did the King's prerogative, or the King's court's prerogative, was floating around and that it had to lodge somewhere, and so it had lodged in the supreme courts of the several States.

Mr. President, it seems to me that any lawyer making that statement to the supreme court ought to have been rebuked, either for his ignorance or for his unfairness. The court seemed to take it all in and looked on with great pleasure when he said to them: "It is not in the power of the legislature to limit your authority at all; they can give you authority; but what you get by inheritance they can not interfere with." That being received by the court rather graciously, he added: "Nor is it possible for the people of this State to take it away from you even by constitutional amendment." And, Mr. President, six of that court held that that is good law.

I have not much patience with anybody who talks about inherited prerogatives or inherited rights. This is a country of law, and every man who has the power to do anything, whether Federal or State, derives it either from the Constitution or from some statute. If the President had the authority to dismiss these men—and I do not intend to discuss that question, because I am not able to do so to-night—he derived it from some positive statute or from some provision of the Constitution.

I do not know whether he had that authority or not; I have not looked into the question, and I do not want to look into it, because it is not necessary to do so; but I do not want to commit myself to the statement that I do not question his right. I am ready to meet any legal question when it comes before me, but I have never been in the habit of volunteering my judgment on such questions when there is no occasion for it.

I have looked over some of the speeches which have been made on this subject. The Senator from Pennsylvania [Mr. KNOX] quoted the case of Blake *v.* The United States, which is found in 103 United States Reports. It has been quoted by nearly every Senator who has spoken, I think—I am not certain whether the Senator from Wisconsin [Mr. SPOONER] quoted it or not—but it has been quoted by others on the floor. That is the only case at which I have looked. I thought I had some

recollection of that case, because that case involved a question which we had before us when Mr. Cleveland was President, upon the right of the President to make removals; and while I am pretty hoarse and do not wish to talk for more than a moment or two, I want to say that that case was simply this: A chaplain, who is not strictly a military officer, but a civil officer, thought he had been improperly treated. So he wrote to the Department stating that if they could not rectify the treatment he had received, he would resign, and he sent in his resignation. The President thereupon accepted his resignation, sent the name of his successor to the Senate, and the Senate confirmed him. Later the friends of the former chaplain concluded that he was insane when he sent in the resignation, and so could not have properly resigned, and that he was still in the Army. What did the court say? The court simply said that when the President made the nomination and this body confirmed it, the chaplain was out of the Army, and that was all there was of it. That has nothing in the world to do with the question of the dismissal of private soldiers. I presume a little attention to some of the other quotations might show that they were more applicable to this case than was that decision. But that is not what I want to talk about.

Mr. President, I want to know what this resolution means? I understood the Senator from Ohio [Mr. FORAKER] to say that it was simply a declaration that we did not intervene; that we did not say anything about it—hands off. I can not read it in that way. I could understand very well if the Senator had said "without asserting or denying the legal right of the President," it might have been left for future consideration; but when some lawyer raises a question and I say "I do not question your law," I think I admit that the law is as he quotes it. I do not want any examination of the question whether the President was correct or not. That can be done at another time. I only want to say we have so often provided by statute as to how the President should act in such cases that it seems to me pretty late to say we can not do it, or that we could not have done it in that case.

I have sometimes been pretty free in my criticisms of the Executive; especially I have felt that I had the right to criticise his legal statements, as every lawyer has, but I can imagine a case very readily, and so can any Senator if he will think for a moment. Suppose that something is done by the President, and we take it up and declare with solemnity that he has not transcended the law. The House of Representatives takes it up and concludes that he has. They send over articles of impeachment, and the President is to be tried by a tribunal that has already adjudicated the case.

Suppose we should say, on the other hand, that he had not transcended the law, that he had not committed any wrongful act—because it is not a mere question of law; you can have the same thing and the same necessity for supporting the President's acts when the law has nothing to do with it—suppose we say the President is right, and we all agree to it, and the other House sends over a message to the effect that they do not think so. We should then witness the spectacle of the Senate sitting down gravely to consider what it had determined beforehand. It seems to me that a little consideration would indicate that unless a case is exceedingly important and we should be obliged to intervene—and I am not able to imagine a case where we ought to be required to do that—we ought to let the President alone.

I would not vote, Mr. President, for a resolution saying that the President had not the right to do what he has done, nor would I vote to say he has the right, and that is what I think this resolution means.

I want to say that I desired to vote for the other resolutions. They all went upon the theory that we wanted the facts. There was only one resolution, and that was formed by the Senator from Massachusetts [Mr. LODGE], which indicated that we were declaring that the President had the constitutional and legal authority to do these things. That, I think, did not meet the approbation of the Senate, and it was withdrawn. So up to yesterday, or perhaps I ought to say up to the time the Senator from Kentucky [Mr. BLACKBURN] offered his amendment, there had been no question before the Senate of the President's being right or wrong in the matter. Of course it was debated extensively by the Senator from Ohio [Mr. FORAKER] and by the Senator from Wisconsin [Mr. SPOONER] in response, and by several Senators on this side of the Chamber; but I supposed that that was simply an oratorical display or a display of their knowledge of the law, and that all the resolutions, with the exception of that offered by the Senator from Massachusetts, simply called for an investigation of the facts.

Now, do we want the facts? We do not want the facts so as to pass upon the question whether or not the President is right. The very act itself is all we need to know. We can then look at the law and determine that question for ourselves. I repeat, do we need the facts?

Here is a most remarkable case. The Army is supposed to be in extreme cases the support of the law. In a town of a neighboring State, where this battalion was stationed—and it is immaterial whether the troops were white or black—they got into an émeute. They "shot up" the town, as it would be called in the western part of the country; and in shooting up the town they killed one man and wounded others. So far as I am concerned I do not want any facts as to who did that shooting. I have not the slightest idea in the world but that those soldiers did it; but, Mr. President, I do want the facts in order to determine what particular men were guilty of that crime. I want those facts, because I want adequate punishment meted out to those murderers; for, under the law, we all know that, having been participants in an illegal transaction which resulted in murder, every man connected with it is guilty of murder.

Mr. President, we are told that the murderers would not admit that they had been engaged in this émeute, and the men who knew who had been engaged in it would not admit it. Who knows how many men knew about it? I believe I have heard it said once or twice that probably twenty men were engaged in the affray and that perhaps twenty more were cognizant of the fact that those soldiers had been out on this shooting expedition. Does anybody here say that there has been such an investigation made as ought to have been made, not in the interest of the colored man, but in the interest of the American Army? We want to know whether we are putting into the American Army men of that character, and we want to punish the men who did the shooting. Does anybody here pretend that there might not have been an investigation that would have brought out the facts?

Mr. President, is it not our duty to go to the fullest possible extent to find out who the guilty men are?

I have never been a criminal lawyer, but I have seen a great many criminal cases tried, and in my youth I have tried a few; but I will guarantee that I could select agents who would have gone there, if the soldiers had been retained, or would have gone in after they had left, and ascertained all the facts. Twenty men were guilty as principals, it is stated, and 20 more were guilty as accessories, who should be punished if they should fail to disclose the facts—40 men in all out of 167 men, citizens of the United States. I do not care what their color is, Mr. President. Every citizen of the United States is entitled to the same protection of the law, whether he is white or black or red. Now, those 167 men are sent out, branded as murderers; and is it not the duty of this Senate to provide some method, if a method is available, by which we may determine the facts, so that we may punish the guilty, and, Mr. President, what is important to me, that we may acquit the innocent?

Mr. President, I was brought up under the old idea that it was as much the duty of the Government to protect the man who was put in the box to be tried for a crime as it was to prosecute him; that it was the duty of the judge, and that it was the duty of the district attorney, if he found during the trial that a man was not guilty, to insist upon his discharge. But, Mr. President, that may not be the law; and I presume it is not now, but it ought to be the law. It has been the law of our English-speaking people ever since civilization fairly began in Great Britain. It likewise was the law in Normandy, whence the ancestors of many of our people came.

It is said that the dismissal of these soldiers was not a punishment. I understand one of the men had been twenty-seven years in the public service and had had a good record during all of that time. I think, Mr. President, the Government owes it to him to provide, if possible, some method to find out whether he had guilty knowledge of the facts. Nobody, I believe, claims that he was engaged in the émeute; and if he is turned out of the Army and disgraced, he will be turned out and disgraced simply because it is not considered of sufficient importance to send a committee down there to investigate this case as it ought to be investigated. I do not suppose anybody thinks that dismissal from the Army is a proper punishment for the men who have been guilty of murder, nor is it a proper punishment for the men who concealed the murderers' guilt.

Mr. President, since this debate began I heard some Senator say—I do not remember who it was—that the Army was a posse comitatus. I want to enter my protest against that statement. It is not a posse comitatus at all. The Army of the United States can only be used where the statutes or the Constitution provide that it may be used. The posse comitatus consists of the people themselves who are called upon to support the sheriff. My friend from Wisconsin [Mr. SPOONER] will agree with me, I know, that that is the law.

Mr. SPOONER. It is the power of the county.

Mr. TELLER. Yes; some years ago, Mr. President, right after the civil war, the Army was used as a posse comitatus, and one day there came from the House of Representatives a bill providing that the Army should not be used except when there was positive authorization of law for it. The Democrats had a majority in the House then and the Republicans had a majority in the Senate; but yet that bill became a law, and it is on the statute book to-day. Nobody, I believe, would question it.

Mr. President, we must have an army, I suppose, and probably we shall always have some colored men in it as well as some men who probably ought to be dismissed, whether they be white or black; but there is one thing that ought to be understood, and that is that we have got to maintain the character of the Army for order and for decency, or else the time will come when the people of the United States will see to it that you do not have an army.

Mr. BACON. Mr. President, as I will favor the substitute proposed by the Senator from Florida [Mr. MALLORY], I deem it proper to say that, while that is so, I do not agree with the Senator as to all the reasons which he urges in advocacy of that resolution. I agree that the President has the power. I think, however, that he has the power subject to the lawmaking power of the land, and that he has no power in the command of the Army, except the right to be its commanding officer, which is not under the control of the lawmaking power.

I do not desire, Mr. President, to go into that, because I expressed my views—not at length, but succinctly—in the debate which I had with the Senator from Wisconsin [Mr. SPOONER] a few days ago, and since then the Senator from Ohio [Mr. FORAKER] has discussed the question with more elaboration. I simply mention it now in this connection in order that, voting, as I shall, for the resolution of the Senator from Florida, I may not be considered as agreeing with the proposition announced by him in regard to the source from which the President derives the power.

I am the more particular, Mr. President, to do so because I regard it as one of the gravest questions which could possibly be submitted for the consideration either of the President or of the Houses of Congress. I think if the President of the United States is not bound to recognize as meaning in its full extent what is recited in the clause which I read in the former debate to the Senate, that there is no limit to be set to his power in the use of the Army, except such limit as he himself may construe to be that limit. There is no place to draw the line. I will again read the section of the Constitution upon which I base my contention. In the enumeration of the powers of Congress there is, in the first article of the Constitution, this sentence:

> To make rules for the government and regulation of the land and naval forces.

I believe that to be a grant of power without limitation. I believe it to be a grant of power intended to be exclusive of the exercise of that power by any other department, unless with the consent and under the direction of the lawmaking power.

Mr. President, the other day when I announced that view the Senator from Wisconsin said that he had heard me make that speech before. I do not think there is anything to be gained in iteration and reiteration, but there are some things so essential that their assertion can not be made too often, certainly not too often whenever there is any contradiction of them, and if it be necessary daily to make assertion in favor of the exercise of the power of the lawmaking department of the land and in contravention of the claim of the exercise of the power by any one man, then it can not be made too often if it is made every day. And, Mr. President, I want no higher encomium, so far as my public career is concerned, than that I was always opposed to the exercise of one-man power and in favor of the exercise of power by the legislative department, which the Constitution set up for that purpose. That is the branch of the Government which is the distinctive republican feature. Both the executive and the judicial departments are found even in unlimited monarchies where the legislative branch is frequently wanting. But, Mr. President, I shall not dwell upon that.

I want to say something with reference to the propriety of the adoption of the substitute proposed by the Senator from Florida. This matter originally was brought before the Senate by resolutions—I am speaking now of when it was first brought here to the Senate—by resolutions which reflected the sentiments of those who condemned the action of the President. That condemnation was put upon several grounds. In the first place, that, as a legal proposition, he had no right to make the order discharging the soldiers of these three negro companies; that he had no right to discharge without honor; but that that was the function of a court-martial. In the second place, that the order involved the innocent as well as the guilty. That as a question of law it should be said that the President had no right to make the order, and that in the exercise of the power, whether he possessed it rightfully or not, there was injustice done by indiscriminately confounding the guilty with the innocent. Those are the two propositions, and around those two propositions this debate for weeks has revolved.

When that proposition was first announced there was no doubt about the fact that there was a distinct cleavage in the Senate, not only among the Democrats in some degree, but in a still more pronounced manner among the Republican Senators. There were Senators who did not believe that the President had the power, whether he drew it as an inherent power from the Constitution or whether he received it by power granted by Congress. There were other Senators on the other side of the Chamber who believed directly to the opposite, that the President did have the power, some of them thinking that it was a power drawn directly from the Constitution and others thinking that it was a power granted to him by the action of Congress, or at least not denied to him, and in the exercise of the usual functions of every commanding officer.

Mr. President, Senators on the other side of the Chamber are to-day giving an illustration of their extreme dexterity in framing measures for which they can all vote, although among themselves directly opposed in sentiment and opinion as to the matter to which the measures relate. The Senators who believed in the beginning that the President did not have the power, from whatever source it was derived, to promulgate that order, believe so to-day. The Senators who in the beginning believed that the President did have the power, believe so to-day. They are in opinion divided as distinctly and as radically as they were two weeks ago, and yet they have agreed upon—I say they have agreed, but possibly all have not—but, speaking generally, it is understood that they have agreed upon a resolution for which they can all vote. Why? Because it is a resolution framed in ambiguous language, under which those who believe that the President did have the power can construe it according to their opinion and vote for it, and those who believe that the President did not have the power can also construe it to mean their way and vote for it.

Mr. President, I am not saying that haphazard; I am saying it because Senators have so announced on the floor. I will proceed to read to show that Republican Senators on the one side and the other of this contention have so stated.

Senators will remember that on yesterday when the Senator from Massachusetts [Mr. LODGE] was on the floor giving reasons why he would support the modified resolution which had been introduced by the Senator from Ohio [Mr. FORAKER], which is in these words:

> *Resolved*, That without questioning the legality or justice of any act of the President in relation thereto, the Committee on Military Affairs is hereby authorized and directed, etc.

I asked the Senator from Massachusetts whether that meant the same thing as the amendment which had been offered by the Senator from Kentucky, which is in these words:

> Without questioning or denying the legal right of the President to discharge without honor enlisted men from the Army of the United States.

And the Senator from Massachusetts made a reply, to which I rejoined as follows:

> Mr. BACON. So I understand, then, that the Senator construes the modified substitute proposed by the Senator from Ohio to mean all that the amendment proposed by the Senator from Kentucky means and to go still further?
>
> Mr. LODGE. I do.

That was as emphatic and as explicit and as unqualified as the Senator could make a reply in language. The Senator from Ohio was not content with the answer made by the Senator from Massachusetts, so he interjected:

> Mr. FORAKER. I want to suggest to the Senator from Massachusetts that, according to my understanding, the two amendments do not mean the same thing.

There, in direct opposition, are the statements of the two Senators, and the Senate will remember that the Senator from Massachusetts had in this debate previously avowed his opinion that the President did have the power, and that the Senator from Ohio had as emphatically and as explicitly avowed that, in his opinion, the President did not have the power. That was the condition before this resolution was framed, the modified resolution offered by the Senator from Ohio, and, as disclosed by that colloquy, that is the position they occupied after the resolution was framed.

In other words, the one who believed in the beginning that the President did not have the power avows that he believes so still, and the one who believed and had announced beforehand that the President did have the power announces that that is still his opinion, and yet the two Senators, directly opposed and

in this avowal asserting still that opposition, agree upon that single resolution. Why? Because, as I say, the language is ambiguous. One Senator can construe it one way and vote for it and another Senator can construe it directly in the opposite and vote for it.

I read further to show that that is the construction of the two Senators.

Mr. SPOONER. Mr. President——

Mr. BACON. Let me read this first. On the same page the Senator from Massachusetts [Mr. LODGE] said:

The resolution as it stands—

That is, the modified resolution—

is absolutely satisfactory to me. It states—

Now, listen—

It states that we do not question the President's right either to discharge the troops or in any act relating thereto. Nothing can be plainer than that, in my judgment.

Now, in the same colloquy, on the next page, the Senator from Ohio [Mr. FORAKER] used this language. Without reading it all, I will read his concluding sentence:

In other words—

Speaking of the modified resolution proposed by him—

In other words, the effect will be precisely the same as though we were to say "neither affirming nor denying the legality."

In one case the words "not questioning" are construed by the Senator from Massachusetts to mean there is no doubt about it, and in the other case the Senator from Ohio says that "not questioning" means that we are not passing on that at all, himself asserting that the reason why he does not pass upon it or does not favor a resolution which will admit of the construction put upon it by the Senator from Massachusetts is that he believes directly opposite to the Senator from Massachusetts. The Senator from North Dakota [Mr. MCCUMBER], with the candor which always characterizes him, says that he believes that this "not questioning" means that it is beyond question, and not to be doubted or denied.

Mr. President, I am very much in sympathy with the suggestion made, I think, first by the Senator from Wisconsin and repeated by the Senator from Colorado to-day, that the investigation is, from some points of view, not a proper thing for us to make, and I would be willing to pass it without any resolution whatever and leave it where it is. But the Senate does not propose to do that. Here, with a challenge in the Senate as to the power of the President to discharge these soldiers, as to the propriety of it, this resolution proposes to pass that challenge and at the same time pursue the course which is proposed by those who deny the right, to wit, to make an investigation for the purpose of establishing the propositions which were announced originally in the resolution, that the President has not the right, and if he has the right that it has been improperly exercised.

I have no interest in this matter so far as it may relate to the personality of the President. Certainly if he is willing that those who particularly represent him in this Chamber shall agree to an ambiguous resolution, to a resolution the language of which can be construed directly the opposite by those who support him and by those who oppose him, a resolution not only susceptible of that, but as to which Senators on this floor announce these opposing views—if the President is content with that, it is not for me to stand in the breach or to attempt to do so in his defense. But there is a great question and a great principle involved which goes beyond the question of the personal fortunes of any man who may occupy the White House.

Mr. ALDRICH rose.

Mr. BACON. If the Senator from Rhode Island will pardon me, I think it is a strained construction that action upon these questions is to be considered as an indorsement or condemnation of the Administration in other matters which have no relation to it whatsoever.

Mr. ALDRICH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Rhode Island?

Mr. BACON. With much pleasure.

Mr. ALDRICH. Do I understand the Senator from Georgia to say that the question whether the President is content with this language should be the main question to be decided?

Mr. BACON. I did not hear the Senator plainly. I heard him partially only.

Mr. ALDRICH. Do I understand the Senator from Georgia to contend that whether the President of the United States is content with the language is the main question to be decided by the Senate?

Mr. BACON. The Senator from Rhode Island could scarcely have heard any words from me which would be susceptible of any such construction. On the contrary, I said it was a question far superior to the personal fortunes or the personal wishes of the President; that if the President is content with the resolution as it has been drafted by his friends upon this floor, it did not become me to attempt to stand in the breach for the defense of his prerogative. I think I have made myself quite plain on that, and I flatter myself that my distinguished friend the Senator from Rhode Island had but one purpose in asking me the question, and that was to enable me to emphasize what I had said to the contrary of what he suggested. It is, however, a most remarkable fact that through the dextrous management of somebody on the Republican side, all of the adherents of that party in this Chamber have been put in a position where, by agreeing to support a certain resolution, they will be compelled to vote against an unreserved and unlimited endorsement of the President's action, as expressed in the substitute of the Senator from Florida.

But, Mr. President, I was saying that this is an important question. The Senator from South Carolina [Mr. TILLMAN] in his speech yesterday said that southern Senators had tumbled over each other, or he knew they would tumble over each other, to go to the defense of the President in this case, because they were opposed to having any negroes in the Army at all, thereby, I think, impugning motives and the good faith of those of us who occupy that position, not intentionally, of course.

Mr. President, I desire to say frankly that when this debate began I very gravely doubted the right of the President to make the order, and if the inclination of my mind had continued I should have voted in favor of saying that he did not have the right to make the order. It had never been my fortune or duty to examine particularly law questions relating to the Army, especially as to the effect of Army regulations and the rules for the government of the Army, and the first inclination of my mind and impression, I may say, was that in discharging without honor the President had inflicted a punishment, and I did not believe that in that case or any other it was according to the genius and spirit of our law, to say nothing of its explicit provisions, that any one man should have the right to be judge and jury and executioner.

It was only after the debate had progressed, particularly after I had heard my learned friend the Senator from Texas [Mr. CULBERSON] as to that legal proposition, that I became convinced that the first impression of my mind was wrong and that the discharge without honor is not a punishment; that it is simply the exercise of a power necessary in a great many instances and on a great many occasions, but particularly necessary as a fundamental proposition for the good of the Army, for the good of the public, and for the protection of the public, and that the discharging of a man without honor from the Army was no more than turning off a servant and failing to give a certificate of character. So the Senator from South Carolina is unjust, I say again, unintentionally so, in attributing any such disposition and unworthy motive to Senators on this side.

I wish to say that the reason why I desire that there shall be an expression of opinion in this matter is somewhat twofold. In the first place, I have no belief that there will be any other occasion which will furnish an opportunity for the Senate to say that it thought the President acted within his power and acted properly, and I am unwilling for the opportunity to pass without so saying.

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

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Wisconsin?

Mr. BACON. As I always do, with pleasure.

Mr. SPOONER. I understood the Senator from Georgia to say that he is in favor of the Senate expressing an opinion, as this is probably the only opportunity which would be afforded for the Senate to do so. I understood the Senator a few moments ago to express very grave doubt as to the propriety of the expression of any opinion by the Senate as to the legality of the Executive act.

Mr. BACON. I did not express it quite so strongly as the Senator does. I did not say I very gravely doubted. I think my exact language was that I was very much in sympathy with the suggestion that there might be such impropriety in the general investigation proposed.

Mr. SPOONER. Is not the Senator just as much in sympathy with the suggestion that we ought not to pass a resolution approving expressly an executive act, with reference to his power, as he is with respect to one disapproving it? If it is proper to pass one approving it is proper to pass one disapproving. Is not really the right thing for the Senate to do——

Mr. BACON. Will not the Senator allow me to answer one question at a time?

Mr. SPOONER. I will add only this little question.

Mr. BACON. Well.

Mr. SPOONER. Is not really the proper thing for the Senate to do to express no opinion and to limit itself to an investigation of the facts? I think my friend——

Mr. BACON. You ask me a question, and then you go on to argue it.

Mr. SPOONER. No.

Mr. BACON. I would be more than glad to hear the Senator argue it afterwards, but I want the question and the argument separate.

The Senator will remember that when I said that with reference to what was the inclination of my mind, or the presentation with which my mind was in sympathy, I accompanied it with the further statement that while that might be the proper course to pursue and might be the one which would most commend itself to my mind, that is to say nothing, that it was also true that the matter had been brought into the Senate by those who were hostile to the act of the President, and they had assumed two positions here. One was that there was no legal power vested in the President to issue the order, and the other was that in the issuance of the order and in the action taken under it there had been great injustice done to these men.

Mr. FORAKER. Mr. President——

Mr. BACON. Pardon me a moment until I finish the remark. I will yield to the Senator from Ohio in a moment.

Therefore I said that it was not proper that there should be an elimination of the consideration and enunciation by the Senate on the question of the existence of power, when the Senate proposed to adopt a resolution which was in furtherance of the motion of those who were unfriendly to this act, based upon the ground that it was an abuse of power, if the power existed, and that it confounded the guilty with the innocent. That was my proposition.

If the Senate is willing to accept what has been done by the President and say no more about it, I will join hands. But if you are going to say anything, then for reasons which I will give later if I have an opportunity, we ought to speak here emphatically as to the propriety of that conduct, both as to law and as to fact.

Mr. FORAKER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Ohio?

Mr. BACON. I do, with pleasure.

Mr. FORAKER. I understood the Senator from Georgia to say two or three times in the course of his remarks, and particularly just when I rose to interrupt him, that this question as to the power of the Executive had been introduced into the debate by those Senators who denied this power to the President, or words to that effect. I call the Senator's attention to the RECORD in that respect.

On the 19th day of December the President sent us his message transmitting information in answer to resolutions which had been previously adopted by the Senate. A motion was then made to refer that message, with all exhibits and documents attached, to the Committee on Military Affairs for consideration, and the committee was directed, in connection with that consideration, by the resolution which was then offered, which, of course, has not been adopted, if it deemed it advisable to do so, to take further testimony in regard to the discharge of the members of these companies.

What was before the Senate, therefore, was the President's message, coming up in the way I have indicated, and it was in that message that the question about the President's power was first raised, and it was because of what was said in that message that, in discussing the motion then offered, that question was properly up for discussion. In other words, the question was not introduced into this debate by Senators who questioned that power. I did not introduce it. My resolution then offered was modified, I believe, on the following day—it has been modified two or three times—but in every modification it has been restricted to an inquiry as to facts. But when it came up for consideration the next time, although it was confined strictly to facts, the Senator from Massachusetts [Mr. LODGE] offered an amendment, which again raised the question of power; and then when it came up again after that had been withdrawn and was modified the second or third time, on the 17th day of this month, the question of power was again raised by the amendment offered by the Senator from Kentucky [Mr. BLACKBURN].

So it is. We have had that question and have had debate on that proposition, but the proposition itself was not embodied in the resolution I offered and was not precipitated in this debate by anything I said, except only what was in answer to what had been said by others.

Mr. BACON. Of course, I do not want to misrepresent the Senator in any particular.

Mr. FORAKER. I am sure of that.

Mr. BACON. And I will accept the full statement of what he said as to the particular way in which the matter came before the Senate. But I do not think there can be any question of the fact that the Senator from Ohio has been recognized as the champion, and the very formidable champion, the untiring champion, of these soldiers who have been thus discharged, and that he has been, with the utmost earnestness, constantly insistent upon the fact that the President did not have the power, and that he had exceeded his power.

Mr. FORAKER. I have not changed my mind about it.

Mr. BACON. He has not changed his mind, and in that connection he demands the investigation.

Mr. FORAKER. Of the facts.

Mr. BACON. Now, it makes no difference, so far as this particular presentation is concerned, whether he is the first one who brought it in issue in this Chamber, but he has based his most powerful advocacy of the cause of these colored soldiers upon the proposition which I have stated, that the President did not have the power, and even if he had the power it had been abused, in meting out punishment both to the innocent and the guilty.

Mr. President, when in the course of this debate as the matter goes along there is gradually an evolution in which there is an attempt to separate those two questions, with this assault upon the act of the President, this denial of the right and of the propriety of his action, and there is an endeavor made to break the force of what there might be in an indorsement of the act of the President, and simply a direction for an investigation at the instance of those who deny the power, while I am not an advocate or defender of the President, I say it is an injustice to the President.

Mr. President, what makes the matter important to my mind, again disavowing any effort on my part to stand as the champion or defender of the President, even if I had the adequate power to do so, is that there has never been an incident connected with the American Army in time of peace which has so challenged the attention and awakened the interest of the American people as this particular incident and the questions that grows out of it. I am very frank to say that there is not a section of the country in which that interest is deeper than in the section of country which I have the honor in part here to represent. That section of the country is not inflamed, as the Senator from South Carolina would suggest, simply by the fact that this outrage was committed by negroes, and with hostility to the race, and for that reason, this attitude is assumed. The southern people have no such blind, unreasoning race hatred. It matters not whether they are white or black. The action was taken by a battalion of the United States Army, which was, as the President has denounced it, the most brutal act of savagery ever known to the American Army, and, I may say, the most brutal act of savagery ever known to the United States by any band of people legally organized together.

Mr. TILLMAN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from South Carolina?

Mr. BACON. I do.

Mr. TILLMAN. The Senator, I know, does not want to misrepresent me. I did not say, because I have never thought it, that the attitude of the South toward the discharge of the negro soldiers was due to hatred of the race, but due to hatred of negro soldiers as negro soldiers because of the infamies perpetrated by them upon the southern people in 1866 and 1867.

Mr. BACON. I will accept the Senator's direct statement, in his own words. I say that is an injustice, and it matters not whether these men are white or black. I am frank to say that in my opinion the southern people think it better that for good reasons there should be no negro soldiers, and in that view I personally concur; but that is not the reason of the attitude of the South relative to this action by the President. It is a matter, after what has occurred, of the supremest importance for the peace and security of the country and for the confidence of the country in the fact that they will not be subjected to such outrages, to know, as alone it can know by the utterance of the Senate after what has occurred here, that the power does rest in the President, and that whenever a proper man is in that office it will be exercised promptly, without a word and without hesitation, to rob such men of the power to commit such outrages in communities in which they may be stationed.

That is the thing which makes it important, Mr. President, that the Senate, after the denial of that power, after the controversy that has been had here, after the attention of the whole country has been attracted to it, that these negro soldiers and white soldiers, knowing that that question is in issue and in the balance, shall not permit to go forth the impression that, after

all, the Senate was in doubt and refused to say the President did right. For myself one principal objection that I had to the resolution of the Senator from Ohio was that it would deprive me of the opportunity to say to the country and to the Army that it was the opinion of the Senate that the President did have the power and had rightfully exercised it.

Mr. TILLMAN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from South Carolina?

Mr. BACON. I do.

Mr. TILLMAN. Does not the Senator think that it is of a great deal more importance that the people of the country should be made to understand that the law of the country, the civil law which deals with such crimes, shall not be interfered with by Executive orders, and that troops, black or white, who shoot up towns and murder citizens shall be subjected to those instrumentalities to detect the true criminals and punish them?

Mr. BACON. There are two questions in one, which I will answer. I think if the Senator from South Carolina or I had had the direction of those matters we might have pursued the course which would have more readily led to a detection of those who were guilty, and I wish to God they could be detected and could be hanged as high as Haman, as they ought to be, a spectacle and an example for all others who might so betray and abuse a trust as those soldiers did. But it does not end there.

Mr. President, in my opinion, if it could to-day be ascertained who these twenty men were, and if they could be hanged, as they should be, none the less would it be the duty of the President to say that the balance of these soldiers should no longer wear the uniform of the United States. Why? Because I myself have not the shadow of a doubt that every single enlisted man of those three companies knows who those guilty parties are, and any man who is familiar with the race characteristics will agree with me, I think, in greater or less degree as to the fact that there is not a man in either of these three companies who does not know who it is of his comrades who perpetrated this monstrous and unspeakable outrage of savage cruelty and brutality upon a peaceful community. And, Mr. President, if they know it, even though the guilty should have a greater punishment, they should no longer be allowed to wear the uniform of the Army, no not for one day or hour.

It is for that reason, Mr. President, and with that response that I think the Senator's suggestion does not controvene the propriety and correctness of the proposition which I make, that it is due to the country, that is is due to the future peace of the country, that it is due to the confidence which our people will have in troops stationed in their midst, that there should be an announcement in no uncertain terms by the Senate, after all this controversy and after all the attention which has been drawn to it, and after the direct challenge which has been made to the power, that, in the opinion of the Senate, the President had the power and properly exercised it.

I am glad of the opportunity, which I feared had been lost when it appeared we were going to vote simply upon the modified resolution of the Senator from Ohio, now presented for me to vote directly on that question. I wish Senators would have the nerve to let us vote on the question and not move to lay it on the table. Let us vote on it direct. Is it true that the President had the power and that he properly exercised it? If so, like men let us say so and not evade it and get under the cover of a motion to lay on the table.

If the motion of the Senator from Ohio to lay on the table is pressed, I hope it will be voted down, even by those who propose to vote against the substitute offered by the Senator from Florida, in order that unflinchingly we may face our duty and say to the American people and say to the American Army—for the future confidence and security of the public, on the one hand, and for the admonition and guidance of the Army, on the other—whether we believe that the President under such circumstances has the power under the law to discharge summarily, and whether under such circumstances as this he has properly exercised it.

Mr. FORAKER. I ask that my motion to lay on the table may be put.

The VICE-PRESIDENT. The Senator from Ohio moves to lay the amendment of the Senator from Florida [Mr. MALLORY] on the table.

Mr. MALLORY. On that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. TILLMAN. I ask that the resolution may be read again.

The VICE-PRESIDENT. The Secretary will again read the amendment, at the request of the Senator from South Carolina.

The SECRETARY. It is proposed to insert as a substitute for the resolution offered by the Senator from Ohio the following:

Resolved, That in the judgment of the Senate the recent action of the President in discharging without honor enlisted men of Companies B, C, and D of the Twenty-fifth Infantry was within the scope of his authority and power and a proper exercise thereof.

Resolved further, That the Committee on Military Affairs is hereby authorized and directed, by subcommittee or otherwise, to take and have printed testimony for the purpose of ascertaining all the facts with reference to or connected with the recent attack on the town of Brownsville, Tex., on the night of August 13–14, 1906. Said committee is authorized to send for persons and papers, to administer oaths, to sit during the sessions of the Senate, and, if deemed advisable, at Brownsville or elsewhere; the expenses to be paid from the contingent fund of the Senate.

The VICE-PRESIDENT. The Secretary will call the roll on the motion of the Senator from Ohio to lay the amendment of the Senator from Florida on the table.

The Secretary proceeded to call the roll.

Mr. ALDRICH (when Mr. ALLISON'S name was called). The Senator from Iowa [Mr. ALLISON] is necessarily detained from the Chamber. He requested me to announce his pair with the Senator from Alabama [Mr. MORGAN].

Mr. CULLOM (when his name was called). I have a general pair with the junior Senator from Virginia [Mr. MARTIN]. I transfer that pair to the junior Senator from Iowa [Mr. DOLLIVER], and will vote. I vote "yea."

Mr. SPOONER (when Mr. ELKINS'S name was called). The Senator from West Virginia [Mr. ELKINS] is required by a lawsuit in which he is involved to be absent from the Chamber, and requested me to announce that he is necessarily absent. He is paired with the Senator from Texas [Mr. BAILEY].

Mr. HANSBROUGH (when his name was called). I am paired with the senior Senator from Virginia [Mr. DANIEL], and I withhold my vote.

Mr. KITTREDGE (when his name was called). I have a general pair with the junior Senator from Colorado [Mr. PATTERSON]. If he were present, I should vote "yea."

Mr. MCENERY (when his name was called). I am paired with the junior Senator from New York [Mr. DEPEW]. If he were present, I should vote "nay."

Mr. MALLORY (when his name was called). I have a general pair with the senior Senator from Vermont [Mr. PROCTOR], who is not present. If he were present, I should vote "nay."

Mr. PETTUS (when Mr. MORGAN'S name was called). My colleague [Mr. MORGAN] is paired with the senior Senator from Iowa [Mr. ALLISON].

Mr. TALIAFERRO (when his name was called). I have a general pair with the junior Senator from West Virginia [Mr. SCOTT]. He is not on the floor, and I withhold my vote. If he were present, I should vote "nay."

The roll call was concluded.

Mr. KITTREDGE. By agreement I transfer my pair with the junior Senator from Colorado [Mr. PATTERSON] to the junior Senator from New Jersey [Mr. DRYDEN], and will vote. I vote "yea."

Mr. MALLORY. I transfer my pair with the Senator from Vermont [Mr. PROCTOR] to the Senator from Mississippi [Mr. MCLAURIN], who, I understand, is not paired. I vote "nay."

Mr. ALDRICH. I have been requested to announce that the senior Senator from New York [Mr. PLATT] is paired with the Senator from Oregon [Mr. GEARIN].

The result was announced—yeas 43, nays 22, as follows:

YEAS—43.

Aldrich	Clapp	Gallinger	Nelson
Alger	Clark, Wyo.	Hale	Nixon
Allee	Crane	Hansbrough	Perkins
Ankeny	Cullom	Hemenway	Piles
Benson	Dick	Heyburn	Smoot
Brandegee	Dillingham	Hopkins	Spooner
Bulkeley	Du Pont	Kean	Sutherland
Burkett	Flint	Kittredge	Teller
Burnham	Foraker	Knox	Tillman
Burrows	Frye	Lodge	Warren
Carter	Fulton	Long	

NAYS—22.

Bacon	Dubois	McCumber	Simmons
Berry	Foster	Mallory	Stone
Carmack	Frazier	Money	Warner
Clarke, Ark.	La Follette	Overman	Whyte
Clay	Latimer	Pettus	
Culberson	McCreary	Rayner	

NOT VOTING—25.

Allison	Dolliver	Martin	Proctor
Bailey	Dryden	Millard	Scott
Beveridge	Elkins	Morgan	Taliaferr
Blackburn	Gamble	Newlands	Wetmore
Clark, Mont.	Gearin	Patterson	
Daniel	McEnery	Penrose	
Depew	McLaurin	Platt	

So Mr. MALLORY'S substitute was laid on the table.

Mr. FORAKER. I ask now for a vote on the main resolution.

Mr. MCCUMBER. Mr. President, I wish to say just one word before voting upon the main proposition, and to introduce a resolution, as a substitute, which I think more nearly conforms to the views that have been expressed on the floor.

In the first instance, I desire to say that I believe that with pen and paper I can generally make that paper reflect my own ideas and what I want to do in the matter of a resolution. If I want a resolution to say that I shall investigate a matter for a certain purpose I will be able to make that resolution declare the purpose for which the investigation is to be made; and if I intend that the investigation shall exclude some other purpose I will be able to so word the resolution that it will clearly exclude the thing I do not wish to have considered.

If I was going to do that I certainly would adopt a form of words which everyone must admit has practically, in the general use of the words, but one meaning. If I say to a Senator that I question his authority to act in a given way, he understands and I understand that that means that I have doubts about his authority; that I doubt it. If I say I do not question it, then it means that I have no doubt as to what was his authority. If I state in a resolution for an investigation of this matter that without questioning the authority of the President we direct that an investigation be made, that carries exactly the opposite meaning that it would carry if I said "questioning the authority of the President," which would mean doubting his authority we would direct the investigation.

Mr. President, as has been stated, and as I would at least draw the inference from the statement of the Senator from Ohio, he wants an investigation not for the purpose of determining whether or not the President has acted within his legal authority, not for the purpose of determining whether or not that action has been absolutely just, but for the purpose of ascertaining whether or not men connected with this division of the Army were guilty; and that is not all; not only for that purpose, but for the further purpose of ascertaining whether or not other than these twenty men were guilty.

There can be but one purpose in this investigation, and that is, first, to determine who are guilty and ought to be punished; second, to determine who are not guilty and therefore ought not to endure the punishment they are now suffering. If that is the object of the resolution, why not embody that object; and if, in addition to that, we want to eliminate the entire question of the authority of the President in the premises, so that we will not put ourselves on record one way or the other, either in affirming the fact that he has acted within his legal authority or by denying the fact of it, why not say so in so many words?

Mr. President, with that in view, and with the idea that we were not attempting to juggle with words in the matter of this investigation in order to make us all agree upon some point, I have prepared a further resolution. I do not think, as I stated before, that this matter is so important above all matters that we need to go outside of our regular use of language and adopt some character of questionable diplomacy to get all Senators to vote for the resolution, some understanding it one way, some understanding it another way, or assuming that it is to be understood in another way, when we all agree practically that it has but one meaning.

I believe, Mr. President, that after we have cast a vote upon this matter and have had our investigation, the good sense of the people of the United States will be such that none of them will be fooled in the slightest degree by the language we have used, and afterwards we will resume our normal condition in the Senate, as that normal condition exists even to-day in the country. I for one will not attempt in any way to support a resolution designed to carry a meaning other than that which its words clearly imply.

Now, I ask for the reading of the resolution as a substitute. If the Senator from Ohio thinks it does not conform to his view, he can so state. He moved to lay upon the table a resolution that less nearly conforms to just exactly the opposite of his views than this one or any other one. Why? Because the resolution of the Senator from Florida simply asserted the legal right of the President to so act. The resolution which has been adopted here by a few of the Senators not only asserts that the President acted legally, but it asserts that his act was a just act as well, without questioning either the legality or the justice of his act. Therefore you admit not only that his act was legal, but also that in discharging all the soldiers guilty and innocent alike his act was also just.

I am not willing to go that far. I admit that the President of the United States probably could not have done otherwise than he did. He had before him a condition. The condition was that an investigation was made by the Army and it was without success. The matter was brought before the local authorities there. No indictments were found. He either had to continue those soldiers in the Army or dismiss them, waiting until some time in the future possibly he might get at the truth of the matter and then reinstate those against whom an injustice might have been done. From the arguments which have been given here it is certain that no two Senators would have done exactly the same under the conditions that confronted the President at that time.

It is not surprising, therefore, that the President of the United States would not have done what any one of the Senators would have done under like conditions. On my own part I think he acted honestly and justly, within his legal authority; but I do think that an injustice has been done to at least 137 or 147, or whatever the number may be, out of the entire battalion. I would rather not say in the resolution that no injustice has been done.

With that statement, Mr. President, I simply ask for the reading of the resolution I offer as a substitute, and then if the Senate desires to lay it upon the table they can do so, and I will vote for the other resolution, because I believe clearly that the President acted within his legal authority. I want an investigation not so much to establish the guilt as to prove the innocence of those who I believe are suffering for an offense that they are not responsible for in any way whatever.

Mr. BLACKBURN. Before the Senator takes his seat will he allow me a moment?

Mr. McCUMBER. Certainly.

Mr. BLACKBURN. Apprehensive that a motion may be made to table the resolution the Senator offers, I simply want to say that on yesterday I announced to the Senate my entire satisfaction with the resolution as offered in its latest form by the Senator from Ohio. I stand to that declaration now; and however much any proposed substitute now offered may commend itself to my judgment, I will not depart from the announcement I made on yesterday of my perfect satisfaction with the resolution now pending. I shall stand by it, and my votes will be understood in the light of this declaration.

Mr. McCUMBER. I certainly believe, Mr. President, that any Senator who believes that the President of the United States has acted within his authority and further believes that he has acted justly in this matter can conscientiously vote for the resolution in the form that it was presented here as a substitute yesterday.

Mr. FORAKER. Mr. President——

Mr. ALDRICH. Let the proposed substitute be read.

Mr. McCUMBER. I ask for the reading of the resolution I have offered as a substitute.

Mr. FORAKER. I will withhold the motion for that purpose.

The VICE-PRESIDENT. The Secretary will read the substitute proposed by the Senator from North Dakota.

The Secretary read Mr. McCUMBER's substitute, as follows:

Resolved, That for the purpose of ascertaining what enlisted men or officers of Companies B, C, and D, Twenty-fifth United States Infantry, were engaged in the affray at Brownsville, Tex., on the night of August 13, 1906, or were accessories thereto, either before or after the fact, and also for the purpose of ascertaining what enlisted men or officers thereof were not implicated therein, either by overt act, assistance, negligence, or suppression of knowledge or information relating thereto, and wholly independent of the question as to whether the President of the United States acted within the scope of his constitutional and legal authority in discharging members of said companies, the Committee on Military Affairs be, and hereby is, authorized to make inquiry and to take testimony in regard to said affray, and that it be, and hereby is, authorized to send for persons and papers and administer oaths, and report thereon by bill or otherwise.

The committee or any subcommittee thereof is further authorized, if deemed necessary, to visit Brownsville, Tex., inspect the locality of the recent disturbance, and examine witnesses there.

Mr. FORAKER. I move to lay the substitute on the table.

The VICE-PRESIDENT. The Senator from Ohio moves to lay the proposed substitute upon the table.

Mr. HEYBURN. I ask the Senator from Ohio to withhold his motion for a moment.

Mr. FORAKER. I will withhold it for a moment.

Mr. HEYBURN. I desire to take this occasion, Mr. President, to state my position in regard to this and the other pending resolutions. I think the Senator from North Dakota certainly has accomplished that which he says he professes to be able to accomplish, by stating in an affirmative manner the things that the committee proposes to do. But I do not think—I have not at any time thought—that I would support any resolution that undertook to inquire or promised not to inquire in affirmative terms into the action of the President of the United States. Ever since this discussion began I have been interested more in considering the question of the power of the Senate than I have in considering the question of the power of the President. I was convinced early that we had absolutely no power to investigate, to criticise, or to approve or disapprove the act of the President when that act was a completed act, and my opinion on that matter has not been changed. It would not be appropriate that we should, merely for the purpose of complimenting the President upon his action, indorse it. It is not appropriate that we shall take up official acts of the President to pass upon them either affirmatively or negatively,

except that in doing so we are performing some legitimate function of this body.

I therefore was satisfied with the resolution as it stood upon adjournment on last Friday, which eliminated that question, and would have been justifiable upon the ground that either branch of Congress may and should at all times inquire, through methods determined upon, into any condition of facts that may be useful for consideration in future legislation in regard to the subject of the inquiry. We may want to inquire in the future, near or distant, whether or not the Articles of War should be amended in order to meet such emergencies; but we can not, by any act of ours, undo or modify the completed act of the President.

Therefore I have objected and shall be compelled to express that objection by my vote to the words "without questioning the legality or justice of any act of the President in relation thereto." The words "without questioning" are equivalent to waiving our right to question. That is the synonym given by the authorities. It is the recognized synonym for that word. It is equivalent to waiving our right to question. We have no right to waive; there is nothing to waive. It carries with it the implication that we have a right, if we should see fit to exercise it, and I can not concede that.

So I say that my vote will be governed more by the consideration of the powers of the Senate than by the consideration of the powers of the President. I shall not vote upon the powers of the President nor upon the question whether he has exercised them wisely or unwisely. I shall not vote upon the question as to whether or not he has exceeded his authority, no matter in what shape it may be presented in a resolution.

If this incident is of sufficient importance as to promise profitable results from an investigation of those occurrences for our future use, to have on hand, if I may use the expression, in the event that we should take up the consideration of the question of a revision of the Articles of War or military law, well and good; let us investigate; but if it is for the purpose, directly or indirectly, or by implication or otherwise, of criticising the President, then I shall vote against all resolutions. I shall be compelled to vote against any resolution that would intimate that we had a right to inquire into this matter at all or that we needed to do it.

Mr. FORAKER. I move to lay the proposed substitute on the table.

Mr. STONE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Missouri?

Mr. FORAKER. I will withhold the motion if the Senator desires.

Mr. STONE. Yes; I do. Mr. President, I think it very clear that under the programme manifestly agreed upon the substitute proposed by the Senator from North Dakota [Mr. MCCUMBER] will be tabled, and that the reconstructed resolution offered by the Senator from Ohio [Mr. FORAKER] will be adopted. For my purpose, I accept that situation.

I desire to say a word, Mr. President—and I will only occupy the time of the Senate a very few moments—about the compromise resolution before it is finally adopted. But, before doing that, I wish in passing to advert for a moment to that part of the speech made on yesterday by the Senator from South Carolina [Mr. TILLMAN], which he has eliminated from the RECORD. I do this that I may say in the open Senate that, although I am as sensitive as most men, I did not feel offended at what that Senator said of me. Without assuming to pass on the merits of the Senator's composition or the timeliness of his utterance, I regarded what he said as an effort at facetiousness and good-natured humor. I was not offended, because I was sure no offense was intended. I venture to say, Mr. President, that except for the gravity with which the Senate treated the incident no importance would have been attached to the Senator's deliverance. The solemnity of the Senate's action gave to a trivial circumstance its only dignity. I could not have congratulated the Senator perhaps for making such a speech in this presence, but having made it, I do regret that it has been withheld from the RECORD—and this I say, despite the opinions to the contrary of our elder statesmen, whose judgment on Senatorial proprieties I regard, as in duty bound, with deference. There is an old saying that

> A little nonsense now and then
> Is relished by the wisest men.

I am not sure that I have the quotation exactly right, but it is near enough right to answer the purpose.

Mr. CLAPP. "By the best of men."

Mr. STONE. My friend from Minnesota suggests that the quotation should be "best of men" instead of "wisest."

Mr. CLAPP. "Best" is the proper word.

Mr. STONE. Of course the proprieties of debate should be observed and the business of the Senate orderly conducted, but I should hate to see the CONGRESSIONAL RECORD converted into a ponderous tome of platitudes without a sparkle of fun or flash of humor to relieve its dull monotony. If ever it is to be read by anybody except some patient digger after serious data, there must be something in it to tempt the lips into smiling or the heart into quicker beating. Although the first effort of the Senator from South Carolina to be humorous was not a shining success [laughter], I can not but hope that he will abandon his announced resolution never to try it again. That first effort created such a stir in the Senate and in the world that there is no telling what he might accomplish with patient practice and a little softening of his tone. No one can measure the possibilities of the Senator in this direction. [Laughter.] If he adheres to his resolution to quit, who can tell what a light the Senator from Tennessee [Mr. CARMACK] and the Senate snuffed out on yesterday; a light, it may be, that would have warmed the world into laughing if only it had been permitted to burn. I devoutly hope the Senator from South Carolina will reconsider his resolution, and again and again illuminate the RECORD with the scintillations of his wit. If he does not, there is no telling how deep the grievance may be which posterity may justly hold against this Senate. With this hope and invocation, Mr. President, I leave this weighty matter with the Senator from South Carolina.

Mr. President, a word now, and only a word, about this newly constructed resolution. It is manifestly a compromise between the warring factions on the other side of this Chamber. When I addressed the Senate several days ago I predicted that their differences would be adjusted and a compromise resolution agreed upon. This eventuation should establish my claim to prophesy. The Senator from Ohio, speaking for the "antis," and the Senator from Massachusetts, speaking for the President, have shaken hands across the bloody chasm, and the cohorts of both are at peace. But, Mr. President, although everybody is agreed, we know that nobody is satisfied. It is a drawn battle. But then, Mr. President, our friends over there are at peace. Watching and waiting with muffled daggers, they are at peace; but with the next gale that blows from the White House we may again hear the clash of resounding arms. Happily this investigation is to go on, and the end is not yet. I am for the investigation, Mr. President, wholly, as a matter of course, from disinterested, unselfish, and purely public considerations; but while I shall cheerfully vote for the resolution, I desire to say that I for one do question the legality but not the justice of the President's act in disbanding the battalion in question as he did. I shall vote for the resolution, but I wish now in advance to avow that in doing so I do not commit myself to the proposition that the President, in all respects, acted within the limits of his constitutional and legal powers. I do not think he did. At the same time I think it perfectly clear that the Senate can not revise or modify, much less revoke, the orders or acts of the President, and this is true whether the orders or acts of the President were legal or illegal. But the Senate has an undoubted right to make this investigation for its own information and for its own purposes. This much I desired to say, Mr. President, and no more.

Mr. FORAKER. I move to lay the substitute offered by the Senator from North Dakota [Mr. MCCUMBER] on the table, and on that I ask for a vote.

The VICE-PRESIDENT. The Senator from Ohio moves to lay the proposed substitute offered by the Senator from North Dakota on the table.

The motion was agreed to.

The VICE-PRESIDENT. The question recurs on the adoption of the resolution offered by the Senator from Ohio [Mr. FORAKER].

Mr. CULBERSON. Mr. President, notwithstanding the lateness of the hour, I feel it my duty to offer a substitute for the resolution which has been agreed upon by certain Senators on the other side of the Chamber. I will read the proposed substitute:

Resolved, That in the judgment of the Senate the President was authorized by law and justified by the facts in discharging without honor, with only the legal consequences incident to such discharges under existing law and Army regulations, the enlisted men of Companies B, C, and D, Twenty-fifth United States Infantry, on account of occurrences at Brownsville, Tex., on the night of August 13–14, 1906, and subsequently.

Mr. President, it will be remembered by perhaps all Senators present that for several days prior to the meeting of the Congress it was suggested in the newspapers of this city that the Senator from Ohio [Mr. FORAKER] intended to offer in this body a resolution of inquiry questioning and attacking the discharge of this battalion of infantry by the President. Notwithstanding

that publication and the apparent foundation for it, on the first day of the session of the Senate, December 3, the Senator from Pennsylvania [Mr. PENROSE], with manifest haste, proposed a resolution of inquiry on the subject. We were informed by the press that it was done on the part of the Administration, so that whatever inquiry was made with reference to this transaction should be made by the friends of the President.

On the same day, December 3, but subsequently, the Senator from Ohio [Mr. FORAKER] offered his resolution of inquiry. It was modified on December 4 and modified again on December 5. On December 5 the Senator from Wyoming [Mr. WARREN], chairman of the Committee on Military Affairs, also offered a resolution on the same subject, and on the 6th day of December the Senator from Ohio, from his place in this Chamber, not only attacked the validity of the act of the President, but the sufficiency of the testimony upon which it was based. I read from the RECORD, on page 105:

The broader question is one of constitutional right—

Said the Senator from Ohio—

The broader question is one of constitutional right. The President does have power, as the Secretary of War says in the statement published in the papers this morning, to grant discharges without honor in contradistinction to discharges that are dishonorable and to discharges that are honorable. But running through all authority, and necessarily so because of the spirit of our institutions as well as the letter of the law, is this rule, that no such discharge can be granted by any order, from the President down, when it rests upon a conviction of a felony punishable with imprisonment in the penitentiary under the laws of the United States and when as a result of such discharge punishment is inflicted as though it had been in pursuance of the sentence of a court-martial.

Whenever it comes to the point where men are charged with the commission of a criminal act they are entitled to a trial before they are condemned, and they have that right, although they may be enlisted men in the Army of the United States. They have it under our constitutional guaranties, and they have it according to the letter of the statute that is applicable. I shall point out, when the proper time comes, that the Congress of the United States has been careful, in enacting the Articles of War and other statutes for the government and regulation of the Army, to provide that there shall be no conviction of any enlisted man of any offense upon which a discharge can be predicated until he has had a trial before a court-martial or some other duly constituted tribunal.

So we have, Mr. President, the friends of the Administration in this Chamber seeking at the outset to take charge of this inquiry in preference to the Senator from Ohio, who announced that the President acted upon testimony insufficient and flimsy and in violation of the Constitution of the United States.

Now, what else? On December 19 the Senator from Ohio modified his resolution, or rather submitted another one. On December 20 he modified his last resolution, and on the 3d of January, Mr. President, when the Senate reconvened after the holiday recess, the Senator from Massachusetts [Mr. LODGE], representing the President, sought to ingraft an amendment upon the resolution of the Senator from Ohio by inserting, after the word "discharge," the words:

By the President of the United States in the exercise of his constitutional and legal authority as Commander in Chief.

There we see the race between the leading opponent of the Administration on this subject and, as we have been told, the best friend of the President in the Senate. Not only that, Mr. President, but the Senator from Massachusetts, as I have shown, insisted upon an amendment which would justify the legal position of the President.

Without following in detail the various resolutions and amendments further, I invite the attention of the Senate to the fact that subsequently the Senator from Massachusetts withdrew his amendment, retreated from his position of expressly justifying the President under the law, and the Senator from Ohio introduced still another resolution, which went further than his original one, further in that all the other resolutions authorized the committee to make this inquiry, whereas this one on the part of the Senator from Ohio not only authorized but directed the committee to make the inquiry, taking away their discretion.

What does all this signify? At the outset the friends of the Administration assumed charge of the inquiry. Later the Senator from Massachusetts, the personal friend of the President, sought by amendment to justify his act as to the law. Then this was abandoned and the resolution of the Senator from Ohio was made wide-reaching both as to law and as to fact.

More than that, Mr. President. Instead of taking charge of the inquiry, instead of justifying the legal position of the President, the forces of the Administration in this Chamber have surrendered on the law and permitted the inquiry to pass under the absolute control of those who are leading the fight against this act of the President.

Then came the amendment suggested and proposed by the Senator from Kentucky [Mr. BLACKBURN], which in itself was an advance, it is true, but the merit of which has been largely subtracted from by the absence of the words "or denying."

Now, what we propose, at least what I propose, though I be the only Senator who will vote for it, is, after the full discussion of the constitutional and legal powers of the President, after the full and exhaustive inquiry into the facts, and after that authority has been challenged and the propriety of the act has been questioned, to pass the substitute resolution justifying the act in law and sustaining the act under the facts.

Mr. President, only a word more, because I recognize in a degree the impropriety of speaking at this hour. The Senator from Colorado [Mr. TELLER] has suggested that we want the testimony. There was an inquiry by Major Blocksom. There was an inquiry by the grand jury of Cameron County. There was an inquiry by General Garlington. There has been a subsequent inquiry by the Department of Justice. There has been an inquiry exhaustive and lengthy by the friends of these soldiers—the Constitutional League of the State of New York. Every person in Brownsville or contiguous thereto who knows anything about the facts in this case, every officer, whether commissioned or noncommissioned, and every private soldier stationed at Brownsville has either made a statement or made an affidavit in this case.

Let me call attention to the fact that under Major Blocksom's report the affidavits of the noncommissioned officers were taken as well as the statements of the five commissioned officers. Under Colonel Lovering's report, which I had almost forgotten, first, there was the sworn testimony of the commissioned officers; second, the sworn testimony of the soldiers, running from page 114 to 163, inclusive, and third, the affidavits of the soldiers, from page 163 to page 174, inclusive, as shown in the Senate document. Under General Garlington's report, first, the accused soldiers who were under arrest were carefully examined at Fort Sam Houston, Tex.; second, many of the men were examined at Fort Reno, and third, all of the officers and enlisted men of the battalion were paraded at Fort Reno and asked to make statements. As taken by the Constitution League of the State of New York, what testimony is here on the part of these soldiers? The affidavit of every soldier connected with this battalion at Fort Brown will be found from pages 222 to 234, inclusive, of Document 155, published by the Senate.

So, recapitulating somewhat what I have said, we have the testimony of the commissioned officers; we have the testimony of the noncommissioned officers; we have the testimony of every private soldier; we have the testimony of every citizen in and about the city of Brownsville who knows anything in the world about this question.

I have here, Mr. President, a telegram from Capt. William Kelly, of Brownsville, which I will read. He was the chairman of the citizens' committee of that city, is a Republican, and was an officer on the Union side in the civil war. It is directed to me from Brownsville, Tex., and dated January 15, 1907:

Our people believe no additional facts obtainable by further investigation. Purdy exhausted every clew.

WILLIAM KELLY,
Chairman of Committee.

For these reasons, Mr. President, which I have hurriedly presented, I feel it my duty to offer the substitute in lieu of the resolution offered by the Senator from Ohio, so that this incident, so far as the Senate and the discharge of these soldiers are concerned, will be closed. It will not be closed so far as the soldiers are concerned, because the President has declared that it is open to any man to show that he is not guilty either of participation in this crime or of having knowledge of the guilty parties, and that when such a showing is made to him he will permit a reenlistment under the law.

The VICE-PRESIDENT. The Secretary will read the substitute offered by the Senator from Texas [Mr. CULBERSON].

The Secretary read as follows:

Resolved, That in the judgment of the Senate the President was authorized by law and justified by the facts in discharging without honor, with only the legal consequences incident to such discharges under existing law and Army regulations, the enlisted men of Companies B, C, and D, Twenty-fifth United States Infantry, on account of occurrence at Brownsville, Tex., on the night of August 13–14, 1906, and subsequently.

Mr. FORAKER. I move to lay the substitute on the table.

Mr. BACON. On that I ask for the yeas and nays.

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

Mr. CULLOM (when his name was called). I have a general pair with the junior Senator from Virginia [Mr. MARTIN]. I have transferred the pair to the Senator from Iowa [Mr. DOLLIVER] and will vote. I vote "yea."

Mr. KITTREDGE (when his name was called). I have a general pair with the junior Senator from Colorado [Mr. PATTER-

SON], which has been transferred to the junior Senator from New Jersey [Mr. DRYDEN], and I will vote. I vote "yea."

Mr. MALLORY (when his name was called). I am paired with the senior Senator from Vermont [Mr. PROCTOR]. I transfer the pair to the Senator from Arkansas [Mr. BERRY], and will vote. I vote "nay."

Mr. PETTUS (when Mr. MORGAN'S name was called). The senior Senator from Alabama is paired with the senior Senator from Iowa [Mr. ALLISON].

Mr. TALIAFERRO (when his name was called). I am paired with the junior Senator from West Virginia [Mr. SCOTT]. I transfer the pair to the Senator from Oregon [Mr. GEARIN], and will vote. I vote "nay."

Mr. WHYTE (when his name was called). I am paired with the junior Senator from Michigan [Mr. ALGER]. I understand there has been a transfer of the pair, and I will vote. I vote "nay."

The roll call was concluded.

Mr. CARMACK. I have been authorized to announce that the Senator from Nevada [Mr. NEWLANDS] is paired with the Senator from South Dakota [Mr. GAMBLE].

The result was announced—yeas 46, nays 19, as follows:

YEAS—46.

Aldrich	Clark, Wyo.	Hale	Nelson
Allee	Crane	Hemenway	Nixon
Ankeny	Cullom	Heyburn	Perkins
Benson	Daniel	Hopkins	Piles
Blackburn	Dick	Kean	Smoot
Brandegee	Dillingham	Kittredge	Spooner
Bulkeley	Du Pont	Knox	Sutherland
Burkett	Flint	La Follette	Tillman
Burnham	Foraker	Lodge	Warner
Burrows	Frye	Long	Warren
Carter	Fulton	McCumber	
Clapp	Gallinger	Millard	

NAYS—19.

Bacon	Dubois	Mallory	Simmons
Carmack	Foster	Money	Stone
Clarke, Ark.	Frazier	Overman	Taliaferro
Clay	Latimer	Pettus	Whyte
Culberson	McCreary	Rayner	

NOT VOTING—25.

Alger	Dolliver	McLaurin	Proctor
Allison	Dryden	Martin	Scott
Bailey	Elkins	Morgan	Teller
Berry	Gamble	Newlands	Wetmore
Beveridge	Gearin	Patterson	
Clark, Mont.	Hansbrough	Penrose	
Depew	McEnery	Platt	

So Mr. CULBERSON'S substitute was laid on the table.

The VICE-PRESIDENT. The question is on agreeing to the resolution of the Senator from Ohio [Mr. FORAKER].

Mr. FORAKER. I move that the resolution, under the rule, be referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

The motion was agreed to.

Mr. KEAN. By the Committee to Audit and Control the Contingent Expenses of the Senate I am directed to report the resolution favorably, and I ask unanimous consent for its present consideration.

The resolution was considered by unanimous consent, and agreed to.

LEGISLATIVE, ETC., APPROPRIATION BILL.

Mr. CULLOM. I desire to give notice that to-morrow morning, after the routine morning business, I shall call up the legislative, executive, and judicial appropriation bill, so called, in which is the item concerning the pay of Representatives and Senators.

The VICE-PRESIDENT. Notice will be entered.

EXECUTIVE SESSION.

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

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After ten minutes spent in executive session the doors were reopened, and (at 6 o'clock p. m.) the Senate adjourned until to-morrow, Wednesday, January 23, 1907, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate January 22, 1907.

APPOINTMENT IN THE REVENUE-CUTTER SERVICE.

William C. Besselievre, jr., of Massachusetts, to be constructor in the Revenue-Cutter Service of the United States.

MARSHAL.

M. Hubert O'Brien, of Michigan, to be marshal of the United States court for China, vice Orvice R. Leonard, resigned.

PROMOTION IN THE NAVY.

Lieut. Henry B. Price to be a lieutenant-commander in the Navy from the 1st day of January, 1907, to fill a vacancy created in that grade by the act of Congress approved March 3, 1903.

RECEIVER OF PUBLIC MONEYS.

Alfred C. Steinman, of Ellensburg, Wash., to be receiver of public moneys at North Yakima, Wash., vice Harry F. Nichols, deceased.

REGISTER OF LAND OFFICE.

Lee Fairbanks, of Colorado, to be register of the land office at Del Norte, Colo., to take effect March 3, 1907, at the expiration of his present term. (Reappointment.)

POSTMASTERS.

CALIFORNIA.

John W. Short to be postmaster at Fresno, in the county of Fresno and State of California, in place of John W. Short. Incumbent's commission expired December 20, 1906.

COLORADO.

George S. Mott to be postmaster at Telluride, in the county of San Miguel and State of Colorado, in place of George S. Mott. Incumbent's commission expired December 15, 1906.

DELAWARE.

Douglass C. Allee to be postmaster at Dover, in the county of Kent and State of Delaware, in place of Douglass C. Allee. Incumbent's commission expires March 16, 1907.

FLORIDA.

John H. Hibbard to be postmaster at De Land, in the county of Volusia and State of Florida, in place of John H. Hibbard. Incumbent's commission expires January 29, 1907.

William H. Northup to be postmaster at Pensacola, in the county of Escambia and State of Florida, in place of William H. Northup. Incumbent's commission expires February 19, 1907.

GEORGIA.

Henry C. Newman to be postmaster at Eastman, in the county of Dodge and State of Georgia, in place of William S. Waite. Incumbent's commission expired June 11, 1906.

ILLINOIS.

Adolph Fehrman to be postmaster at Pekin, in the county of Tazewell and State of Illinois, in place of Christian A. Kuhl. Incumbent's commission expired February 10, 1906.

Theodore A. Fritchey to be postmaster at Olney, in the county of Richland and State of Illinois, in place of Theodore A. Fritchey. Incumbent's commission expired February 13, 1906.

William A. Hardy to be postmaster at Springvalley, in the county of Bureau and State of Illinois, in place of Edward G. Thompson. Incumbent's commission expired March 14, 1906.

William C. Heining to be postmaster at Red Bud, in the county of Randolph and State of Illinois, in place of William C. Heining. Incumbent's commission expires February 3, 1907.

Andrew J. Pickrell to be postmaster at Anna, in the county of Union and State of Illinois, in place of Andrew J. Pickrell. Incumbent's commission expires February 9, 1907.

George C. Roberts to be postmaster at Greenview, in the county of Menard and State of Illinois, in place of George C. Roberts. Incumbent's commission expires January 23, 1907.

Charles Scofield to be postmaster at Marengo, in the county of McHenry and State of Illinois, in place of Charles Scofield. Incumbent's commission expires January 23, 1907.

Allen T. Spivey to be postmaster at Shawneetown, in the county of Gallatin and State of Illinois, in place of Henry M. Peebles. Incumbent's commission expires January 23, 1907.

Edwin L. Welton to be postmaster at Centralia, in the county of Marion and State of Illinois, in place of Edwin L. Welton. Incumbent's commission expires February 3, 1907.

IOWA.

Edward C. Brown to be postmaster at Dewitt, in the county of Clinton and State of Iowa, in place of Edward C. Brown. Incumbent's commission expires February 9, 1907.

Charles C. Burgess to be postmaster at Cresco, in the county of Howard and State of Iowa, in place of Charles C. Burgess. Incumbent's commission expires January 29, 1907.

Gilbert Cooley to be postmaster at Strawberry Point, in the county of Clayton and State of Iowa, in place of Gilbert Cooley. Incumbent's commission expired January 14, 1907.

John J. Heverly to be postmaster at Center Point, in the county of Linn and State of Iowa. Office became Presidential January 1, 1907.

Isaac Hossler to be postmaster at Battle Creek, in the county of Ida and State of Iowa, in place of Isaac Hossler. Incumbent's commission expired January 7, 1907.

Emery Westcott to be postmaster at Iowa City, in the county

of Johnson and State of Iowa, in place of Henry D. Overholt. Incumbent's commission expired January 7, 1907.

James E. Wheelock to be postmaster at Hartley, in the county of O'Brien and State of Iowa, in place of James E. Wheelock. Incumbent's commission expired December 15, 1906.

KANSAS.

James S. Alexander to be postmaster at Florence, in the county of Marion and State of Kansas, in place of James S. Alexander. Incumbent's commission expires February 3, 1907.

MARYLAND.

Sewell M. Moore to be postmaster at Cambridge, in the county of Dorchester and State of Maryland, in place of Sewell M. Moore. Incumbent's commission expires January 29, 1907.

MINNESOTA.

Alfred J. Gebhard to be postmaster at Lamberton, in the county of Redwood and State of Minnesota, in place of Alfred J. Gebhard. Incumbent's commission expired January 13, 1907.

Thomas T. Gronlund to be postmaster at Tyler, in the county of Lincoln and State of Minnesota, in place of Thomas T. Gronlund. Incumbent's commission expires March 2, 1907.

Dwight C. Pierce to be postmaster at Goodhue, in the county of Goodhue and State of Minnesota. Office became Presidential October 1, 1906.

MISSOURI.

John L. Schmitz to be postmaster at Chillicothe, in the county of Livingston and State of Missouri, in place of John L. Schmitz. Incumbent's commission expired January 13, 1907.

NEW JERSEY.

Thomas E. Hunt to be postmaster at Penn Grove, in the county of Salem and State of New Jersey, in place of Joseph D. Whitaker. Incumbent's commission expired December 9, 1906.

Adam Kandle to be postmaster at Elmer, in the county of Salem and State of New Jersey, in place of Adam Kandle. Incumbent's commission expired January 19, 1907.

NEW YORK.

Jay Farrier to be postmaster at Oneida, in the county of Madison and State of New York, in place of John J. Hodge. Incumbent's commission expires February 12, 1907.

Huet R. Root to be postmaster at De Ruyter, in the county of Madison and State of New York, in place of Henry P. Mitchell. Incumbent's commission expired January 7, 1907.

NORTH CAROLINA.

Thomas H. Dickens to be postmaster at Enfield, in the county of Halifax and State of North Carolina, in place of Elijah C. Shearin. Incumbent's commission expired December 20, 1906.

OHIO.

Erwin G. Chamberlin to be postmaster at Caldwell, in the county of Noble and State of Ohio, in place of Erwin G. Chamberlin. Incumbent's commission expired January 13, 1907.

Van R. Sprague to be postmaster at McArthur, in the county of Vinton and State of Ohio, in place of Van R. Sprague. Incumbent's commission expires February 12, 1907.

OKLAHOMA.

Joseph V. Martin to be postmaster at Lone Wolf, in the county of Kiowa and Territory of Oklahoma. Office became Presidential January 1, 1907.

John P. Richert to be postmaster at Gotebo, in the county of Kiowa and Territory of Oklahoma. Office became Presidential January 1, 1907.

OREGON.

George W. McQueen to be postmaster at Cottage Grove, in the county of Lane and State of Oregon, in place of Charles J. Howard, resigned.

PENNSYLVANIA.

William F. Brittain to be postmaster at Muncy, in the county of Lycoming and State of Pennsylvania, in place of William F. Brittain. Incumbent's commission expires February 5, 1907.

James S. Kennedy to be postmaster at Grove City, in the county of Mercer and State of Pennsylvania, in place of James S. Kennedy. Incumbent's commission expires March 2, 1907.

J. C. Lauffer to be postmaster at Portage, in the county of Cambria and State of Pennsylvania. Office became Presidential October 1, 1906.

William H. H. Lea to be postmaster at Carnegie, in the county of Allegheny and State of Pennsylvania, in place of William H. H. Lea. Incumbent's commission expires February 11, 1907.

Luther P. Ross to be postmaster at Saxton, in the county of Bedford and State of Pennsylvania, in place of Luther P. Ross. Incumbent's commission expires January 26, 1907.

George C. Wagenseller to be postmaster at Selinsgrove, in the county of Snyder and State of Pennsylvania, in place of George C. Wagenseller. Incumbent's commission expires January 26, 1907.

RHODE ISLAND.

Warren W. Logee to be postmaster at Pascoag, in the county of Providence and State of Rhode Island, in place of Warren W. Logee. Incumbent's commission expires January 26, 1907.

SOUTH CAROLINA.

Thomas B. McLaurin to be postmaster at Bennettsville, in the county of Marlboro and State of South Carolina, in place of Frank M. Emanuel. Incumbent's commission expired December 17, 1906.

TEXAS.

Isham H. Nelson to be postmaster at Snyder, in the county of Scurry and State of Texas, in place of Isham H. Nelson. Incumbent's commission expired January 20, 1907.

Laura M. Poe to be postmaster at Santa Anna, in the county of Coleman and State of Texas. Office became Presidential October 1, 1906.

Jacob J. Utts to be postmaster at Canton, in the county of Van Zandt and State of Texas. Office became Presidential January 1, 1907.

Wilber H. Webber to be postmaster at Lampasas, in the county of Lampasas and State of Texas, in place of Wilber H. Webber, Incumbent's commission expired January 20, 1907.

David M. Wilson to be postmaster at Bridgeport, in the county of Wise and State of Texas. Office became Presidential January 1, 1907.

WISCONSIN.

Alex Archie to be postmaster at Waterloo, in the county of Jefferson and State of Wisconsin, in place of Cornelius E. Donovan. Incumbent's commission expires February 4, 1907.

Ole Erickson to be postmaster at Grantsburg, in the county of Burnett and State of Wisconsin, in place of Ole Erickson. Incumbent's commission expired January 7, 1907.

John G. Gorth to be postmaster at Oconomowoc, in the county of Waukesha and State of Wisconsin, in place of John G. Gorth. Incumbent's commission expired June 30, 1906.

Fred R. Helmer to be postmaster at Clinton, in the county of Rock and State of Wisconsin, in place of William A. Mayhew. Incumbent's commission expired January 7, 1907.

John Vilberg to be postmaster at Mount Horeb, in the county of Dane and State of Wisconsin, in place of John Vilberg. Incumbent's commission expired January 7, 1907.

CONFIRMATIONS.

Executive nominations confirmed by the Senate January 22, 1907.

PROMOTIONS IN THE ARMY.

Corps of Engineers.

Lieut. Col. Clinton B. Sears, Corps of Engineers, to be colonel from January 11, 1907.

Maj. Curtis McD. Townsend, Corps of Engineers, to be lieutenant-colonel from January 1, 1907.

Capt. Charles Keller, Corps of Engineers, to be major from January 11, 1907.

First Lieut. Albert E. Waldron, Corps of Engineers, to be captain from January 11, 1907.

Second Lieut. De Witt C. Jones, Corps of Engineers, to be first lieutenant from January 11, 1907.

Cavalry Arm.

Second Lieut. Robert L. Collins, Second Cavalry, to be first lieutenant from October 2, 1906.

Infantry Arm.

First Lieut. Lawrence D. Cabell, Fourteenth Infantry, to be captain from January 9, 1907.

POSTMASTERS.

ARKANSAS.

Carl O. Freeman to be postmaster at Berryville, in the county of Carroll and State of Arkansas.

Alexander Jackson to be postmaster at Hoxie, in the county of Lawrence and State of Arkansas.

Robert C. Vance to be postmaster at Benton, in the county of Saline and State of Arkansas.

FLORIDA.

Edwin N. Bradley to be postmaster at Green Cove Springs, in the county of Clay and State of Florida.

Fred M. Taylor to be postmaster at Titusville, in the county of Brevard and State of Florida.

GEORGIA.

Halbert F. Brimberry to be postmaster at Albany, in the county of Dougherty and State of Georgia.

John B. Crawford to be postmaster at Cairo, in the county of Grady and State of Georgia.

Alamo B. Harp to be postmaster at Jackson, in the county of Butts and State of Georgia.

Christopher E. Head to be postmaster at Tallapoosa, in the county of Haralson and State of Georgia.

Frank P. Mitchell to be postmaster at Americus, in the county of Sumter and State of Georgia.

KENTUCKY.

Offa A. Stump to be postmaster at Pikeville, in the county of Pike and State of Kentucky.

NEW MEXICO.

James A. Duff to be postmaster at Farmington, in the county of San Juan and Territory of New Mexico.

NEW YORK.

Joseph A. Douglas to be postmaster at Babylon, in the county of Suffolk and State of New York.

Frank W. Higgins to be postmaster at Wellsville, in the county of Allegany and State of New York.

Charles C. Horton to be postmaster at Silver Creek, in the county of Chautauqua and State of New York.

Benjamin C. Moore to be postmaster at Pleasantville Station, in the county of Westchester and State of New York.

Robert Murray to be postmaster at Warrensburg, in the county of Warren and State of New York.

James L. Taylor to be postmaster at Dobbs Ferry, in the county of Westchester and State of New York.

Fred A. Upton to be postmaster at Charlotte, in the county of Monroe and State of New York.

OKLAHOMA.

Elmer E. Brown to be postmaster at Oklahoma, in the county of Oklahoma and Territory of Oklahoma.

PENNSYLVANIA.

John H. Bishop to be postmaster at Millersville, in the county of Lancaster and State of Pennsylvania.

Joseph M. Brothers to be postmaster at Knox, in the county of Clarion and State of Pennsylvania.

Joseph J. Delp to be postmaster at Windgap, in the county of Northampton and State of Pennsylvania.

Silas E. Dubbel to be postmaster at Waynesboro, in the county of Franklin and State of Pennsylvania.

Samuel H. Jackson to be postmaster at Claysville, in the county of Washington and State of Pennsylvania.

J. G. Lloyd to be postmaster at Ebensburg, in the county of Cambria and State of Pennsylvania.

John G. McCamant to be postmaster at Tyrone, in the county of Blair and State of Pennsylvania.

Charles A. Passmore to be postmaster at Gap, in the county of Lancaster and State of Pennsylvania.

William H. Pennell to be postmaster at Duncannon, in the county of Perry and State of Pennsylvania.

Thomas K. Pullin to be postmaster at Confluence, in the county of Somerset and State of Pennsylvania.

Rosella M. Russell to be postmaster at Glassport, in the county of Allegheny and State of Pennsylvania.

Robert B. Thompson to be postmaster at Freeport, in the county of Armstrong and State of Pennsylvania.

Sylvester B. Wollet to be postmaster at McConnellsburg, in the county of Fulton and State of Pennsylvania.

SOUTH CAROLINA.

James P. Bodie to be postmaster at Leesville, in the county of Lexington and State of South Carolina.

Levi S. Bowers to be postmaster at Prosperity, in the county of Newberry and State of South Carolina.

Benjamin H. Massey to be postmaster at Fort Mill, in the county of York and State of South Carolina.

TEXAS.

Carrie E. Hoke to be postmaster at Taylor, in the county of Williamson and State of Texas.

VIRGINIA.

Willard B. Alfred to be postmaster at Clarksville, in the county of Mecklenburg and State of Virginia.

Robert A. Anderson to be postmaster at Marion, in the county of Smyth and State of Virginia.

WEST VIRGINIA.

Fannie E. Helmick to be postmaster at Thomas, in the county of Tucker and State of West Virginia.

HOUSE OF REPRESENTATIVES.

TUESDAY, *January 22, 1907.*

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.

MRS. ALBERTA DE LARIO.

Mr. CASSEL. Mr. Speaker, I submit the following report from the Committee on Accounts.

The SPEAKER. The gentleman from Pennsylvania submits a privileged report, which will be read by the Clerk.

The Clerk read as follows:

Resolved, That the Clerk of the House is hereby authorized and directed to pay Mrs. Alberta De Lario, widow of Louis De Lario, deceased, late clerk of the Committee on Irrigation of Arid Lands, of the House of Representatives, a sum equal to six months' pay at the rate of compensation received by him at the time of his death, and a further sum, not exceeding $250, on account of the funeral expenses of said Louis De Lario, said amounts to be paid out of the contingent fund of the House.

The resolution was agreed to.

CLARA MORGAN.

Mr. CASSEL. I also submit the following.

The Clerk read as follows:

Resolved, That the Clerk of the House is hereby authorized and directed to pay, out of the contingent fund of the House, to Clara Morgan, granddaughter of James M. Kenney, deceased, late messenger in the office of the Sergeant-at-Arms of the House, a sum equal to six months' pay at the rate of compensation received by him at the time of his death, and a further sum, not exceeding $250, on account of the funeral expenses of said Kenney.

The resolution was agreed to.

MESSENGERS TO DISBURSING CLERK.

Mr. CASSEL. Also the following.

The Clerk read as follows:

Resolved, That from the date of their employment, and until otherwise provided for by law, there shall be paid out of the contingent fund of the House, for the services of two messengers in the offices of the disbursing clerks of the House, a sum equal to the rate of $900 each, payable monthly.

The resolution was agreed to.

NELLIE M. WAKEFIELD.

Mr. CASSEL, from the Committee on Accounts, also presented House resolution 599, which was read by the Clerk, as follows:

Resolved, That the Clerk of the House is hereby authorized and directed to pay, out of the contingent fund of the House, to Nellie M. Wakefield, the sum of $900, for services rendered as assistant to the docket clerk in tracing legislation and notifying Members of the House of the status and progress of legislation.

The resolution was agreed to.

EDWIN S. PIERCE.

Mr. CASSEL, from the Committee on Accounts, also presented House resolution 679, which was read by the Clerk, as follows:

Resolved, That there shall be paid, out of the contingent fund of the House, miscellaneous items, fiscal year 1907, payable in equal monthly installments, a sum equal to the rate of $500 per annum, as additional compensation to Edwin S. Pierce, as Deputy Sergeant-at-Arms of the House, until his salary, at the rate of $2,500 per annum, shall be otherwise provided for by law.

Mr. MANN. Mr. Speaker, I would like to know what this is.

Mr. CASSEL. This is an increase of $500 to the Deputy Sergeant-at-Arms, equalizing his salary with other employees of this character.

The resolution was agreed to.

On motion of Mr. CASSEL, 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 bill and joint resolution of the following title; when the Speaker signed the same:

H. R. 23114. An act extending to the subport of Bellingham, in the State of Washington, the privileges of the seventh section of the act approved June 10, 1880, governing the immediate transportation of dutiable merchandise without appraisement.

S. R. 13. Joint resolution authorizing the Secretary of War to award the Congressional medal of honor to Roe Reisinger.

DIPLOMATIC AND CONSULAR APPROPRIATION BILL.

Mr. COUSINS. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the diplomatic and consular appropriation bill.

Mr. WILLIAMS. Mr. Speaker, I would like to inquire if points of order have been reserved?

Mr. COUSINS. They have. Pending that motion, Mr.

Speaker, I wish to make a proposition for unanimous consent. I will ask if Mr. HOWARD, of Georgia, is present, and if not, I will inquire of Mr. FLOOD, of the minority of the committee, how much time is thought necessary for general debate on that side?

Mr. FLOOD. I think that Mr. HOWARD thought that an hour and a half would be ample.

Mr. COUSINS. Then, Mr. Speaker, I ask unanimous consent that general debate on this measure may be terminated in three hours, one-half of the time to be controlled by the leader of the minority of the committee on that side and one-half by myself.

The SPEAKER. Is there objection to the request of the gentleman from Iowa?

There was no objection.

The motion of Mr. COUSINS was then agreed to; accordingly the House resolved itself into Committee of the Whole House on the state of the Union for the consideration of the diplomatic and consular appropriation bill, with Mr. STERLING in the chair.

Mr. COUSINS. Mr. Chairman, I ask unanimous consent that the first reading of the bill be dispensed with.

The CHAIRMAN. The gentleman from Iowa asks unanimous consent to dispense with the first reading of the bill. Is there objection?

There was no objection.

Mr. COUSINS. Mr. Chairman, this measure proposed by the committee carries a total of $3,138,477, which is $67,816 less than the bill of last session and $146,000 less than the estimate. The occasion for the reduction in this measure below that of the former measure is largely represented in one item of that act. The fact that we purchased or provided for the purchase of the legation premises at Constantinople at the last session at a cost of $150,000 naturally makes the necessary appropriation this year less than that of last year. There are a few items of increase, however, proposed in this measure which I shall very briefly explain.

The most important matter of legislation is the proposed increase in salaries of certain ministers now receiving less than $10,000 a year. There are quite a number of these cases. There is a prevailing opinion in your committee, and I think in this House, that our diplomatic positions should not all be commanded by millionaires, and in order that representative citizens of the middle classes, coming from the people of the country, may be enabled to occupy these positions, it is necessary, as you will all agree, I think, that at least their expenses should be paid. In many of the legations at the present time the $7,500 salary is not sufficient to meet the expense. Your committee believe that men who are competent and worthy to represent this Government should not only have their expenses paid, but that they should receive at least a fair compensation for their time and services. Therefore your committee have agreed with the recommendation of the Secretary of State that these positions below $10,000 should go into the ten-thousand class. At present we have three classes, so far as salaries are concerned. Six of our ministers receive $12,000. Seven receive $10,000 salary, and fourteen of them receive only $7,500. I shall not at this time go into details concerning any of these missions, nor offer special reasons in the several cases until we reach the items on reading the bill.

There are a few other propositions that your committee deems of importance. There is the increase for additional interpreters. The Department has the very best information that the service is very greatly crippled or embarrassed by reason of not having sufficient interpreters. There is another important proposition involved in the bill which your committee offers, and that is this: In the last appropriation bill the allowance for clerk hire was divided into two different sums.

Clerk hire for one hundred and sixty odd of these consulates was provided for specifically and about 128 of the smaller consulates were provided for in bulk, to be paid in the discretion of the Secretary of State. Under the rulings whenever an amount of money is specifically appropriated for clerk hire at certain named consulates, it must all be paid at the particular places named, even though the necessity for it might not exist at the end of the year or at any time during the year. Your committee, after thinking the matter over carefully and considering it well, and without any suggestion of the Department on that particular subject, concluded that it would be wise to put the entire appropriation for clerk hire in the discretion of the Secretary of State, so that the Department can apportion it wherever the actual need occurs during the year, as it does now among the 138 minor consulates, thereby making the administration more flexible, and if all of the money appropriated for particular consulates for clerk hire is not needed in that particular year, that it may be used at some other place to greater advantage, thereby putting the responsibility upon the State Department, for we are necessarily dependent for our information in regard to the necessities of the service upon the State Department. Therefore it has been considered best by your committee to put the responsibility on the Department and let them use the money appropriated for clerk hire to the best advantage.

There is practically no other innovation in the bill offered at this time. There is an appropriation recommended of $5,000 for a new cipher code. The code we are now using, I think, was made in 1874. It is practically useless, and it is said by those who ought to know that it is the belief of the Department that this sum offered to be appropriated, $5,000, will be saved in a single year by reason of the enonomy of a new system and a much more readily interpreted code. I think I have nothing further to say at this time.

Mr. SCOTT. Mr. Chairman, I notice on page 3 that the minister resident and consul-general to the Republic of Santo Domingo is paid $10,000 and the minister resident and consul-general to Liberia is paid $5,000. Could the chairman of the committee explain briefly the condition in the difficulties or obligations of these two stations which seems to warrant so great a difference in the compensation?

Mr. COUSINS. Mr. Chairman, I have not thought that I should go into these particular missions in detail now, but I will answer the gentleman temporarily that the position at Santo Domingo is one of the most important from a diplomatic point of view in the service. It is one of the most expensive places to live; it is one of the most undesirable places for a representative to go. There is little of diplomatic importance at Liberia. It is a mere question of living there and having a representative there. In Santo Domingo everything excepting fruits and fresh meats is practically high—double in cost what it is in the United States—occasioned, no doubt, by the large import duties which they levy. Those import duties probably were not levied for the purpose of encouraging industries, but rather in times past for the purpose of being made away with by corrupt officials.

I yield now to the gentleman from Georgia [Mr. HOWARD].

Mr. HOWARD. Mr. Chairman, I yield one hour, or so much thereof as he may desire, to the gentleman from Kentucky [Mr. SHERLEY].

Mr. SHERLEY. Mr. Chairman, there have recently been made in the House and in the Senate several interesting speeches on the extent of the treaty-making power conferred in the Constitution of the United States upon the President and the Senate. In this discussion, however, there has been omitted one rather striking fact that I desire to call to the attention of the committee before proceeding to the larger discussion of the extent of the treaty-making power. There is to-day no law upon the Federal statute books that enables the National Government to punish violations of treaty rights of aliens. I hold it to be a position not to be controverted that to the extent that there is responsibility there ought to be power; and inasmuch as the National Government can and does confer rights upon aliens, it follows that it should have the power to enforce recognition of those rights and to punish any efforts to disregard them. If at any time some citizen of a foreign country resident in America should be injured or his rights violated, the foreign country would look not to the particular State where the injury occurred, but to the National Government for a redress of the wrong. That has been the history in the past and it will be so in the future. When this country was confronted by a claim by Italy, growing out of the disturbances in the State of Louisiana, Italy declined to receive the suggestion of the National Government that that was a matter that should be taken up with the State of Louisiana, and while the National Government did disclaim responsibility, it nevertheless made payment in satisfaction of that claim. During the term of President Harrison in a message to Congress attention was called to this absence of Federal law.

He said:

> It would, I believe, be entirely competent for Congress to make offenses against treaty rights of foreigners domiciled in the United States cognizable in the Federal courts. This has not, however, been done, and the Federal officers and courts have no power in such cases to intervene, either for the protection of the foreign citizen or for the punishment of his slayers.

President Roosevelt has also called attention to the need for this legislation, saying that—

> One of the great embarrassments attending the performance of our international obligations is the fact that the statutes of the United States are entirely inadequate. They fail to give to the National Government sufficiently ample power, through the United States courts and by the use of the Army and Navy, to protect aliens in the rights secured to them under solemn treaties which are the law of the land.

So far as his message seems to call attention to the need of giving jurisdiction to the Federal courts I am entirely in accord with him. So far as he suggests the need of giving powers to the Army and Navy in the matter I disagree with him, believ-

ing that there can be given ample power to the Federal courts to control the situation, and I accordingly introduced in the early part of this session the following bill:

A bill (H. R. 20540) punishing conspiracy to injure or intimidate any person in the exercise of a right under the Constitution or laws of the United States.

Be it enacted, etc., That if two or more persons conspire to injure, oppress, threaten, or intimidate any person in the free exercise or enjoyment of any right secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, they shall be fined not more than $5,000, or imprisoned not more than ten years, or both.

That is an exact copy of section 5508 of the Revised Statutes, except that it changes the word "citizen" to the word "person." It was held by the Supreme Court, in the case of Baldwin *v.* Frank, reported in 120 U. S., 678, that the word "citizen" in that section did not embrace an alien and that an indictment brought under that section which charged certain men with a conspiracy to deprive Chinese aliens, resident in California, of the right of residence there could not be sustained, because the word "citizen" was used in the narrow sense of citizen of the United States or of the States and not in the broad sense of "person;" but the court said that, while there was no law covering such an offense, Congress had ample power to provide for the punishment of an offense against rights given by treaty to aliens. Now, it is manifest that this may become at any time a very serious matter. I do not believe that we need to apprehend at present any difficulties, but the fact that there has been much discussion relative to the rights under existing treaties of aliens residing in America and that there have been, in certain parts of the country, pronounced views relative to the matter, make it evident that there may arise at any time a situation where irresponsible men, disregarding the law and the obligations imposed upon us toward aliens residing in America, might commit some act of violence, might do something that would involve this nation in a very serious controversy with some foreign power. For this nation, then, to be put in the humiliating position of being held responsible by another power for a wrong done upon an alien residing in America and yet be unable to punish the perpetrators of that wrong would be a matter of grave concern to us all and place America in a pitiful position in the eyes of the world. I am not one of those who believe that the treaty-making power is unlimited, and I shall take occasion later on to state my views relative to that power, but I plant myself upon this firm proposition, that to the extent that we can confer a right upon an alien, to that extent the National Government that confers it ought to have the machinery by which it can punish any violation of that right, and I hope that very shortly this Congress will consider the advisability of passing this or similar legislation. The bill is purposely drawn in general terms, so as to leave to the proper department the power to determine what rights can be conferred by treaty. Under it any man indicted would have the right to raise the constitutional question of whether the right that he is alleged to have conspired against is such a right as could be conferred by treaty, and it would thus enable the Supreme Court in any given case to determine how far the treaty power goes and what rights are conferred under any particular treaty, because I do not believe that there is anyone now who will seriously contend that the Federal courts have not the power to declare a treaty unconstitutional, the same as they might declare any law of Congress unconstitutional.

It is true that one of the most recent writers on the treaty-making powers, a gentleman who has gathered together much useful information and data concerning it, does doubt that power and bases the doubt upon the fact that Judge Chase, in rendering the decision in the case of Ware *v.* Hylton, said that if the court had the power it would not exercise it except in a clear case; and upon that flimsy ground he contends that the court itself has disposed of the idea that it would have such power, forgetful of the fact that that decision was rendered at a time when the Supreme Court had not determined its right to declare any law unconstitutional. And of course it is manifest that in regard to a treaty, as in regard to a law, even more so perhaps, the courts would be very slow to declare unconstitutional such a solemn compact. But that it has the unquestioned power no thinking man, acquainted with the theory of our Government, can long doubt.

And this brings me properly to a discussion of what rights can be conferred, because while I do not believe that the opinion gentlemen may have as to the extent of the power ought to in any wise influence their judgment relative to the proposition to give the National Government the power to enforce treaty rights, still it is probable that some, dreading the extreme power that is claimed under the treaty-making clause, would hesitate to give to the National Government the power to enforce offenses against such rights, because they think that even though the right may exist it ought not to be exercised.

In the House but a few days ago a very elaborate speech was made by my friend from Vermont [Mr. FOSTER] dealing with this whole question. I did not have the pleasure of hearing it, but I have read it with great care. It is full of learning, but it proceeds upon a theory of government to which I must give my most emphatic dissent. The gentleman in his remarks stated that he considered that the question of whether the treaty-making power rests in sovereignty or rests in grant is an immaterial question, or, as he puts it, an academic question. To my mind it is a fundamental question. Once admit that the treaty-making power exists not by virtue of the grant in the Constitution, but as an inherent part of the nationality of the United States Government, and you then admit that there is no limitation that can be put upon that power. If it is true the treaty-making power arises from the sovereignty of the nation, and if it be true that this nation has all powers that any nation can possess, then it must follow absolutely that the treaty-making power extends to every subject without regard to our division of powers among the States and the nation and among the different departments of the nation. It follows for this reason, because while the Constitution declares the power, the power is not born of the Constitution, but is born of a right inherent in national sovereignty.

Now, the fundamental mistake in that argument, as it is in many that proceed upon a similar theory, relative to power in the Federal Government not declared in the Constitution, is that the sovereignty of the American people rests in the National Government. The sovereignty of the American people rests neither in the national nor State governments nor in all together. It rests in the people, and only to the extent that they have given to the State and to the National Government a part of that sovereignty do those governments possess it. I can not state the case better than to quote a statement made by Justice Brewer in an address before the Virginia Bar Association, in which he says:

I fully believe that this nation as a nation has all the powers which any nation possesses, but I as fully believe that those powers are vested in the people and that only such as they have enumerated in the Constitution have they granted to the Government.

And again, in delivering the opinion of the Supreme Court in the recent case of Hodges *v.* United States, reported in 203 United States Reports, he says:

The National Government still remains one of enumerated powers, and the tenth amendment, which reads, "the powers not delegated to the United States are reserved to the States respectively or to the people," is not shorn of its vitality.

In very truth it may be said that upon these two statements hang all the law and the prophets. They represent to my mind the right theory of this Government. The National Government has only the powers delegated to it. Now, it is true that the treaty-making power is delegated in general terms; but it is not the only power delegated in general terms. It says "that the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur," and it also declares that "this Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land." In regard to treaties the phrase is used "under authority of the United States," and some have claimed that the words "under authority" give greater power than if the Constitution had said, as it does in regard to the laws, "in pursuance thereof." But the reason for using the phrase "under authority" is easy to be ascertained.

At the time of the adoption of the Constitution there were many treaties in effect. It was desired to validate all of these treaties and give them binding effect so far as they were in accord with the theory of the Government as set forth in the Constitution. If it had simply said "made under the Constitution" or "made in pursuance of the Constitution," it would have excluded treaties already in existence, and therefore there was used the phrase "under authority." It was not used in the sense of meaning that once you determine that the President and Senate had acted in making a compact with a foreign nation the question of its validity could not be raised. To assume that was to assume that the great fight in the Constitutional Convention had been waged in vain. They undertook to counterbalance the great States with the little ones. All the States were given equal representation in the Senate. They were given this as a safeguard against the fear that the great States would soon swallow them up. But as counteracting that there was given to the House of Representatives, which has its representation based not upon the State but upon population, the exclusive right to raise revenue bills, and it was further declared that no appropriation of money shall be made except by

authority of Congress. Now, if the treaty-making power was given supreme power, it, in its power, could assert both of these prerogatives, and then we would have the Executive and simply two-thirds of the Senate (who might represent a minority of the people, because even to-day there can be found two-thirds which represent much less than a majority of the people) able to enter into treaties with other nations, by which this vital right given to the House of Representatives, to hold the purse strings of the nation, would be abrogated and done away with.

Most students of the Constitution now agree that the treaty-making power is limited by this right in the House of Representatives, though some insist that when a treaty requires an appropriation of money Congress is morally bound to make the appropriation, but this House has ever maintained the right to freely decide for itself whether the appropriation should be made, and one has but to read the elaborate reports of the House Judiciary Committee, written by that great constitutional lawyer, Randolph Tucker (H. Repts. Nos. 2680–2721) to have all doubts removed. And it is also generally conceded that what is especially prohibited by the Constitution can not be done under the treaty-making power. It is manifest that no title of nobility could thus be conferred. It may also be considered as settled that where the right to do a given thing is given to Congress—as to coin money, regulate the militia, establish bankrupt laws—Congress alone can act, and the treaty-making power can not touch such subjects. But while these limitations are admitted by all save a few extremists, it is now being urged that the tenth amendment is in no sense a limitation upon the treaty-making power. The basis for this position I am unable to find. As said by Mr. Tucker, "The instant it is admitted that the power has limitations, even as to what is rightfully subject to it, the question at issue is narrowed to determining all these limits on principles of justice and of fair interpretation of the Constitution."

There is no reason that is good in logic that I know of that justifies you in taking part of the Constitution as superior and above the rest of the Constitution.

The very fact that the tenth amendment was adopted after the treaty-making power was conferred would indicate that it was intended that that power, along with all national powers, was to be exercised subject to the reservation stated in the tenth amendment. When this amendment was proposed the friends of the Constitution declared that it stated nothing that was not already the law, but those who were fearful of the power that was being given to the National Government said: "If that is true, it could do no harm, and we insist on an affirmative declaration; and inasmuch as you have got in the Constitution as already drawn many affirmative declarations of the rights of the people, we insist on this additional one; we insist that except to the extent power is expressly given it is reserved to the States and people, respectively."

Now, the treaty-making power is unquestionably a very extensive one. It is unquestionably true that the very most pronounced evil in connection with the Confederacy as it existed, aside from its inability to tax, so necessary an attribute of a virile government, was its inability to enforce the treaties then made and existing with foreign nations. It is true that there was constant complaint on the part of the Federal Government that the States disregarded these treaty obligations, and it is true that some of the States claimed that, while the treaties might be morally binding upon them, they were not legally binding, and claimed the privilege to regard or disregard them, as they saw fit. That proposition was effectually denied when it was put into the Constitution that not only the laws, but the treaties, should be the supreme law of the land, anything in the constitutions or the laws of the States to the contrary notwithstanding. That clause determined that question, and only that question. It determined that a legal treaty—that is, a treaty which is not ultra vires; a treaty made within the power—is the supreme law of the land. Nobody can dispute that. Nobody now claims that it is not. But it is the supreme law of the land in no other sense than any law made by Congress that is within its constitutional limitations the supreme law of the land. And the best proof of that fact is the fact that Congress can, by enactment, repeal a treaty. If a treaty possessed a power peculiar to itself, if the treaty rose superior to a law and was supreme in any other sense, then it would follow inevitably that, being superior to the lawmaking body, it could not be repealed by the lawmaking body, and only the power warranted in making the treaty would be warranted in annulling it. And yet the Supreme Court decided, in the Chinese-exclusion cases, that the acts passed by Congress, in so far as they were in conflict with the treaty then in existence with China, abrogated that treaty, the rule being that a treaty of later date abrogates a law in conflict with it and a law of later date abrogates the treaty.

Now, if the treaty has only the power and none other than the law, it becomes important to determine, as we have determined many questions relating to the power of legislation in Congress, what are the limitations upon it. This is not an easy task. It is easy in general terms to recite limitations, but it is exceedingly difficult to determine the exact line and say, "Thus far shalt thou go and no further." It is true that there has never been a treaty declared by the Supreme Court to be unconstitutional, although there have been very many reviewed by that Court, and it is true that some of the decisions of the Supreme Court as to one subject-matter would seem in their logic to carry the conclusion that the clause relative to the reserved rights of the States did not apply; because they have held that it is within the power of the treaty-making power to remove by treaty the alienage of a foreigner, so as to enable him to inherit and transmit real estate. I should have said, as an original proposition, that that was a matter that remained within the States. I should have said, as Mr. Bayard when Secretary of State said, that if the question was to arise anew, he doubted very much whether the Supreme Court would hold as it has held; but I am faced with the fact, I recognize that they have decided; and in Chirac *v.* Chirac, and in many other decisions by that court, they have held that a treaty which conferred upon an alien the right to inherit and dispose of real estate overrode any State law or constitution. I realize that in the first great case of Ware *v.* Hylton, the Supreme Court held that where the State of Virginia had passed acts escheating the property of aliens who were British subjects, and had also undertaken to put impediments in the way of their right to recover debts, that the treaty overrode those acts of the legislature and the constitution of the State of Virginia; but I am unwilling to concede any more in that line than needs to be conceded. The proposition that is involved in the present case, growing out of the controversy between Japan and California, is that the treaty-making power is not only able to remove alienage so far as it relates to residence, and so far as it relates to inheritance and transmission of property, but that it can go to the extent of conferring upon an alien every right enjoyed by a citizen of the United States or of any particular State. That I deny. It is manifest that no treaty could undertake to confer upon an alien the right to hold office within a State. It is manifest that no treaty could confer upon an alien the right to the suffrage within a State; because, gentlemen, the treaty-making clause must always be held subject to the general purpose and scope of our Government, State and National. It is unthinkable that the makers of the Constitution, who were so careful to guard the powers of every particular department, to offer check against check, and counterbalance against counterbalance, were yet so impressed with the necessity of having facility of contract with foreign nations that they were willing to give to one man and two-thirds of the Senate present—not even two-thirds of all elected—the power to make a law that could override all State enactments and rule. The National Government could, if it saw fit, as it did see fit in the Chinese treaty, give to the citizens of a foreign country the right to education in the public schools of the National Government, because that is a matter that rests with the nation.

The burden is upon the nation in maintaining these schools, and it might be proper that the nation should impose the additional burden of education of aliens. But how can it be said, where the obligation is one that belongs to the State primarily, that is subject to the State's will, so subject that the State could to-morrow, if it saw fit, do away with its public-school system, make what appropriation it saw fit, or none at all, that the National Government could confer upon an alien such right? Once you concede that right, I see no reason in a logical way why you should not concede any other particular right that may be desired in regard to the internal affairs of a State.

Now, I desire to draw the attention of the committee to another argument, and I do it with a great deal of hesitancy and some reluctance. What I am about to say may seem foolish, and I confess it is novel. I am not satisfied in my own mind, but I am unable to detect the flaw in the logic if it be there. The Constitution provides that the President, with the consent of the Senate, may make treaties and also provides that "no State shall enter into any treaty, alliance, or confederation." Now, if this was all, it would be manifest that whatever agreement might be had with other nations would have to be had by virtue of a treaty made by the National Government. But this is not all. The prohibition upon the States to make treaties is contained in the beginning of section 10 of Article I of the Constitution, and in the last division of that section it is declared that "no State shall, without the consent of Congress, * * * enter into an agreement or compact with another State, or with a foreign power." Of course it is clear that the negative form of this declaration admits the affirmative, and a State can with the consent

of Congress enter into an agreement with another State or with a foreign power. But yesterday this House passed a bill giving the consent of Congress to an agreement between two of the States. Now, if an agreement can be made between a State and a foreign power, it follows that such an agreement must be one not included within the scope of a treaty, because a State is, as we have seen, prohibited from making any treaty.

That of itself is a further indication that the treaty-making power does not embrace all contracts of every kind which can be thought of between the people of one country and the people of another. What seems to my mind to have been the view of the makers of the Constitution was that the treaty power should relate to those subjects naturally belonging to treaties; should relate to those subjects that pertain to the country as a whole. It was proper—aye, it was necessary—that one voice should speak as to its contracts with other nations when it spoke on behalf of all the people, and it was further manifest that when that voice spoke within its domain, the voice of every State must be silent, that no discordant note might be heard to limit or deny the solemn compact of the General Government. But it is evident that there are many things that may pertain peculiarly to one locality, to one section of the country, and to its relationship to foreign nations that do not pertain to the balance of the country and should not be embraced within a treaty. We have States adjoining Canada, we have States adjoining Mexico, and it might be proper—and I do not know but what it has been done; I was unable to find any case—for one of those States, by consent of Congress, to enter into an agreement with a foreign nation relative to such matter local to it. I even consider that this very subject-matter that has given rise to this discussion is a case that would more properly fall into an agreement between a State and a foreign power than it would under the treaty-making power. It might well be that one State would be willing to concede to the citizens of a foreign country the right of education within the schools of that State in consideration of the same right, for instance, being given to the citizens of that State in the country with which the agreement is made, but that the National Government should have the power to confer upon a foreigner a right which imposes an obligation not upon the nation, but upon an individual State, seems to me utterly illogical. There is to my mind a distinction in an agreement removing a disability from one creating an affirmative right. The Supreme Court has said, and therefore I accept it, that the treaty-making power can confer the right, or, to put it more accurately, that it can remove the disability of alienage so that the foreigner may inherit what he would inherit if it were not for his alien birth. That is simply the removal of a disability and confers no burden upon the State; it simply declares an equity, does away with the old harsh view that the outsider, the barbarian, as the Greeks called all that lived outside of their borders, should have no right of property within a state. Modern international law does not recognize such treatment. It says foreigners should be treated in their rights of property as if they did not have the disability of alienage. To hold, however, that our treaty-making power goes to the extent of giving an affirmative right that imposes an obligation not upon the United States, but upon a particular State; that requires the taxation not of all the people; seems to my mind to carry it very much too far. This I do know, that if that be the extent of the treaty-making power, the sooner the people of the United States demand of their representatives in the other branch of Congress a strict and careful limitation of the contracts that are entered into with foreign nations the better. I hold very much to the theory that the less of contact between nations and the more of contact between people the better. I believe that a treaty does not always help, but is very apt to hamper, the friendly relations between nations. Certainly if the construction that is being put by the Administration upon this particular treaty be the true one, and I shall not discuss that question, though it seems to me to be open to much question, then it follows that a right that was not considered by the parties at the time it was given, at least not considered to the extent of having an express declaration about it, is liable to be made the cause of disturbing relations that have existed harmoniously for more than half a century between the two countries. Such a result flowing from ill-considered treaties is to be greatly deplored, and the people of America should demand of the treaty-making power the most careful scrutiny of any treaty entered into.

Mr. Chairman, an examination of the decisions and the text writers on this subject will, I believe, confirm these views of mine. It so happens that the debates at the time of the adoption of the Constitution are singularly silent in regard to the matter, but when the Constitution came before the various State conventions for adoption there occurred considerable debate, particularly in Virginia. Patrick Henry, opposed to the Constitution, believing sincerely that it was robbing the States of all their rights and depriving the people of liberty, seized upon every possible thing as an argument against ratifying the Constitution. Among other things he took hold of the treaty-making power. He made then the very claim that is made by the advocates of an unlimited power now. He declared that the treaty-making power was sufficient to swallow up all the rights of the States and of the National Government; that all they needed to do was to enter into some agreement with a foreign country, and what they could not do by ordinary act of legislation they then became empowered to do. He was answered by Madison, Randolph, Nicholas, and several others of the members of the convention, and in answering him they declared that such reasoning was not warranted; that the treaty-making power was limited, must be considered as being subject to the express limitations in the Constitution, and further limited by the nature and character of our dual form of government. The gentleman from Vermont [Mr. FOSTER] quoted Calhoun as authority for his position. Some seem to think that because Calhoun enumerates certain limitations, therefore all other limitations not enumerated do not apply. This does not follow; because he does, in the enumeration of specific cases, also put as a limitation the nature and the character of our Government, and the Supreme Court, when quoting Calhoun in the case of Geoffroy *v.* Riggs (133 U. S., 258), a case growing out of the treaty made with France, where the court again confirmed the power of a treaty to give an alien the right to inherit and transmit property, said that the treaty-making power was not only limited by these express provisions, but limited "by the nature of the Government itself and of that of the States." If it be limited by the character of the government of the States, what conclusion can you draw other than that the reserved powers of the States are a limitation upon the treaty-making power? For if it does not mean that, it means nothing.

I might continue to cite cases and writers, and I had originally intended so to do, but within a few days a gentleman of my city, a distinguished lawyer, the judge of our chancery court, and a professor in our law school, has delivered an elaborate lecture upon this subject. He has summarized so well all of the opinions of the writers, from the adoption of the Constitution down, that for me to undertake it would be either to repeat what he has said or to poorly do what has been superbly done. So I shall content myself with filing as a part of my remarks, with the permission of the committee, this elaborate lecture upon that question, and I trust the House will read it most carefully. I have spoken without manuscript, save a few notes, and of necessity have not therefore been always accurate or concise, but there will be found the exact quotations from the men who made the Constitution and from the great writers and judges who have construed it ever since. In conclusion, may I be pardoned for saying that it seems to me that in this day, when we are told that if the exigencies of the case demand it we must either give to the National Government more power or the National Government must in some way take it to itself, the House should view with particular care the claim that is being made that this power extends over all others. I utterly abhor the man who is so narrow, whose love of his State is so petty, that he can not rise to a realization of the obligations and duties imposed upon all of us as members of the nation, but I abhor in even greater degree the man who, out of pressure of the immediate moment, out of the exigencies of the case, is willing to twist and pervert the fundamental law of the land in order to have his way and in order to give the National Government unwarranted power. [Applause.] I believe more and more each day that the salvation of America and of America's people lies in getting back to the old doctrine of self-dependence and independence [applause], of teaching the people that not by statute can they be made upright, but out of themselves must come the grace that is to reform and redeem. I believe we must have the people check the constant tendency to put off somewhere else the doing of an obligation that rests at home. It has been my fortune in this House to frequently oppose the power of the National Government. Sometimes it may have seemed that in doing so I would wish to take away from it all of its real strength, but this is in no sense true. If I had been a member of a State legislature I should most likely have been just as pronounced in my opposition to much of the legislation there. I believe that the States should only do those things that the individual can not do, and that the nation should only do those things that the State and the individual can not do, and I always approach every proposition of legislation with a feeling of hostility. The burden is also on the man proposing legislation when he asks me to support it.

I think we are a law-ridden Government. We have so much law that we have ceased to obey any law. Why, it has gotten to the point where our very notices give an indication of our disregard of the law. We publish not only that a thing is prohib-

ited, but in order to make somebody really believe that we mean it we say that such and such a thing is positively prohibited, as if there could be degrees of prohibition in a law-abiding community. And it all grows out of the fact that we pass laws that result in bringing about a condition that, being obeyed, would not be livable under. It is one of the great eternal truths of life that the remote results of legislation are always greater, more far-reaching in their effect upon people, than the immediate results. We pass some act for a particular purpose, and after we have passed it for that purpose we awake to find that the effect of it is being felt in a hundred other directions that were never contemplated, and we are forced either to disregard the law or to repeal it, and then the inertia of Government in regard to the repealing of laws makes us disregard them, and we become a nation of lawbreakers.

Therefore I believe that one performs no higher duty than when he insists on the strict construction of powers; not with the idea of detracting from the vigor of the nation, but because he believes, as said by Justice Brewer, that this nation as a nation has all the powers that any people have, but that those powers rest with the people, and only to the extent that they have delegated them do they rest in the National Government, and that we have made provision for the extension of those powers; and because it would be better to wait until that extension was legally given and suffer the particular evil that exists than to disregard the highest law of the land.

Gentlemen, if you permit the disregard of your Constitution, how, in the name of common sense, can you expect the people to regard the law supposedly made under the Constitution? [Loud applause.]

APPENDIX.

In accordance with the permission granted me by the committee, I append the lecture delivered by Judge Shackleford Miller, of Louisville, Ky., before the Jefferson School of Law:

The recent disturbance in California, brought about by the action of the school authorities of San Francisco in closing the doors of the public schools of that city against Japanese students residing there, naturally provokes a discussion of the treaty-making power under the Constitution of the United States. The Japanese claim the right to attend the San Francisco public schools under the treaty of 1894 between Japan and the United States, which provides as follows:

"The citizens or subjects of either of the two high contracting parties shall have full liberty to enter, travel, or reside in any part of the territories of the other contracting party, and shall enjoy full and perfect protection for their persons or property. In whatever relates to rights of residence and travel, to the possession of goods and effects of any kind, to the succession to personal estate by will or otherwise and the disposal of property of any kind and in any manner whatsoever which they may lawfully acquire, the citizens or subjects of each contracting party shall enjoy in territories of the other the same privileges, liberties, and rights, and shall be subject to no higher imposts or charges in these respects than native citizens or subjects of the most-favored nation."

It will no doubt readily be conceded that the right of the Japanese students to attend the public schools must be founded upon this treaty right of residence or it does not exist. There is no other right or privilege mentioned in the treaty which could even be remotely claimed to embrace the right of attending the public schools. It would seem, however, that a fair construction of the treaty would scarcely extend the privilege of the public schools of a State to unnaturalized foreigners. If the Federal Government had so intended, it is but reasonable to assume that the treaty would have so provided in express terms. It was careful to cover the rights of entry, travel, residence, the succession of personalty, and the disposition of property of all kinds, but it nowhere appears that school privileges were ever considered.

Under the present treaty, therefore, it would seem reasonably clear that the Japanese residents of California have no right to have themselves and their children educated at the public schools and at the public expense.

But the larger question arises: Can the President and Senate constitutionally make a treaty with Japan that would confer this right upon the Japanese residents of California?

The answer to this question turns upon the extent of the treaty-making power granted to the Federal Government under the Federal Constitution.

This power is found in the following provision:

"He [the President] shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senate present concur." (Const., Art. II, sec. 2, cl. 2.)

"This Constitution and the laws of the United States which shall be made in pursuance thereof, and all the treaties made or which shall be made under the authority of the United States shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." (Ib., Art. VI, cl. 2.)

It may be interesting to consider briefly the origin of the clause and how it has been viewed in the light of American history.

NOT DISCUSSED IN CONVENTION.

Strange though it may now appear, the question of the extent of the treaty-making power was not discussed at all in the Federal convention of 1787. The right to enter into "treaties and alliances," under some slight restrictions upon treaties relating to commerce, was given to the Congress under the Articles of Confederation (art. 9). The clause relating to the subject of treaties originated in the "committee of detail" and in the later stages of the convention. Prior to that time the subject had not come up for action, but had only been referred to incidentally in the consideration and discussion of other subjects. It first formally appeared as the first clause of article 9 in the committee's report of August 6, 1787, wherein "the power to make treaties" was lodged in the Senate alone. (5 Elliott's Debates, 379.) After a short consideration on August 23, the clause was referred back to the "committee of detail;" but as that committee made no further report, the clause went to the "committee on unfinished portions," which reported it on September 4 substantially as we now have it, by transferring the power to the President, with the advice and consent of the Senate.

At no time, however, did the convention discuss the scope or extent of the power; it merely considered the question as to where the power should be lodged—who should exercise it. The same is true as to the "Federalist," written in support of the proposed constitution while it was before the State convention for ratification. The authors of that able work confined their discussion of the subject of the treaty-making power not to its extent, but to an effort tending to show that it had been properly lodged in the President and Senate. (Nos. 64 and 75.)

But when the Constitution came on for ratification by the State conventions it was to be expected that its opponents would carefully scan it with the view of determining, if possible, precisely what powers the several provisions carried and what limitations they imposed.

The scope and extent of the provisions of the Constitution were more elaborately discussed in the Virginia ratifying convention of 1788 than in any of the other similar conventions.

In the Virginia ratification of 1788 it was strongly contended by Patrick Henry, William Grayson, George Mason, and the other leading opponents of the Constitution that the treaty-making power was unlimited and therefore unwise and inconsistent with the proclaimed theory of its friends that the proposed Federal Government was one of delegated powers, specifically defined or necessarily implied. In the course of the debate Mr. Henry said:

"We are so used to speak of enormity of powers that we are familiar with it. To me this power appears still destructive, for they can make any treaty.

"If Congress forbears to exercise it, you may thank them, but they may exercise it if they please and as they please. They have a right from the paramount power given them to do so."

It fell to the lot of Madison, Governor Randolph, and George Nicholas to meet this argument, and in doing so Nicholas said:

NOT REPUGNANT TO CONSTITUTION.

"The worthy Member says that they can make a treaty relinquishing any rights and inflicting punishments, because all the treaties are declared paramount to the constitutions and laws of the States. An attentive consideration of this will show the committee that they can do no such thing. The provision of the sixth article is that this Constitution and the laws of the United States which shall be made under the authority of the United States shall be the supreme law of the land. They can by this make no treaty which shall be repugnant to the spirit of the Constitution or inconsistent with the delegated powers. The treaties they make must be made under the authority of the United States to be within their province. It is sufficiently secured because it only declares that in pursuance of the power given they shall be the supreme law of the land, notwithstanding anything in the constitution or laws of the particular States." (3 Elliott's Debates, 507.)

In closing the debate Mr. Madison said:

"I am persuaded that when this power comes to be thoroughly and candidly viewed it will be found right and proper. As to its extent, perhaps it will be satisfactory to the committee that the power is precisely in the new Constitution as it is in the Confederation. In the existing confederacy Congress is authorized indefinitely to make treaties. Many of the States have recognized the treaties of Congress to be the supreme law of the land. Acts have passed within a year declaring this to be the case. I have seen many of them. Does it follow because the power is given to Congress that it is absolute and unlimited? I do not conceive that power is given to the President and Senate to dismember the empire or to alienate any great essential right. I do not think the whole legislative authority have this power. The exercise of the power must be consistent with the object of the delegation. One objection against the amendment proposed is this, that by implication it would give power to the legislative authority to dismember the empire—a power that ought not to be given but by the necessity that would force assent from every man. I think it rests on the safest foundations as it is. The object of treaties is the regulation of intercourse with foreign nations and is external. I do not think it possible to enumerate all the cases in which such external regulations would be necessary. Would it be right to define all the cases in which Congress could exercise this authority? The definition might and probably would be defective. They might be restrained by such a definition from exercising the authority where it could be essential to the interest and safety of the community. It is most safe therefore to leave it to be exercised as contingencies may arise." (3 Elliott's Debates, 514.)

The views of Madison prevailed in the Virginia convention, as they have generally prevailed upon constitutional questions in the country at large. (Pomeroy's Constitutional Law, sec. 34.)

FIRST IMPORTANT DISCUSSION.

The Constitution went into operation in 1789. The first important discussion of the treaty-making power arose in connection with Jay's treaty concluded with Great Britain on November 19, 1794. It was approved by the Senate on August 18, 1795; proclaimed by the President on February 29, 1796, and this proclamation was communicated to both Houses of Congress on March 1, 1796. Money was necessary to carry its provisions into effect, and as money could be only appropriated by both Houses of Congress, differences of opinion at once arose as to the extent of the treaty-making power and the obligation it imposed upon the House of Representatives:

"On the one side it was maintained that the power of the President and Senate as to treaties was absolute, and that the House of Representatives was bound, under the Constitution, to make the appropriations necessary to carry the treaty into effect. On the other side it was contended that, under the Constitution, the consent of the House was requisite to pass appropriations to carry the treaty into effect, and that this was as much known to the other contracting party as was the consent of the Senate to the preliminary adoption of the treaty." (Wharton's Int. Law Dig., 17.)

On March 21, 1796, Jefferson wrote to Monroe, then in France, as follows:

"The British treaty has been formally at length laid before Congress. All America is a tiptoe to see what the House of Representatives will decide on it.

"We conceive the constitutional doctrine to be that, though the President and Senate have the general power of making treaties, yet wherever they include in a treaty matters confided by the Constitution to the three branches of legislature, an act of legislation will be requisite to confirm these articles, and that the House of Representatives,

as one branch of the legislature, are perfectly free to pass the act or to refuse it, governing themselves by their own judgment whether it is for the good of their constituents to let the treaty go into effect or not. On the precedent now to be set will depend the future construction of our Constitution, and whether the powers of legislation shall be transferred from the President, Senate, and House of Representatives to the President, Senate, and Piaminigo, or any other Indian, Algerine, or other chief." (4 Jefferson's Works, 134.)

Henry Adams, a grandson of that stout old Federalist, John Quincy Adams, has written a life of Albert Gallatin, who was then a Member of Congress from Pennsylvania. In describing the debate in the House of Representatives, Henry Adams says:

CHECK ON TREATY-MAKING POWER.

"The debate began on March 7, 1796, and on the 10th Mr. Gallatin spoke attacking the constitutional doctrine of the Federalists and laying down his own. He claimed for the House, not a power to make treaties, but a check upon the treaty-making power when clashing with the special powers expressly vested in Congress by the Constitution; he showed the existence of this check in the British constitution, and he showed its necessity in our own, for if the treaty-making power is not limited by existing laws, or if it repeals the laws that clash with, or if the legislature is obliged to repeal the laws so clashing, then the legislative power in fact resides in the President and Senate, and they can, by employing an Indian tribe, pass any law under the color of treaty.

"The argument was irresistible; it was never answered; and, indeed, the mere statement is enough to leave only a sense of surprise that the Federalists should have hazarded themselves on such preposterous ground. Some years later, when the purchase of Alaska brought this subject again before the House on the question of appropriating the purchase money stipulated by the treaty, the Administration abandoned the old Federalist position; the right of the House to call for papers, to deliberate on the merits of the treaty, even to refuse appropriations if the treaty was inconsistent with the Constitution or with the established policy of the country, was fully conceded. The Administration only made the reasonable claim that if, upon just consideration, a treaty was found to be clearly within the constitutional powers of the Government, and consistent with the national policy, then it was the duty of each coordinate branch of the Government to shape its action accordingly. See the speech of N. P. Banks of June 30, 1868, Cong. Globe, vol. 75, appendix, p. 385."—(Life of Albert Gallatin, p. 161.)

Gallatin's views prevailed in the House by a vote of 57 against 35.

While Jefferson was Vice-President he prepared his now famous Manual of Parliamentary Practice. It has ever since remained the highest authority in this country upon that subject. The work was published in 1800, and contains this note under the head of treaties:

"By the Constitution of the United States this department of legislation is confined to two branches only of the ordinary legislature; the President originating and the Senate having a negative. To what subject this power extends has not been defined in detail by the Constitution, nor are we entirely agreed among ourselves. (1) It is admitted that it must concern the foreign nation, party to the contract, or it would be a mere nullity, res inter alios acta. (2) By the general power to make treaties, the Constitution must have intended to comprehend only those objects which are usually regulated by treaty, and can not be otherwise regulated. (3) It must have meant to except out of these the rights reserved to the States, for surely the President and Senate can not do by treaty what the whole Government is interdicted from doing in any way. (4) And also to except those subjects of legislation in which it gave a participation to the House of Representatives. This last exception is denied by some on the ground that it would leave very little matter for the treaty power to work on. The less the better, say others."

REASON FOR RESTRAINT.

"The Constitution thought it wise to restrain the Executive and Senate from entangling and embroiling our affairs with those of Europe. Besides, as the negotiations are carried on by the Executive alone, the subjecting to the ratification of the Representatives such articles as are within their participation is no more inconvenient than to the Senate. But the ground of this exemption is denied as unfounded. For example, e. g., the treaty of commerce with France, and it will be found that out of thirty-one articles there are not more than small portions of two or three of them which would not still remain as subjects of treaties, untouched by these exceptions." (Jefferson's Works, IX, 80.)

The first formal treatise upon the Constitution of the United States was published by Judge St. George Tucker in 1803 as an appendix to his edition of Blackstone. In that work Judge Tucker says:

"Treaties, as defined by Puffendorf, are certain agreements made by sovereigns between one another, of great use both in war and peace. Of these there are two kinds: The one such as reenforce the observance of what by the law of nature we were before obliged to, as the mutual exercise of civility and humanity, or the prevention of injuries on either side; the second, such as add some new engagement to the duties of natural law, or at least determine what was before too general and indefinite in the same, to something particular and precise. Of those which add some new engagements to those duties which natural law imposes upon all nations, the most usual relate to, or in their operation may affect, the sovereignty of the state, the unity of its parts, its territory or other property, its commerce with foreign nations, and vice versa; the mutual privileges and immunities of the citizens or subjects of the contracting powers, or the mutual aid of the contracting nations, in the case of an attack or hostility from any other quarter. To all these objects, if there be nothing in the fundamental laws of the state which contradicts it, the power of making treaties extends and is vested in the conductors of states, according to the opinion of Vattel.

"In our Constitution there is no restriction as to the subjects of treaties, unless perhaps the guaranty of a republican form of government and protection from invasion, contained in the fourth article, may be construed to impose such a restriction in behalf of the several States against the dismemberment of the Federal Republic. But whether this restriction may extend to prevent the alienation, by cession, of the western territory, not being a part of any State, may be somewhat more doubtful." (1 Tucker's Blackstone; appendix, 332.)

During the years 1790 and 1791 Mr. Justice Wilson, of the United States Supreme Court, delivered a course of lectures on law before the College of Philadelphia. These lectures were published in 1804, after his death, by his son. Part II of that work relates to the constitutions of the United States and of Pennsylvania, and chapter 2 thereof treats of the executive department. Justice Wilson dismisses the treaty-making power with the following scant consideration:

MUST BE KEPT DISTINCT.

"The President has power to nominate and, with the advice and consent of the Senate, to appoint ambassadors, judges of the Supreme Court, and, in general, all the other officers of the United States. On this subject there is a very striking and important difference between the Constitution of the United States and that of Pennsylvania. By the latter the first executive magistrate possesses, uncontrolled by either branch of the legislature, the power of appointing all officers whose appointments are not, in the constitution itself, otherwise provided for. On a former occasion I noticed a maxim which is of much consequence in the science of government—that the legislative and executive powers be preserved distinct and unmingled in their exercise. This maxim I then considered in a variety of views, and in each found it to be both true and useful. I am very free to confess that with regard to this point the proper principle of government is, in my opinion, observed by the constitution of Pennsylvania much more correctly than it is by the Constitution of the United States. In justice, however, to the latter, it might be remarked that, though the appointment of officers is to be the concurrent act of the President and Senate, yet an indispensable prerequisite—the nomination of them—is vested exclusively in the President.

"The observations which I have delivered concerning the appointment of officers apply likewise to treaties, the making of which is another power that the President has with the advice and consent of the Senate."—(2 Wilson's Works, 191.)

It seems strange that this total failure to discuss either the nature or extent of the treaty-making power in a formal set of lectures which covered the whole field of the Constitution, could be the omission of one who was a distinguished member of the Federal Convention of 1787, and a justice of the Supreme Court of the United States in 1796, when that court decided the important case of Ware *v.* Hylton, reported in Third Dallas. In fact Justice Wilson delivered a short concurring opinion in that case. Nevertheless, he ignores a great constitutional question that had been ably debated in Congress when Jay's treaty was under fire, and in the Supreme Court by John Marshall, and before Justice Wilson himself.

In 1821 Mr. Wert, Attorney-General, gave an official opinion, in which he said:

"The people seem to have contemplated the National Government as the sole organ of intercourse with foreign nations. It ought to be armed with power to satisfy the fulfillment of all moral obligations, perfect and imperfect, which the law of nations devolves upon us as a nation. In this respect our system seems to be crippled and imperfect."—(1 Opins. Attys. Genl., 392.)

In 1825 William Rawle, a distinguished lawyer of Philadelphia, published A View of the Constitution of the United States. Mr. Rawle had been United States district attorney for Pennsylvania under Washington, and had been offered by him the Attorney-Generalship of the United States. He was a firm supporter of the Administration of John Adams. In discussing the treaty-making power, Mr. Rawle says:

MUST BE SOUGHT FOR IN PRINCIPLE.

"The most general terms are used in the Constitution. The powers of Congress in respect to making laws we shall find are laid under several restrictions. There are none in respect to treaties. * * * To define them in the Constitution would have been impossible, and therefore a general term could alone be made use of, which is, however, to be scrupulously confined to its legitimate interpretation. Whatever is wanting in an authority expressed must be sought for in principle, and to ascertain whether the execution of the treaty-making power can be supported we must carefully apply to it the principles of the Constitution from which alone the power proceeds. * * *

"There is a variance in the words descriptive of laws and those of treaties. In the former it is said those which shall be made in pursuance of the Constitution, but treaties are described as having been made, or which shall be made, under the authority of the United States.

"The explanation is that at the time of adopting the Constitution certain treaties existed, which had been made by Congress under the Confederation, the continuing obligations of which it was proper to declare. The words 'under the authority of the United States' were considered as extending equally to those previously made and to those which should subsequently be effected. But, although the former could not to be considered as made pursuant to a constitution which was not then in existence, the latter would not be 'under the authority of the United States' unless they are conformable to its Constitution" (p. 66).

In 1833 Judge Story published his "Commentaries upon the Constitution of the United States," in which he says:

"The power to make treaties is by the Constitution general, and it, of course, embraces all sorts of treaties, for peace or war, for commerce or territory, for alliances or success, for indemnity for injuries or payment of debts, for the recognition and enforcement of principles of public law, and for any other purposes which the policy or interests of independent sovereigns may dictate in their intercourse with each other. But though the power is thus general and unrestricted, it is not to be so construed as to destroy the fundamental laws of the State. A power given by the Constitution can not be construed to authorize a destruction of other powers given in the same instrument. It must be construed, therefore, in subordination of it and can not supersede or interfere with any other of its fundamental provisions. Each is equally obligatory and of paramount authority within its scope, and no one embraces a right to annihilate any other. A treaty to change the organization of the Government or annihilate its sovereignty, to overturn its republican form, or to deprive it of its constitutional powers would be void, because it would destroy what it was designed merely to fulfill—the will of the people. Whether there are any other restrictions necessarily growing out of the structure of the Government will remain to be considered whenever the exigency shall arise." (Sec. 1508.)

Judge William Alexander Duer, of New York, delivered a course of lectures on the constitutional jurisprudence of the United States at Columbia College for many years. In 1833 he published the substance of his lectures under the title of "Outlines of Lectures," etc.; and in 1843 he published a revised and enlarged work on the same subject entitled "Lectures on the Constitutional Jurisprudence of the United States." In this last and most complete statement of his views Judge Duer said:

CAN'T DESTROY OTHER POWERS.

"More general and extensive terms, also, are used in vesting the power with respect to treaties than in conferring that relative to laws; and, while the latter is laid under several restrictions, there are none imposed on the exercise of the former, notwithstanding it is committed to

the President and Senate, in exclusion of the House of Representatives, and is executed through the instrumentality of agents delegated for that purpose. And, although the President and Senate are thus invested with this high and exclusive control over all those subjects of negotiation with foreign powers, which in their consequences may affect important domestic interests, yet it would have been impossible to have defined a power of this nature, and, therefore, general terms only were used. These general expressions, however, ought strictly to be confined to their legitimate signification; and, in order to ascertain whether the execution of the treaty-making power can be supported in any given case, those principles of the Constitution, from which the power proceeds, should carefully be applied to it. The power must, indeed, be construed in subordination to the Constitution; and, however in its operation it may qualify, it can not supersede or interfere with any other of its fundamental provisions, nor can it ever be so interpreted as to destroy other powers granted by that instrument." (2d ed., 228.)

Probably the best attempt at formulating a general rule for the exercise of the treaty-making power is that framed by Mr. Calhoun, in 1851, in his "Discourse on the Constitution and Government of the United States." It reads as follows:

"Although the treaty-making power is exclusively vested, and without enumeration or specification, in the Government of the United States, it is nevertheless subject to several important limitations. It is, in the first place, strictly limited to questions inter alios; that is, to questions between us and foreign powers which require negotiation to adjust them. All such clearly appertain to it. But to extend it beyond these, be the pretext what it may, would be to extend it beyond its allotted sphere, and thus a palpable violation of the Constitution. It is, in the next place, limited by all the provisions of the Constitution which inhibit certain acts from being done by the Government or any of its departments, of which description there are many. It is also limited by such provisions of the Constitution as direct certain acts to be done in a particular way, and which prohibit the contrary, of which a striking example is to be found in that which declares that 'no money shall be drawn from the Treasury but in consequence of appropriations to be made by law.' This not only imposes an important restriction on the power, but gives to Congress, as the law-making power, and to the House of Representatives as a portion of Congress, the right to withhold appropriations; and thereby, one important control over the treaty-making power, whenever money is required to carry a treaty into effect, which is usually the case, especially in reference to those of much importance.

MORE IMPORTANT LIMITATION.

There still remains another and more important limitation, but of a more general and indefinite character. It can enter into no stipulation calculated to change the character of the Government, or to do that which can only be done by the Constitution-making power, or which is inconsistent with the nature and structure of the Government, or the objects for which it was formed. Among which it seems to be settled that it can not change or alter the boundary of a State or cede any portion of its territory without its consent. Within these limits all questions which may arise between us and other powers, be the subject-matter what it may, fall within the limits of the treaty-making power and may be adjusted by it. (Calhoun's Works, I, 203.)

This definition was used in Hauenstein *v.* Lynham, 100 United States, 483, and in People *v.* Gerke, 5 California, 381.

Perhaps the ablest and most accurate law writer of the past fifty years was Judge Thomas M. Cooley, of Michigan. He always undertook to state the law as it had been settled by the decisions of the courts. Writing in 1880, he reached this conclusion:

"The President has power, by and with the consent of the Senate, to make treaties, provided two-thirds of the Senators concur. The Constitution imposes no restriction upon this power, but it is subject to the implied restriction that nothing can be done under it which changes the Constitution of the country or robs a Department of the Government or any of the States of its constitutional authority." (Constitutional Law, 3d ed., p. 117.)

A more extended discussion of this subject is found in the late work of John Randolph Tucker on "The Constitution of the United States," published in 1899. After stating the question to be "Whether the exclusive power of treaty making, vested in the President and Senate, is unlimited in its operation upon all the objects for which a treaty may provide," he gives the respective contentions with respect to the power; quotes Vattel's saying that "it is from the fundamental laws of each state that we must learn where resides the authority that is capable of contracting with validity in the name of a state," and concludes as follows:

"A treaty therefore can not take away essential liberties secured by the constitution to the people. A treaty can not by the United States do what their Constitution forbids them to do. We suggest a further limitation: A treaty can not compel any Department of the Government to do what the Constitution submits to its exclusive and absolute will. On these questions the true canon of construction, that the treaty-making power in its seeming absoluteness and unconditional extent, is confronted with equally absolute and unconditional authority vested in the judiciary." (Vol. 2, p. 725.)

That a treaty can not invade the constitutional prerogatives of the legislature is well illustrated by Dr. Ernest Meier, a German author, who, according to Mr. Wharton, has given to the subject a degree of elaborate and extended exposition which it has received from no writer in our own tongue.

Doctor Meier was a professor of jurisprudence in the University of Halle, and gave his conclusions as follows:

POWER NOT ABSOLUTE.

"Congress has, under the Constitution, the right to lay taxes and imposts as well as to regulate foreign trade; but the President and the Senate, if the treaty-making power be regarded as absolute, would be able to evade this limitation by adopting treaties which would compel Congress to destroy its whole tariff system. According to the Constitution Congress has the right to determine questions of naturalization, of patents, and of copyright. But, according to the view here contested, the President and Senate, by a treaty could on these important questions utterly destroy the legislative capacity of the House of Representatives. The Constitution gives Congress the right of declaring war. This right would be illusory if the President and Senate could by a treaty launch the country into a foreign war. The power of borrowing money on the credit of the United States resides in Congress; this power would cease to exist if the President and Senate could by treaty bind the country to the borrowing of foreign funds. By the Constitution 'no money shall be drawn from the Treasury but in consequence of appropriations made by the law;' but this limitation would cease to exist if by a treaty the United States could be bound to pay money to a foreign power. * * * Congress would cease to be the law-making power as is prescribed by the Constitution. The law-making power would be the President and the Senate. Such a condition would become the more dangerous from the fact that treaties so adopted, being on this particular hypothesis superior to legislation, would continue in force until superseded by other treaties. Not only, therefore, would a Congress consisting of two houses be made to give way to an oligarchy of President and Senate, but the decrees of this oligarchy when once made could only be changed by concurrence of President and of senatorial majority of two-thirds."—(Ueber den Abschluss von Staats vertragen.)

As a conclusion to this résumé of the views of authors and publicists upon this subject the following review by Prof. von Holst, the well-known German-American historian, is both pertinent and instructive:

CAN NOT BE UNLIMITED.

"As to the extent of the treaty power the Constitution says nothing, but it evidently can not be unlimited. The power exists only under the Constitution, and every treaty stipulation inconsistent with a provision of the constitutional law is ipsi facto null and void. Simple and self-evident as this principle is in theory, yet it may be very difficult under certain circumstances to decide whether or not it has been transgressed in fact. Indeed, the chief difficulty arises from the question of the relation of the treaty power of the President with the concurrence power of the Senate bears to the legislative power of Congress. The question is answered by saying that these powers must be coordinate, for treaties, like laws, are 'sovereign acts,' which differ from laws only in form and in the organs by which the sovereign will expresses itself. It follows from this principle that a law can be repealed by a treaty (Foster *v.* Neilson, 2 Peters, 253) as well as a treaty by a law (The Cherokee Tobacco, 11 Wallace, 616). If a treaty and a law are in opposition, their respective dates must decide whether the one or the other is to be regarded as repealed (Foster *v.* Neilson, 2 Peters, 253, 314; Doe *v.* Braden, 16 Howard, 635). * * * Neither the principle nor the correctness of these conclusions from it can well be disputed, and they are, at any rate, valid constitutional law. But in spite of this, it must be admitted that the doctrine has its doubtful side both in theory and practice. It must be called at least an anomaly that, by the ex parte action of the President and two-thirds of the Senators present (who may be only a minority of the whole Senate), a law can be repealed the passage of which required the concurrence of the House of Representatives with the Senate and President, or a two-thirds majority of each House of Congress. The repeal of a treaty by the enactment of a law may, however, lead the more easily to serious consequences, because the incompatibility of the law and of the treaty may not be so clearly manifest that the foreign power concerned will immediately take notice of the law. It is in nowise inconceivable that Congress itself might know nothing of what it had done, so that only after a long time would the fact be established by judicial decision that in this direct manner a treaty was overthrown, the repeal of which had not been contemplated by either of the two contracting parties.

"On still another side of this question of the direct relation between the treaty power and the legislative power makes it difficult to fix the limits of the treaty power. It is certain that no authority granted by the Constitution to any of the factors of government can be drawn from it by treaty, for that would be a change of the Constitution, and, as such, unconstitutional. But Congress may be bound by a treaty not to exercise in a certain way a power belonging to it, although it might exercise it in that way if not bound by the treaty. The freedom of action of the House of Representatives can thus easily be restricted by a treaty to such a degree that the restriction must be admitted to be a violation of the constitution, even if not strictly of its letter, yet still of its spirit. Thus, for instance, the framers of the Constitution certainly did not wish that duties should be fixed in a way repugnant to the views of the House of Representatives, and yet this might be brought about at any moment by a commercial treaty. Of course, it must not be inferred that, in general, there should be no commercial treaties. But Daniel Webster was certainly right in advising his countrymen to consider carefully before beginning to handle questions of duties in connection with treaties." (Constitutional law of the United States, 202.)

CONFINED BY DECISIONS OF COURTS.

The text of a sound treatise on any subject of law is based upon and confined by the decisions of the courts upon that subject. I have followed this historical treatment of the treaty-making power from the Constitutional Convention of 1787 to the present time, purposely quoting any direct mention of the decisions in order that we might see what effect those decisions had from time to time upon the definitions and descriptions of the power as given by subsequent writers. The result is interesting and peculiar. In 1802 Tucker, the first author, cited no authority except the text of the Constitution; thirty years later Story cited Tucker, Rawle, and Jefferson, while in 1880 Cooley cites Tucker and Story, as herein quoted, in support of his text. The reason for this is plain, since the judicial decisions have been only so many applications of general rule to specific states of fact. For it is readily seen that while many of the decisions contain broad general statements to the effect that treaties are the supreme law of the land, there is always the accompanying qualification that it must be a constitutional treaty in order to be so considered.

It is clear that there may be an unconstitutional treaty, just as there may be an unconstitutional act of Congress. This point is well illustrated by the treaty negotiated in 1854 at Caracas by the United States minister and the Venezuelan Government, which provided, in its twenty-fifth article, that in case a citizen of either country should accept a commission in the service of an enemy at war with the other country he should be deemed a pirate and so punished. Mr. Marcy, Secretary of State, promptly repudiated the treaty, which was satisfactory in other respects, upon the ground that the Constitution provided that Congress should define the crime of piracy and its punishment, and that it could not be made the subject of a treaty. If the treaty had been ratified, there can be no doubt that the courts would have sustained Mr. Marcy's view.

Cooley recognizes the right of the House of Representatives to annul such a treaty in the following express terms:

"An unconstitutional or manifestly unwise treaty, the House of Representatives may possibly refuse to aid; and this, when legislation is needful, would be equivalent to a refusal of the Government, through one of its branches, to carry the treaty into effect. This would be an extreme measure, but it is conceivable that a case might arise in which a resort to it would be justifiable." (Constitutional Law, 3d ed., 175.)

Some of the opinions go further and expressly declare that treaties, like laws, are bound by the provisions of the Constitution. Thus, in 1847, in the License Cases (5 How., 613), Mr. Justice Daniel said:

"By the sixth article and second clause of the Constitution it is thus declared: 'That this Constitution and the laws of the United States made in pursuance thereof and treaties made under the authority of the United States shall be the supreme law of the land.'

"This provision of the Constitution, it is to be feared, is sometimes applied or expounded without those qualifications which the character of the parties to that instrument and its adaptation to the purpose for which it was created necessarily imply."

IS COINCIDENT WITH RIGHTS OF STATES.

"Every power delegated to the Federal Government must be expounded in coincidence with a perfect right in the States to all they have not delegated; in coincidence, too, with the possession of every power and right necessary for their existence and preservation, for it is impossible to believe that these ever were, in intention or in fact, ceded to the General Government. Laws of the United States, in order to be binding, must be within the legitimate powers vested by the Constitution. Treaties to be valid must be made within the scope of the same powers, for there can be no authority of the United States save what is derived mediately or immediately and regularly and legitimately from the Constitution. A treaty, no more than an ordinary statute, can arbitrarily cede away any one right of a State or of any citizen of a State."

It therefore makes little difference whether the power is restricted "in subordination to the Constitution and can not supersede or interfere with any of its fundamental provisions," as Judge Story puts it; or to "the principles of the Constitution from which alone the power proceeds," as Mr. Rawle says; or we agree with Judge Duer that "those principles of the Constitution from which the power proceeds should carefully be applied to it;" or with Justice Field that the power is limited "by those restraints which are found in that instrument against the action of the Government or of its departments and those arising from the nature of the Government itself and that of the States;" for they, in substance, are all equivalent to Cooley's statement of the rule that the power "is subject to the implied restriction that nothing can be done under it which changes the Constitution of the country or robs a department of the Government or any of the States of its constitutional authority."

Since all the authorities agree that the power must, under our form of government, be limited in some way, it necessarily follows that it can and must be limited only by the Constitution which created the power.

So we find the usual limitation in the late case of De Geofroy *v.* Riggs (133 U. S., 258) decided in 1890. The court, speaking through Mr. Justice Field, used this language:

"The treaty power as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the Government or its departments, and those arising from the nature of the Government itself, and that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the Government or in that of one of the States, or a cession of any portion of the territory of the latter, without its consent. But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiation with a foreign country."

TREATY-MAKING POWER.

In the actual exercise of the treaty-making power it has been construed to extend to the acquisition of property belonging to the citizens of each in the territory of the other: (U. S. *v.* Forty-three Gallons of Whisky, 93 U. S., 197); provisions for inheritance by aliens (Hauenstein *v.* Lynham, 100 U. S., 489; Geofroy *v.* Riggs, 133 U. S., 266; Bohaud *v.* Bize, 105 Fed., 485; People *v.* Gerke, 5 Cal., 381); the establishment of consular tribunals (In re Ross, 140 U. S., 463); to enable aliens to purchase and hold lands (Chirac *v.* Chirac, 2 Wheat., 259); to create a judicial system (Forbes *v.* Scannell, 13 Cal., 242); the acquisition of territory by the United States (Am. Ins. Co. *v.* Canter, 1 Pet., 511; Philippine cases, 182 U. S., 197; 183 U. S., 181); the settlement of boundaries between States (U. S. *v.* Texas, 162 U. S., 38; R. I. *v.* Mass., 12 Pet., 725); the granting and accepting of awards for injuries (Frevail *v.* Bache, 14 Pet., 97; Bachman *v.* Lawson, 109 U. S., 660); and the conferring of citizenship on Indians (Cross *v.* Harrison, 16 How., 164; U. S. *v.* Rhodes, Fed. Cas. 16, 151).

I have not attempted to cite all the decisions in point, but only some of the leading cases that support the statement. It will be noticed that all of these instances are properly within the fair exercise of the power, and neither interferes with a department of the Federal Government nor robs a State—to use Judge Cooley's phrase—of its constitutional authority.

It is hardly necessary to cite authority to show that the Federal Government is one of enumerated powers, and that the States retain control of their domestic and local affairs. But if it be thought necessary, the following language of Mr. Justice Brewer, in the current number of the advance sheets of the United States Supreme Court Reports, may suffice. In referring to the effect of the thirteenth, fourteenth, and fifteenth amendments, Judge Brewer said:

"Notwithstanding the adoption of these three amendments the National Government still remains one of enumerated powers, and the tenth amendment, which reads 'the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively, or to the people,' is not shorn of its vitality." (Hodges *v.* United States, 203 U. S.)

To what extent, then, may a State control its public schools in the admission or exclusion or separation of different races of pupils?

In People *v.* Gerke (5 Cal., 381), and that class of cases which permit aliens to inherit contrary to the provisions of State laws, it was contended that the treaty, in effect, nullified the State laws upon that subject. But in the Gerke case this objection was answered as follows:

"One of the arguments at the bar against the extent of this power of treaty is that it permits the Federal Government to control the internal policy of the States, and, in the present case, to alter materially the statutes of distribution. * * * I think, however, that no such consequence follows as is insisted. The statutes of distribution are not altered or affected. Alienage is the subject of the treaty. Its disability results from political reasons which arose at an early period of the history of civilization, and which the enlightened advancement of modern times and changes in the political and social condition of nations have rendered without force or consequence. The disability to succeed to property is alone removed, the character of the person is made politically to undergo a change, and then the statute of distribution is left to its full effect, unaltered and unimpaired in word or sense."

FOREIGNERS MERELY TAKE THEIR OWN.

Treaties of this kind do not confer any thing or right upon the foreigner; they merely permit foreigners to take that which is their own. But the granting to unnaturalized foreigners the right to attend the public schools of a State, either with or without charge, is something more. Does it, in Judge Cooley's language, "rob the State of its constitutional authority," and is it in the language of Justice Field, within those restrictions "arising from the nature of the Government itself and of that of the States?" Are the local public schools of a city, maintained exclusively by local taxation and presumably for the exclusive use of citizens, "properly the subject of negotiation with a foreign country?" (Geofroy *v.* Riggs, 133 U. S., 258:) The answers to these questions all turn upon the nature of our Government and the relation of the State governments to the United States Government under the Constitution.

It may be considered as fairly well settled that the establishment of separate schools for white and for colored children does not violate the constitutional right of either class to the equal privileges and immunities guaranteed by the Federal Constitution, provided equal advantages are provided for each class. (People *v.* Gallagher, 93 N. Y., 438; 45 Am. Rep., 232; Cory *v.* Carter, 48 Ind., 327; 17 Am. Rep., 738; McMillan *v.* School Committee, 107 N. C., 609; 10 L. R. A., 823; State *v.* McCann, 21 Ohio St., 198; Martin *v.* Board of Education, 42 W. Va., 514; Lehew *v.* Brummell, 103 Mo., 546; 11 L. R. A., 828; State *v.* Maryland Institute, etc., 87 Md., 643; Roberts *v.* City of Boston, 5 Cush., 198.)

Equality, and not identity, of privileges and rights is what is guaranteed to the citizen. If the right claimed be not guaranteed by the Federal Constitution, but is reserved to the States, it is difficult to see how the Federal Government can constitutionally control it either by treaty or otherwise.

Likewise it has been repeatedly decided that State laws requiring separate coaches for white and for colored passengers on railroad trains within the State violate no privilege or immunity of either class and places no badge of slavery upon the colored passenger.

(L., N. O. & T. R. Co. *v.* Mississippi, 133 U. S., 587; Ex parte Plessy, 45 La. Ann., 80; 18 L. R. A., 639; Plessy *v.* Ferguson, 163 U. S., 537; Civil Rights cases, 109 U. S., 3; Ohio Valley R. R. Co. *v.* Lander, 104 Ky., 431.)

Cases of the class of Parrott's Chinese case (6 Sawyer, 349)—and there are many of them—are not in point and do not come up to the question. The laws of California prohibited the employment of Chinese by any corporation, and Parrott, the president of a mining company, was indicted for violating the law. Upon habeas corpus he was properly discharged, because he had a perfect right to hire a Chinaman or any other kind of a man. Moreover, the court held that the Chinaman's right to work was a property right protected by the fourteenth amendment, which extends not only to citizens, but to all persons within the jurisdiction of the United States. In Parrott's case California attempted to act under an unconstitutional law; in the school cases she is quite within her constitutional rights.

If the control of local schools can not be taken from the States and cities by a law passed by both Houses and approved by the President, because the power to do so is not granted, it would seem that the discussion is at an end, for if the power is wanting it clearly can not be done in any way, much less by the President and the Senate only.

And of this limitation of power all nations must take notice. (Taylor's International Public Law, secs. 158, 361, 364.)

Mr. COUSINS. Mr. Chairman, I yield five minutes to the gentleman from Vermont [Mr. FOSTER].

Mr. FOSTER of Vermont. Mr. Chairman, in the course of my remarks last week upon the treaty power of the Government, in response to a question from the gentleman from West Virginia [Mr. GAINES], I stated that aside from the disability affecting the right of suffrage the Government had undertaken to deal with nearly all the disabilities of alienage by treaty stipulations. I did not make myself quite clear in that statement. I was not quite accurate. What I meant to say was that aside from those disabilities of alienage which affect political rights the Government had dealt with nearly all, if not quite all, of the disabilities of alienage. That is to say, Mr. Chairman, there are two classes of disabilities of alienage. The first class relates to civil rights, and the second class relates to political rights. Our Government has dealt with and has undertaken to remove by treaty stipulation the disabilities of alienage affecting civil rights; but it has never, so far as my knowledge goes, undertaken to deal with or to relieve foreigners of the disabilities of alienage affecting political rights. By political rights I mean those which enable one to participate in the management of the Government. I wish to make myself clear upon this subject. I claim that the National Government through its treaty powers has the right to remove the first class of disabilities. I deny that it has the power to remove the disabilities of alienage of the second class. In this respect we can not differ from that constitutional government which confessedly exercises its treaty-making power as the result of sovereignty, for no one would claim, I believe, that such a government through its treaty-making power could admit foreigners to participate in the management of its government.

Mr. GARRETT. Why?

Mr. FOSTER of Vermont. Because, among other reasons—and I have not the time now to go deeply into the subject—that subject is not a proper one for international agreement. The other disabilities of alienage, as has been shown, I think, by myself—certainly has been shown by my distinguished friend the gentleman from Kentucky [Mr. SHERLEY]—are proper subjects for international negotiation.

Mr. GARRETT. The gentleman's reasons, then, are not found in the structure of the Government?

Mr. FOSTER of Vermont. Yes. I could go further and point out that the limitation of the treaty power which Mr. Calhoun mentioned, and which I quoted—that is, the form of

our Government—would prohibt the treaty-making power of the Government from attempting to say by treaty stipulation that foreigners might participate in the management of the Government, either State or nation. This is a government by the people, a government by people who owe allegiance to the National Government, and therefore to the State governments.

Mr. STEPHENS of Texas. Will the gentleman permit me to ask him a question?

Mr. FOSTER of Vermont. Certainly.

The CHAIRMAN. The time of the gentleman has expired.

Mr. COUSINS. I yield five minutes more to the gentleman.

Mr. STEPHENS of Texas. I ask the gentleman whether he does not think it to be the duty of one of the Members of Congress to introduce a bill, and the Foreign Affairs Committee to report it, declaring that this Government will not stand by any treaty, or will revoke any treaty, that permits the States to be required to educate any children of any citizen of any other government, and declaring that no person shall have any right that is not guaranteed to the citizens of the State in which the foreigner may reside?

Mr. FOSTER of Vermont. Mr. Chairman, I would hardly undertake to say what bills Members should introduce; but I will say that the Foreign Affairs Committee as now constituted will carefully consider all bills which are introduced by any Member of the House and referred to that committee.

Mr. STEPHENS of Texas. I will try to furnish the gentleman with a bill.

Mr. McNARY. I would like to ask the gentleman from Vermont, in view of the fact that nine States of the Union now allow foreigners to vote and participate in the political management of their affairs without being naturalized, merely having made the formal declaration, whether or not, if these States have the power to do that now, they would not have power to do it under an agreement with a foreign nation?

Mr. FOSTER of Vermont. I should very much doubt it. They might with the consent of Congress.

Mr. SHERLEY. If the gentleman will permit me. You say that a State can, with the consent of Congress, make such an agreement with a foreign government.

Mr. FOSTER of Vermont. I said they might, if you are correct in your position.

Mr. SHERLEY. Assuming that the State could do it, would not the fact that the State could do it preclude the idea that the treaty-making power could do it?

Mr. FOSTER of Vermont. Oh, not at all.

Mr. SHERLEY. Will the gentleman answer this question? If an agreement to do a certain thing might be stated and made to have all the binding force of a treaty, then in that particular instance a treaty and an agreement would be the same, would it not? It does not matter whether you call that an agreement or a treaty, if they both accomplish the same purpose they are exactly the same thing. Well, if that be true, how does the gentleman get around the proposition that a State can not make a treaty?

Mr. FOSTER of Vermont. I have not said at any time during my remarks that it can not make an agreement with the consent of Congress.

Mr. SHERLEY. But the Constitution so states. The Constitution says that no State shall enter into any treaty, and it could not be put any clearer than when it says that no State, without the consent of Congress, shall enter into an agreement. The point I make is this: That this necessarily shows that a treaty and an agreement were different things, embracing different subjects.

Mr. FOSTER of Vermont. I so understand it.

Mr. SHERLEY. Does the gentleman consider it a fair construction of one provision of the Constitution that will deny the validity of another provision of the Constitution?

Mr. FOSTER of Vermont. I shall not undertake to say what the fathers had in mind when they provided that a State should enter into no such agreement without the consent of Congress. There are text-book writers and distinguished members of the legal profession who claim that every international agreement is a treaty. Whatever they may have intended by that provision, it is plain that the fathers placed the treaty-making power in the National Government.

Mr. SHERLEY. Mr. Chairman, I ask unanimous consent to print, as a part of my remarks, the address referred to in the RECORD.

The CHAIRMAN. The gentleman from Kentucky asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. COUSINS. Mr. Chairman, I yield to the gentleman from Ohio such time as he may desire.

Mr. GROSVENOR. Mr. Chairman, I had intended to trespass upon the good nature of the House by submitting some remarks this afternoon upon a subject somewhat new to the Congress of the United States, the subject of the tariff in its various forms and developments; but I am not in a physical condition to do myself justice, and therefore, with very many feelings of obligation to the gentleman from Iowa [Mr. COUSINS], chairman of the committee, who has yielded this time, I will yield back my time to him, and to-morrow, if opportunity offers, I will proceed with my remarks.

Mr. COUSINS. Mr. Chairman, I will now ask the gentleman from Georgia [Mr. HOWARD] to use such time as he may desire.

Mr. HOWARD. We are not in a position on this side to use any further time now, and unless the gentleman from Iowa can go on on his own side we will have to yield back the time.

Mr. COUSINS. There is no further request for time on this side. I therefore ask that we take up the bill for consideration under the five-minute rule.

The CHAIRMAN. The Clerk will read the bill.

The Clerk, proceeding with the reading of the bill, read as follows:

For the payment of the cost of tuition of student interpreters at the legation to Japan, at the rate of $125 per annum each, $750.

Mr. CAMPBELL of Kansas. I should like to ask, Mr. Chairman, in what manner these student interpreters are chosen, as a matter of fact.

Mr. COUSINS. They are chosen by the President of the United States.

Mr. CAMPBELL of Kansas. Is there any sort of examination?

Mr. COUSINS. All consular appointees, and all other appointees to the foreign service now, except ambassadors, are required to be examined, and have been for some time.

Mr. CAMPBELL of Kansas. And are these students examined?

Mr. COUSINS. They are.

Mr. CAMPBELL of Kansas. How are they called to the attention of the President?

Mr. COUSINS. They are appointed directly by him, and then appear at the State Department, where they are examined as to their fitness.

Mr. CAMPBELL of Kansas. Their appointment is entirely in the discretion of the President.

Mr. COUSINS. Undoubtedly.

Mr. MANN. Is it not provided by a recent order that these consular positions, and positions of that sort, shall be distributed to a certain extent according to the population of the different States?

Mr. COUSINS. In the new regulations I understand there is some such provision.

Mr. SOUTHARD. By whom are these examinations conducted?

Mr. COUSINS. There is a committee, and I think one of the Civil Service Commissioners is included in that committee.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

GROUND RENT OF LEGATION AT TOKYO, JAPAN.

Annual ground rent of the legation at Tokyo, Japan, for the year ending March 15, 1908, $250, or so much thereof as may be necessary.

Mr. SLAYDEN. Mr. Chairman, I offer the amendment which I send to the Clerk's desk.

The Clerk read as follows:

After the word "necessary," in line 8, page 9, amend by adding:
"For the purchase of ground and the erection of an embassy building in the City of Mexico, $60,000."

Mr. COUSINS. Mr. Chairman, of course I must reserve a point of order against that. But I should like to hear what the gentleman has to say on the subject.

Mr. SLAYDEN. I thank the gentleman from Iowa for his courtesy. The City of Mexico is the one capital of a foreign and friendly country with which I have great personal familiarity. In the prosecution of business enterprises I have occasion to visit the Republic of Mexico frequently, and almost annually I am in the City of Mexico and spend some time there. It has been a source of some mortification to me when I have found that other governments less important—in my view, of course, which may be a partial one—than the United States have splendid residences in which to house their legations, while whenever there is a change of ambassador from the United States the new ambassador must go house hunting. And, Mr. Chairman, it is not an easy thing in the City of Mexico to find a comfortable or suitable residence for the American ambassador.

Now, some time or other we will undoubtedly rise to the right plane and do our duty in this matter. Some time or other

we will unquestionably provide for the purchase of ground and the erection of buildings in which to house our ambassadors abroad, and this, I think, sir, is as good a time as any to begin. The City of Mexico, for many reasons it seems to me, is the most desirable capital in which to make that beginning.

Last fall sensational newspaper correspondents and timid travelers came flocking out of Mexico with the cry of an impending revolution. They stated that this revolution was more aimed at American citizens than at the Government of Mexico. I happened to be in the country at the time, spent some weeks there, and was there when the outbreak was expected. I never saw a more peaceable country; I never saw a more orderly people; and in all my visits to Mexico I never received more consideration nor was I ever more courteously treated than on that occasion.

Recently, and indeed at the present time, in my own home a trial is being had of some revolutionists who were charged with conspiring against a friendly government, the Republic of Mexico. Now, our laws, which make this Government a haven for political agitators, are not thoroughly understood by the Latin people who direct the destinies of Mexico. They can't see why a friendly country should harbor their avowed enemies. I think it is due them that we should make some recognition of their importance as a friendly people, and we can not do it better than by giving to our embassy the advantage of a house of its own. There ought to be in the great City of Mexico a piece of territory belonging to the United States. The compensation of the ambassador is not very great, as he is compelled out of his limited official income to hire a house for himself. That ought not to be the case.

Mr. Chairman, the commerce between this country and Mexico is large and is growing marvelously. Our commercial and social relations with that country are upon a closer and closer basis from year to year. Our railways cross the river on the border of Texas and through Arizona into Mexico without interruption and without vexatious delays at the custom-houses. Mexico realizes the importance of our commerce and the desirability of maintaining closer relations with us. This will be a grateful compliment and concession to that Government and put our embassy on a proper plane. I sincerely hope the gentleman from Iowa will not make a point of order against the amendment.

Mr. COUSINS. Mr. Chairman, I am in duty bound to make the point of order. I will say further to the gentleman from Texas that on the request of your Committee on Foreign Affairs at the last session the State Department, only a day or two ago, furnished a report on the probable expense of building buildings for some of our legations, but that report is not yet printed. When we come to consider that subject we shall consider it on its merits altogether. I think the gentleman will agree with me that that will be the better way to do it. I am quite agreeable to the idea of our country owning its premises at the various embassies and legations, but I think we should take it up at some time and consider it aside from the general appropriation bill.

Mr. SLAYDEN. Does not the gentleman think it will be more difficult to get a general plan adopted than it would be to provide one location in one capital where it is urgently needed, for comfortable and suitable houses are scarce there?

Mr. COUSINS. It might or might not be more difficult, but it would certainly be more intelligent to consider it on its merits. The idea of slipping in one here and there from time to time would not result, I think, in the end favorably.

Mr. SLAYDEN. Well, Mr. Chairman, the amendment calls for a very modest expenditure. It will not build a palace, and it is needed, and I wish the gentleman would give the House an opportunity to vote upon it.

Mr. COUSINS. I have no doubt that in the near future, in the next session, we shall consider that subject, and it is the intention of your committee to take it up and present it to the House for consideration.

Mr. SLAYDEN. I want these buildings built before the 4th of March, 1909.

The CHAIRMAN. The Chair sustains the point of order.

The Clerk read as follows:

For salary of consul-general at Boma, Kongo Free State, class 5, $4,500.

For salary of consul at Calgary, Canada, class 9, $2,000.

Mr. MANN. I would like to ask the gentleman in charge of the bill whether this is a new consul-general's office?

Mr. COUSINS. To which one does the gentleman refer?

Mr. MANN. Well, you provide in the bill a paragraph under the act of reorganization of last year, and then provide for a salary of a consul-general at Boma, and also for the salary of a consul at Calgary, Canada. If these were provided for in the reorganization act, why are they segregated here?

Mr. COUSINS. They were not provided for in the reorganization act, but were in the appropriation bill.

Mr. MANN. But they are not provided in the reorganization act. There is no law for their provision.

Mr. COUSINS. The law is in the appropriation act.

Mr. MANN. The law of an appropriation act is not sufficient law for next year.

Mr. COUSINS. Oh, I think so, as a basis for another appropriation.

Mr. MANN. Well, let the Chairman rule on that, if necessary. What is the reason for this? It is true that last year, immediately following the reorganization act, where everything was included as consulates and consuls-general that anybody could think of at the time, the bill went over to the Senate and some additions were made, almost before the ink was dry on the President's signature. What is the occasion for that?

Mr. COUSINS. I will say to the gentleman that it very often happens it becomes necessary to place men at new points. For instance, we abandoned eight last year. We expect to abandon many others. I am told by the Department that certain consulates can be from time to time abandoned. It became necessary, in the opinion of the President, to send a man to Boma to make certain investigations now going on, and that was the reason it was provided for at the last session.

Mr. MANN. The gentleman says they abandoned eight at the last session. There were not eight abandoned except in the reorganization of the consular department.

Mr. COUSINS. Well, that was at the last session.

Mr. MANN. I understand—a law was passed providing for the omission of certain consulates and the addition of certain consulates. That law was a very late expression of opinion on the part of the Department of State as to the necessities, and gentlemen say that the President advised this. As a matter of fact, the item was added in the Senate, and I have often seen items added in appropriation bills in various legislative bodies that were not asked for by the Executive and not asked for by anyone, except somebody in interest.

Mr. COUSINS. I will say to the gentleman that there was a very great influx of Americans to this point in Canada, and it was deemed necessary that we should have a representative there. I was very much surprised that more were not proposed, that only two were added to the entire list provided for in the so-called "consular reform bill;" and it seems to me that these two that were added were absolutely needed. As I said before, from time to time it is thought by the Department that other consulates can be discontinued. Our service must necessarily be to a greater or less extent flexible, and wherever the interests of our own citizens require it and the interests of the country we should have at least enough flexibility to establish a consulate if necessary or a consular agency.

Mr. MANN. What the gentleman says is entirely true; but, on the other hand, here is a bill reorganizing the service that is approved on April 5, and immediately thereafter recommendation is made to add two new consulates that nobody had thought of up to that time. That is very rapid work.

Mr. PERKINS. Will the gentleman allow me to make a suggestion, which I think will appeal to him?

Mr. MANN. Certainly.

Mr. PERKINS. Let us take the consul-general in the Kongo Free State. The gentleman is certainly familiar with the very considerable degree of agitation there has been in this country in reference to the condition of the Kongo. This body has been flooded with petitions asking for action in reference to situations existing in the Kongo. Questions of considerable diplomatic delicacy have arisen, and it was to furnish further information, to furnish further facilities for dealing with the question, which was a new question and which had risen in its importance since the consular bill was passed, that this new station was established. That illustrates the way in which, in the constant changes of trade and of diplomatic relations between different governments, new situations arise which require the action of new officials. I am sure that, in view of all the far-reaching questions that are raised with reference to it, the gentleman will thoroughly agree in the wisdom of the Government's action in sending to the Kongo a special representative of the United States. I am not familiar with the one in Canada, but doubtless, as has been suggested by the gentleman from Iowa [Mr. COUSINS], exigencies have arisen there or necessities of trade have suggested it.

Mr. MANN. Does the gentleman recall that there was any special difference in the situation as concerning the Kongo Free State between the 5th of April and the adjournment of the last session of Congress?

Mr. PERKINS. Yes.

Mr. MANN. I would be very glad to have the gentleman's

recollection refresh mine. I had, and I have no doubt the gentleman had, stacks of petitions and letters upon the subject long before the consular reorganization bill was brought into the House at all. I do not recall any special consideration of the subject between the time of the passage of that bill and the adjournment of Congress.

Mr. PERKINS. We all of us had stacks of correspondence and many missives prior to the passage of that bill, and those have continued to follow in not lessening volume. Perhaps it might have been well a year ago to have decided upon the appointment of this officer, which has since been made, but the State Department at that time had not reached the point of thinking it was judicious to have this special examination made. Since then, in view of the continued agitation, in view of the continued interest in questions in reference to the internal condition of the Kongo, it has decided upon this appointment, and surely the gentleman does not think that if a step is thought to be wise now the fact that it had not been decided upon a year ago should for all time bar the Government from adopting a measure the wisdom of which I am quite sure will appeal to the gentleman himself.

Mr. MANN. May I ask the gentleman a question? Has he ever made any investigation of the subject, and is he prepared to say, upon his investigation, it is a wise step to take?

Mr. PERKINS. Yes; I think it is.

Mr. MANN. From personal investigations or simply because it is in the bill, which?

Mr. PERKINS. Oh, no; not because it is in the bill, but because I have read with great care volumes of evidence bearing upon this question, and I have also read documents and petitions innumerable from citizens of the United States, to whose requests we are certainly bound to yield proper deference.

Mr. MANN. Let us see what the situation is. Here is a bill—I do not remember now whether the consular reorganization bill as it came to the House was a Senate or House bill.

Mr. PERKINS. It was a Senate bill.

Mr. MANN. It passed the Senate; it was a Senate bill, and it came to the House and was largely amended. Reasons were given for the action in the Senate in the first instance and for the action in the House making the amendments. The amendments were numerous. It went back to the Senate, went into conference, and changes were made in conference. Reasons were given. The bill became a law. No reason has ever been given to either House of Congress for inserting either one of these items in the bill. The gentleman assumes that there be reason for it. No reason has ever been communicated by the Executive to either House of Congress showing any necessity for putting these items in the bill. Now, I am assuming that if the Executive asked for it there may be reason for it, but the gentleman knows as well as I, and we all know, that often places are created not because there is a necessity for the position from the public-service standpoint, but because there is a necessity for the position to put somebody in.

Mr. PERKINS. Well, that is not at all applicable to this place. The gentleman is wrong in his statement. There have been abundant reasons for the appointment of this consul-general to the Kongo Free State given to the Committee on Foreign Relations, which reported the bill.

Mr. MANN. Well, if the committee had any hearings we will be glad to have them.

Mr. PERKINS. Now, I am endeavoring in a weak and ineffectual way to transmit the information which the committee has received to the House when this item comes on for consideration, and it seems to me that in every way it is properly brought before the House. It was the opinion of the State Department, it is the committee's opinion now, I think it will be the opinion of the entire community, and I hope it will be the opinion of this House that, in view of the conditions existing in the Kongo Free State, it is proper for this Government to appoint a consul-general there whose duty shall be to look into and consider these questions, and also to have under his charge the largely increasing American interests in the Kongo Free State. The gentleman, a careful student of every political question——

Mr. MANN. Do not get sarcastic.

Mr. PERKINS. Knows that important contracts have been made between the Belgian Government and American citizens in reference to very important branches of trade in the Kongo Free State, contracts of great size and importance, and I am sure the gentleman will see the eminent propriety of the appointment of this officer. There may have been offices created not for public need but for private advantage, but surely there has been no addition made to the force of consuls for a long time which it seems to me was more justified alike by political and by business considerations than this particular appointment to which the gentleman calls attention.

Mr. MANN. The gentleman from New York has my entire confidence at all times. I am perfectly willing to take the judgment of the Committee on Foreign Affairs as to the needs of consular places, but I do not believe myself that the Committee on Foreign Affairs has expressed or has any judgment in reference to this office or this place.

It is put in the bill this year simply because it was in the bill last year. It was inserted in the bill last year because the committee in charge of it had to yield in conference, not because they inserted it, not because they asked for it, not because they thought it was right. It was yielding to another body. Now, if the gentleman can give us any statement that his committee has considered the matter, I am perfectly willing to take the judgment of the committee.

Mr. PERKINS. The gentleman's remarks, although he has always been most courteous, are to me very painful, because when I had endeavored as best I could to state reasons for the appointment of this consul-general in the Kongo Free State which seemed to me to be very satisfactory the gentleman says we had no reasons and we give no reasons.

Mr. MANN. The gentleman has the ability to give reasons on any subject, and at any time that he has to do so. But that is not the question. The question with me is whether the committee had any reason and gave any consideration to this question. Of course the gentleman can give reasons based upon some petitions they had.

Mr. PERKINS. The committee had reasons, which I have endeavored to state to the gentleman from Illinois [Mr. MANN], and those reasons by the committee were deemed sufficient, as I hope they will be by the gentleman.

Mr. MANN. I withdraw the point of order upon that item.

Mr. CLARK of Missouri. Mr. Chairman, I would like to ask the chairman of the Committee on Foreign Affairs [Mr. COUSINS] or the gentleman from New York [Mr. PERKINS] a question for information. Having served a long time on that committee, I take a great deal of interest in its affairs. Has anybody observed any improvement in the consular system of the United States since that consular bill was passed here remodeling it?

Mr. COUSINS. The time of its operation being so very limited perhaps very little can be observed so soon. However, I will say to the gentleman that the Chief of the Consular Bureau has stated that largely by reason of the elimination of fees and turning them over to the Government instead of letting them be retained by the consuls has resulted in a situation which places it about $19,000 ahead so far.

Mr. CLARK of Missouri. One more question. As to these numerous papers that the gentleman from New York [Mr. PERKINS] and the gentleman from Illinois [Mr. MANN] were talking about receiving, it was constantly stated by boards of trade and other self-constituted advisers that the consular service in the United States was loaded up with a lot of weaklings and incapables. Now, have any of those undesirable consuls been weeded out of the system since this law was passed?

Mr. COUSINS. I do not concede the truth of those statements that were made from time to time by the gentleman and by the papers referred to. I have saved some of those utterances, and the difference of opinion that existed at that time concerning our consular service is remarkable. There was one gentleman who used to appear before the committee, when the gentleman from Missouri [Mr. CLARK], now upon the floor, was a member of the committee, and whose name I do not care to mention in connection with his words which I shall quote, who spoke in a city not far from Washington along about that time in this fashion:

> As now conducted, although it possesses some virtues and includes a few good men, our service, as a whole, is a blot on the political and commercial records of this country.

Mr. CLARK of Missouri. The chances are that that man has learned a good deal better since then.

Mr. COUSINS. It is to be hoped he has. However, there was another class of men that appeared in the city of Washington when they had their meeting a year or more ago, and I will read the utterances of one of those gentlemen, which I think is far more of a credit to the association he represented and to our country and to the truth than the miserable utterance I read a moment ago. This gentleman, who is from the city of Brooklyn, said:

> From personal observation and acquaintance with many consuls abroad, I believe that in intelligence and faithful performance of duty our consuls compare well with those of other nations. However, we should strive to improve this standard and endeavor to obtain adequate compensation for our consuls, which compensation seems to be at present meager.

This convention, representing the leading commercial interests of this country, is called for the purpose of carefully considering the subject and urging Congress to adopt measures which will prove beneficial to the consular service.

That is the character of utterance that is worthy of the organization and of the gentleman who made it. It is worthy of this country, and it comes more nearly representing the truth at that time and at the present time than the wild utterances of other gentlemen contemporaneous with these that I have quoted.

I could go on further and give the opinion of foreigners concerning our consular service, and I think that since the subject has been raised I will read briefly from Doctor Vosberg-Rekow, a well-known economist. He has this to say of American consuls:

The Americans have acted judiciously in establishing a system which is of the greatest advantage to themselves, but costly and inconvenient to their competitors. In all countries with which it has trade relations the United States has stationed consuls and consular agents. Every shipment of goods to a United States port must pass through the hands of these officials, and the amount, value, place of origin, market price ruling in the country of production, method of production, etc., are noted. The consuls thus dive deeply into the economic condition of their districts and obtain information the result of which is discernible in the steadily increasing exportations of their home country.

I read further from the Frankfürter Zeitung commenting on our system and on our foreign service:

The American does not wait until a report is "due," but makes it when an occasion occurs. These opportune reports, which are being adopted in England more and more, may be inferior to ours in scientific thoroughness and accuracy, but their practical value is twice as great. The Commercial Museum of Vienna gives some examples of the promptness of these reports. On the 10th of June a German vessel was plundered by pirates at Maracaibo. On the 20th of June the American consul sends a report about the equipment of a ship necessary to evade the pirates. The consul in Venezuela notices that there is an excellent opening for American coal at La Guaira and writes his report, exactly a page long, but containing all necessary information. Those interested receive prompt and exact information. Can not our officials do the same? Certainly they can do it, if they are informed as to the real needs of home industries, but it requires, of course, special training.

I quote further from the London Daily Mail of September 27:

One can not fail to notice the admirable business promptitude of American consuls, who are so alert that within a few weeks of the opening of a new establishment they pay a visit, and immediately report to their countrymen new openings that are arising in countries where they are located. How many of our consuls would take such steps as these? Possibly the solution is to be found in commercial attachés to the consulates. Certainly something should be done to keep home manufacturers as much abreast of foreigners and as well informed on foreign openings as our American cousins are kept by their alert consuls.

I quote further from Mr. Robert P. Yates, chairman of the Birmingham Chamber of Commerce. After expressing his appreciation of American consuls, etc., Mr. Yates was asked by the reporter:

"So you think the American consuls make themselves more useful to their country than the British do to theirs?"

"Yes; there can be no doubt of it. The United States consul, to begin with, has fewer traditions. That is a great advantage. He has also, in my experience, a far keener eye to industrial and commercial affairs and a better capacity for details, technical and otherwise. In, I believe, sixty towns and cities of the British Isles there is an American consulate. About half of these are in charge of American citizens, the others being English; but these latter are mostly at the unimportant places. The thirty Americans have taken to the duties of ambassadors of commerce with a zeal which can not, I think, be too closely followed by British consuls in foreign countries. Of course it is only of late years that manufacturers of the United States have generally laid themselves out for a foreign trade. But, like new beginners at most things, they have put a lot of enthusiasm into the work and have spared no trouble. This enthusiasm is shared by the consuls, and they take a pleasure in acquiring information likely to be useful, even though it may entail a good deal of trouble and expenditure of a lot of time. Yet the American consuls are not given to the writing of long-winded reports or to explaining at length the principles upon which American merchants should conduct their export business."

"But," I inquired, "in what way do the United States consuls get better information than the British?"

"I should say they take a great deal more trouble over getting information and go to work in a different fashion. The American consul, as a rule, is the sort of man to cultivate the acquaintance of business men in his district, and of course we know that the citizens of the Stars and Stripes are champions at the gentle art of questioning, and their questions are usually very much to the point. If a man in a large way of business is willing to 'open out' at all, the American consul will stick to him until he has got all the essential facts likely to be useful to the traders supplying the particular description of goods used. Then again, when he gets anything he thinks of importance, he does not wait for a month to include the information in a comparatively lengthy report. He writes out the statement concerning the matter promptly, perhaps even the same night, as was the case in one instance that came under my notice; he catches the next mail, it is published in Washington in two or three weeks, and it is circulated all over the United States with no longer interval from the time the information was acquired than would be taken by many of our consuls in preparing the report."

I might go on and read numerous expressions of foreigners concerning the American consular service and American officers that represent us. I am very glad that this question has been raised. I believe that by reason of the consular reform bill of last session and by what we are doing from time to time by way of appropriations our service will be very greatly improved.

It had been characterized by one whose opinion is very good, in my judgment—the Secretary of State—as "uneven." I think that came nearer describing our foreign service than any other term I have heard.

Mr. CLARK of Missouri. One more question. Was not that consular bill, or bill reforming the consular service, gotten through both Houses of Congress by reason of just exactly such articles as you have been reading, condemning the consular service as then existing?

Mr. COUSINS. I think that the agitation at the time, perhaps, aided in hastening the legislation which the committee had formerly recommended.

Mr. SLAYDEN. I move to strike out the last word. Mr. Chairman, I would like to have the consent of the House to proceed for ten minutes. It is entirely possible that I would not use all that time, but I would like to have the privilege of proceeding ten minutes.

Mr. COUSINS. I hope that the gentleman will be given that privilege. The gentleman had asked for time in general debate, but was not given it, and I hope that he will have that privilege extended to him now.

The CHAIRMAN. The gentleman from Texas asks unanimous consent to proceed for ten minutes. Is there objection? [After a pause.] The Chair hears none.

Mr. SLAYDEN. Mr. Chairman, any man who occupies the position of President of the United States is an object of interest to the people at large. The present occupant of that high office would be a striking figure even if he did not have the aid of the pomp and circumstance of the Presidency. He is never commonplace; he is always interesting and usually picturesque.

Mr. MANN. And right.

Mr. SLAYDEN. Picturesque. Indeed, there have been times in which I would like him to have been less picturesque than he was. He is a leader among men, takes his rightful station as a leader of men, and seems to be equally at home in a prayer meeting or a political powwow. Recently he made an extremely interesting speech here in the city of Washington to the national convention for the promotion of foreign commerce. Among other interesting things which he said upon that occasion was that he had by rules promulgated by the Department of State put the consular and diplomatic service upon a nonpartisan basis. He even went further and made the more surprising statement that it had been put upon a nonsectional basis.

Now, Mr. Chairman, that statement is interesting if true; but the President of the United States, like all men who talk a great deal and vehemently, is occasionally apt to get his facts all wrong. I do not believe that he means to be inaccurate; but any man who talks volumes can not always be accurate, and he certainly has been inaccurate in some instances.

Impressed by the importance of his statement that the consular and diplomatic service had been put upon a nonsectional and nonpartisan basis, I went to the Department of State to make an inquiry as to the facts, and this is a memorandum, Mr. Chairman, of the facts which I discovered in my visit to the Department of State. I submit this list, which is an enumeration of the diplomatic and consular service. In this list there is a record of 743 diplomatic and consular employees. It also shows that they were appointed from the various States and Territories as follows: Alabama, 2; Arkansas, 0; Florida, 3; Georgia, 2; Louisiana, 10; Mississippi, 1; Tennessee, 9; Texas, 10; Virginia, 4.

On the other hand, Mr. Chairman, leaving these orphan children of the South and crossing the river, we find the following to be the facts as to appointments. But first I will have to run over to the Pacific coast, because it comes alphabetically at the head of the list. California has 21, Connecticut 19, Indiana 19, Illinois 40, Iowa 23, New Jersey 25, Ohio 28, Pennsylvania 61, Massachusetts 53, New York 134.

Mr. PAYNE. Is that based on the population of the States or the voting population of the States, or is it on merit?

Mr. SLAYDEN. That, I think, Mr. Chairman, is based purely upon political prejudice. [Applause on the Democratic side.]

Mr. PAYNE. It would seem to me to be apportioned on merit.

Mr. SLAYDEN. Mr. Chairman, if the gentleman will take the pains to investigate the census returns, he will either admit that he spoke in jest or was ill informed when he advanced the idea that it was probably done on the merit basis according to population.

Mr. MANN. Will the gentleman yield for a question?

Mr. SLAYDEN. Mr. Chairman, I have only ten minutes, and I want to know before I yield to my friend from Illinois whether I can get an extension or not.

Mr. MANN. We will get the gentleman an extension.

Mr. SLAYDEN. Go on.

Mr. MANN. Would the gentleman feel happier if we should say that in the South they send their best men to Congress, while in the North we send our best abroad?

Mr. SLAYDEN. Mr. Chairman, it would probably be less embarrassing to those of us who have been sent to Congress if we could send some of our talent abroad. There would be less competition. I shall not take the time to read all of these figures, because I could not get these remarks into my ten minutes, but I will ask the privilege of printing them in the RECORD.

I ask my friend the distinguished chairman of the Committee on Ways and Means [Mr. PAYNE] to listen to these figures. Of these 733 employees, 134, or about one-fifth, were appointed from the State of New York, which has approximately one-twelfth of the population of the United States. Six States—New York, Pennsylvania, Illinois, Ohio, California, and Massachusetts—have 377 appointees in the consular and diplomatic service, or twenty-one more than half of the total, while Pennsylvania and New York combined have 195 of their citizens in this foreign service, twelve more than one-quarter of the entire number. And it is a comparatively easy matter to turn to the census tables and see what proportion of the population of the country these two great States have. The Southern States, with nearly one-third of the total population of the United States, are credited with only forty-nine appointees out of the 733 in the service, or about one-fifteenth of the whole. Of these forty-nine, eleven were born in Northern States and nine are from foreign countries. Mr. Chairman, even when they come to dole out the very slender slices of pie that they give to the South in the consular and diplomatic service they give them to carpet-baggers rather than to the home-grown talent.

The relative importance of these appointments is shown in the fact that from the South we find one ambassador at a salary of $17,500 per year; two ministers at salaries of $7,500 per year; one consul at $5,000, one at $4,500, four at $4,000, and then there are others running on down until finally there are ten consular agents out of the forty-nine.

Mr. BENNET of New York. Will the gentleman yield for a question? How many appointments does the gentleman know to have been made to the consular service since the 27th of June last, and how were they divided?

Mr. SLAYDEN. Mr. Chairman, I am reading from a bulletin issued by the State Department since that time.

Mr. BENNET of New York. But that covers the entire consular service, no matter how far back they were appointed.

Mr. SLAYDEN. That is my information. Among the other appointees from the South were ten consular agents who live upon fees ranging from $2,684.50 a year down to $310. There were ten consular agents, vice and deputy consuls, who received no salaries and collected no fees during the year which it was intended to cover by that report.

But even in the appointments made in the Southern States themselves there is a certain degree of discrimination manifested. Tennessee, which State elects two Republican Congressmen always, and has occasionally sent three, has one ambassador at $17,500 per year, one consul at $4,500, one at $3,500, one at $2,500, two at $2,000 per year, and two consular clerks at $1,200 per year. This is quite the lion's share of southern appointments. North Carolina, another State which has a Republican Representative upon this floor, is treated fairly well, having one minister with a salary of $7,500, one consul at a salary of $5,000, one whose salary is $3,000, two consular agents who collected fees last year amounting to $2,064. Texas, with a population greater than Massachusetts, with her fifty-three appointments in this service, or California, with its forty-one appointees in the consular and diplomatic service, is rewarded, possibly because of her persistent and large Democratic majorities, with ten appointments, the importance of which is shown by the following table——

The CHAIRMAN. The time of the gentleman has expired.

Mr. MANN. I ask unanimous consent that the gentleman have five minutes more.

The CHAIRMAN. The gentleman from Illinois asks for the extension of the gentleman's time five minutes. Is there objection?

There was no objection.

Mr. RHODES. Mr. Chairman, I would like to inquire of the gentleman if he knows how many appointments Missouri has?

Mr. SLAYDEN. I will put that in the RECORD in the morning. These appointments from Texas are of some interest to me, and therefore I wish to call the attention of the House to the appointments from that State. There are two consuls, one at $4,000 and one at $4,250. There are three consular agents, whose fees are as follows: The largest one was $689 for the last year; $399 for the man who had the second best place, and $123 for the man who had the least profitable office. There were three vice and deputy consuls who received no salaries and collected no fees. Fifty per cent of the appointees of Texas may have enjoyed the honor of an appointment, but certainly had no emoluments to enjoy.

Arkansas, one of the great States in this Union, important for the high character of her people and the great value of her contribution to the commerce of the country, has no appointment in either the diplomatic or consular service.

Mr. BOUTELL. In justice to the State of Arkansas it ought to be stated to the country that she has been singled out to receive for one of her distinguished citizens, U. M. Rose, of Little Rock, one of the greatest gifts in the diplomatic service, the appointment as a representative at the great Hague peace conference that is soon to meet.

Mr. SLAYDEN. I understand that, and I have no doubt the bar and the people of the South are grateful for the honor that was bestowed upon the State of Arkansas.

Mr. LACEY. Mr. Chairman, I would like to add in this connection that Arkansas has had for a great many years—up to a short time ago—the ambassador to Mexico.

Mr. SLAYDEN. Yes; she has. Mr. Chairman, Nevada, like Arkansas, is shut out entirely; she has no representative in either the consular or diplomatic service. I presume that as the service has been put on a nonsectional and a nonpartisan basis it is a mere oversight of the State Department, just as the vast preponderance of appointments in the persistently and overwhelmingly Republican States is a mere accident.

Mr. Chairman, I do not complain of this state of affairs; I am simply reciting them as being of interest. I would, if I had the power enjoyed by the President, do just what he has done. It is a Republican Administration, and very properly the appointees are Republicans. If I had the power I would turn them all out, bag and baggage, and in six months the Federal pay rolls in the consular and diplomatic service, as well as other branches of the Government, would be a sweet and faint memory to all the Republicans in the country. [Laughter and applause on the Democratic side.]

Mr. PAYNE. Mr. Chairman, I want to say to the gentleman that the whole matter is easily explainable. When Mr. McKinley was first elected President he adopted the policy of examination for every candidate for a consular appointment, and unless that candidate could pass an examination he was not appointed. Now, since the beginning of McKinley's Administration down to the present time it has been the policy of the President and of the State Department to make these appointments depend more and more upon the qualifications of the various candidates; and when this principle is understood I presume even my friend from Texas will understand why there is such a great preponderance of appointments from New York and so few from his own State. [Laughter and applause on the Republican side.]

Mr. SLAYDEN. Mr. Chairman, I want to say to the gentleman from New York that if he opens the door of hope based on an intellectual, competitive, and academic examination it will forever bar Republicans from the South anywhere. [Laughter.]

The following are the diplomatic and consular appointments by States and Territories:

Alabama, 2; Arkansas, 0; California, 41; Colorado, 2; Connecticut, 19; Delaware, 1; Florida, 3; Georgia, 2; Idaho, 1; Illinois, 40; Indiana, 19; Iowa, 23; Kansas, 9; Kentucky, 11; Louisiana, 10; Maine, 21; Maryland, 19; Massachusetts, 53; Michigan, 15; Minnesota, 18; Mississippi, 1; Missouri, 12; Montana, 2; Nebraska, 7; Nevada, 0; New Hampshire, 6; New Jersey, 25; New York, 134; North Carolina, 5; North Dakota, 2; Ohio, 48; Oregon, 5; Pennsylvania, 61; Rhode Island, 11; South Carolina, 3; South Dakota, 5; Tennessee, 9; Texas, 10; Utah, 2; Vermont, 13; Virginia, 4; Washington, 9; West Virginia, 9; Wisconsin, 16; Wyoming, 0; Arizona, 2; Hawaii, 2; New Mexico, 0; Oklahoma, 1; District of Columbia, 21.

Mr. BENNET of New York. Mr. Chairman, I move to strike out the last word for the purpose of saying that, as far as New York is concerned, during the last two years there have been only two appointments to the consular service from that State. One of them was appointed at the request of the pottery interests from the interior of the country, and the only backing that man had of a political character was that of a Senator from West Virginia. The other one was a colored man, appointed to a very inconsiderable post in South America to succeed another colored man.

Within the last two weeks the question came up in the State Department as between a man from New York State and a man from Louisiana, both equally qualified, and because of the fact that New York is more abundantly represented in the service than Louisiana the appointment was given to the Louisiana man.

I think it only fair to the Secretary of State to say that this policy of promotions within the service, so far as it is a regular and determined thing, has been in existence only since the 27th of June last, and that there has been no further opportunity of carrying out the present purpose of the President and of the

Secretary of State of putting the whole matter on a nonpartisan and nonsectional basis; that that one instance that I cite, where the decision was against the State of the President and of the Secretary of State and in favor of Louisiana, looks to me as though the President and Secretary of State were carrying out their express purpose of putting this service on just the basis that the President in that speech which the gentleman from Texas [Mr. SLAYDEN] has quoted said the service would be put on.

Mr. COUSINS. Mr. Chairman, I also wish to say for the information of the gentleman from Texas that four of the ministers whose salaries have been this day raised by your committee come from the Southern States—a very fair apportionment, I should think.

Mr. GROSVENOR. Mr. Chairman, I should like to supplement what has been said about the various States with a reference to the statement often heard that Ohio monopolizes most of the Federal patronage. Ohio to-day has not a single representative in the diplomatic service of the United States, unless it be a secretary of one of the legations, perhaps an assistant, whose name I do not know and whose whereabouts I can not locate. That is the situation in that great office-seeking State. We did have a representative at one of the European courts, but he was retired some time ago from the public service, and we are left absolutely without any representative whatever. We are satisfied with the situation, however, from the fact that we do not rise in rebellion for the "last of the Mohicans," and the fact that New York has so nobly and so successfully borne substantially all the burden of the diplomatic work of the country.

Mr. MANN. Mr. Chairman, I move to strike out the last two words. When the President made the remarks which have been referred to by the gentleman from Texas [Mr. SLAYDEN] in reference to putting the consular service upon a nonpartisan and nonsectional basis, he told the truth, and it seems peculiar that in receiving this act of courtesy and propriety on the part of the President the gentleman from Texas should now repeat the speech of the other gentleman from Texas [Mr. BURLESON], who originally called attention to the gross injustice in the way of distribution. What is the fact? Does the gentleman from Texas [Mr. SLAYDEN] expect that the President of the United States, in putting the consular service upon a nonpartisan and nonsectional basis, proposes at once to put it upon a sectional basis and thereby discharge from the public service men now in office because they come from a certain State—men who are performing the duties of their offices well and faithfully—in order to put men into office from another State who now know nothing about the subject? That would be something that the gentleman from Texas [Mr. SLAYDEN] himself would be one of the last men in the House to indorse. What is the situation? The President has, by an order through the Department of State, provided that hereafter in the appointments to the consular service they shall be made from a competitive examination; that there shall be assigned certain persons to take that competitive examination; that in making the assignment of these persons preference shall be given to those States which do not now have their numerical proportion of the consular appointments.

Mr. CLARK of Missouri. Mr. Chairman, if the statement of the gentleman from Illinois [Mr. MANN] be correct, that these people that are now in the consular service—and they are substantially the same ones who were in there prior to June 27 last—are discharging their duties faithfully and intelligently, then does not the bottom fall out of the propaganda we had here that this thing ought to be remodeled, because we have the consular service stocked with a lot of incapables?

Mr. MANN. I made no statement to begin with that they all are performing their service intelligently, although I have no doubt that that is, in the main, the fact. What I said was, Would the gentleman have a person who is performing the service intelligently discharged from the service merely because he comes from New York in order to place in the office a raw recruit from Texas or Missouri or any other State in the Union?

Mr. SLAYDEN. Mr. Chairman, I would like to suggest to the gentleman that I was told in the Department of State some time prior to that date in June to which he refers, as to the period of the adoption of this policy, that such a policy was in practice; that, as a matter of fact, they then made their selections upon a nonpartisan basis and a nonsectional basis. I knew of several gentlemen from Texas who had special qualifications, who made an effort to get into the consular service and who failed to do it, and in my travels I have never seen a man in any of those posts anywhere in any country who was not a Republican.

Mr. MANN. Mr. Chairman, I have no doubt that in the past it has been the practice of a Democratic Administration to appoint Democrats to consular offices and of a Republican Administration to appoint Republicans. But it is the very reason that the President has now initiated a new proposition, that these men shall be selected for examination regardless of politics, the only limitation on the selection being capacity, and local preference being given to those States which do not have their numerical proportion. The gentleman from Texas [Mr. SLAYDEN] in all sincerity ought to be here speaking words of praise about the first President, in recent times at least, who has endeavored in any way to put the consular service upon a nonsectional basis.

I think he is right. Now, it is the fact if to-day you go to the Department of State and ask for the assignment for examination of a person from New York State you will be told that he has no chance at all, because New York State's quota is overfilled. The gentleman complains about Illinois. I will say to the gentleman that forty-one representatives in the service is not in greater proportion than twenty-five Members of the House of Representatives in this body, so that the only place probably where there has been an excess has been in certain States where people are possibly a little more ambitious to go abroad; but the President, in the very purpose of making the consular service an able body, in aid of a commercial enterprise, has endeavored to remove from it a partisan and sectional aspect, and the gentlemen on this side of the House ought to be praising him for what he has done and is endeavoring to do and hold up his hands in this matter, as they would be doing in some other matters at present, instead of condemning him for doing the thing which they want him to do.

The Clerk read as follows:

REWRITING CONSULAR REGULATIONS.

For services, rewriting the consular regulations as authorized by the act of March 3, 1905, provided that the provisions of sections 170, 1763, 1764, and 1765, Revised Statutes, and section 3, act of June 20, 1874, shall not be applicable, the $3,000 appropriated by the said act of March 3, 1905, is hereby made available.

Mr. MANN. Mr. Chairman, I reserve the point of order on this paragraph for the purpose of asking a question. Is it intended that this rewriting of the consular regulations shall be completed within the cost of $3,000?

Mr. COUSINS. Yes.

Mr. MANN. Is there any objection to so stating in the bill?

Mr. COUSINS. None whatever.

Mr. MANN. Would the gentleman be willing to accept an amendment of this kind: "*Provided*, That the said work shall be completed within the limit of the said appropriation?"

Mr. COUSINS. I will accept that amendment.

Mr. MANN. I withdraw the point of order and offer that amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

After the word "available," in line 18, page 21, add the following words:

"*Provided*, That said work shall be completed within the limit of this appropriation."

The amendment was agreed to.

The Clerk read as follows:

CIPHER CODE.

Cipher code, $5,000.

Mr. JOHNSON. Mr. Chairman, I make the point of order against that paragraph. I will reserve the point of order.

The CHAIRMAN. The gentleman from South Carolina makes the point of order.

Mr. JOHNSON. There is no law providing for it, and I want to get some information. I will reserve the point of order.

Mr. COUSINS. I will state frankly to the committee that this paragraph is subject to the point of order, technically speaking, being new legislation.

Mr. JOHNSON. Now, what I want to find out from the chairman of the committee is this: Is it contemplated that this cipher code shall be prepared by somebody who has now employment in the State Department?

Mr. COUSINS. It is contemplated to employ an expert to assist those in the State Department. It is designed to have the very best and most modern code that can be devised.

Mr. JOHNSON. Is this expert already on the pay rolls of the Government?

Mr. COUSINS. No; there is no expert of that kind on the pay rolls of the Government. It will be necessary to employ somebody outside.

Mr. JOHNSON. I want to say I have no objection to the preparation of the new code, but if anybody who is connected with the State Department is to have the work I desire to enter my protest against it. I believe that the practice of allowing men who are already on the pay rolls of the Government to prepare digests, indexes, codes, and such work as that under special appropriations is wrong in principle and damnable in practice.

Mr. COUSINS. I will say to the gentleman that such is not contemplated in this at all. I will read what the Secretary says on that subject:

The cipher code of the Department was published in 1874, and is now entirely unfit for such a purpose. The two great needs for a cipher code, namely, secrecy and economy, are not served by the use of our present code. The great need is for a code on the model of the best commercial codes now in use, made with special reference to the particular needs of the Government, which is now scarcely served at all by the Department code. It is confidently believed that the saving to the Government in one year by the use of an up-to-date code will pay for the expense of preparing a new code. It is desired to employ experts in preparing a new code, and the appropriation of $5,000 for this purpose is earnestly urged.

Mr. JOHNSON. I am in perfect sympathy with the proposition to prepare a code, but I wanted to know whether somebody who is already in the employ of the Government is at Government expense to prepare this code and then receive double pay.

Mr. COUSINS. No; it could not be done.

Mr. MANN. I take it that the $5,000 is sufficient to complete the work?

Mr. COUSINS. We hope so.

Mr. MANN. Would the gentleman be willing to accept an amendment providing that said cipher will be completed in the limit of the appropriation hereby made?

Mr. COUSINS. Personally I would; but I think that might not be wise, as it might cost a little more and we would find the work crippled. It may cost less.

Mr. MANN. It appeals to me, from the reason that they are going to employ somebody on the outside to do this work. If they find they can not do it, then it is a matter that Congress will still have jurisdiction over.

Mr. COUSINS. It would simply hold the matter up; that is all.

Mr. MANN. They think they can do it for $5,000, and we make an appropriation of $5,000, and we have a right to know whether that is the beginning of an expenditure or whether it is a completion of an expenditure.

Mr. COUSINS. Oh, no; it is not a work of that character. It is not a work like the erecting of a building or anything of that sort. It is a simple matter that they think can be done for that money. I hope the gentleman will not ask for that amendment.

Mr. MANN. Very well; I will not.

Mr. JOHNSON. Mr. Chairman, I withdraw the point of order.

Mr. LONGWORTH. Mr. Chairman, I desire to offer the following amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. LONGWORTH] offers an amendment, which the Clerk will report.

The Clerk read as follows:

On page 22, at the end of line 5, insert:
"For the acquisition in foreign capitals of proper sites and buildings, which shall be used by the embassies and legations of the United States and for the residences of the ambassadors and envoys extraordinary and ministers plenipotentiary of the United States to foreign countries, to be expended by the Secretary of State, $500,000."

Mr. MANN. Mr. Chairman, I raise a point of order upon that.

Mr. JOHNSON. Mr. Chairman, I make a point of order against that.

Mr. LONGWORTH. Is the gentleman willing to waive his point of order for an amendment?

Mr. MANN. Mr. Chairman, I reserve the point of order.

Mr. SHACKLEFORD. Mr. Chairman, a parliamentary inquiry. Did not the gentleman from New York [Mr. FITZGERALD] make a point of order against it?

Mr. FITZGERALD. No.

Mr. SHACKLEFORD. I thought that the Chair did not happen to hear it.

The CHAIRMAN. The Chair understands that the point of order was made by the gentleman from Illinois [Mr. MANN].

Mr. FITZGERALD. That is right.

Mr. LONGWORTH. Mr. Chairman, of course I admit that the point of order is well taken, and yet I think I am justified in asking the gentleman from Illinois [Mr. MANN] to refrain from making it. It is a matter of history that practically all the improvements in the diplomatic service have been made by legislation on the diplomatic and consular appropriation bill. We even went so far as to raise our ministers to the rank of ambassadors by legislation on the diplomatic appropriation bill, and I think that for these reasons and because of the fact that so many Members of this House are convinced that this Government should own its legations and embassies, or, at least, provide leased premises for the use of our ministers and ambassadors, that we should be allowed to vote on this amendment. Of course the amount provided in this amendment is absolutely inadequate to provide more than possibly one or two residences. It is the principle of the Government owning and maintaining these residences that I advocate. I do not intend to spend more than a moment or two in advocacy of this amendment, because I have already on several occasions spoken at considerable length upon this subject. It would, in my opinion, take not less than ten times the amount provided in my amendment to do the thing that we are ultimately striving to do.

So I shall confine myself to discussing a few facts with relation to our diplomatic service to-day. There is not a nation on earth anywhere approaching our wealth and power that does not pay to its diplomatic envoys from two to six times as much as we do to ours. One of two things must be true—either that their system is right or that our system is right. Either the system of compensation provided by foreign countries is grossly excessive or our compensation is grossly inadequate. Now, this is no longer a matter of argument, for it is a fact that many ministers and ambassadors from the great European nations have retired from the service simply and solely because they could not afford, with the compensation paid to them, to remain in it.

Only last year the English ambassador for this country asked for and received an increase of $5,000 a year in his salary, bringing it up, so I am informed, to $45,000 a year, in addition to which he receives his residence rent free, the costs of the upkeep of the embassy being paid by the British Government, and in addition to all this a substantial amount for entertaining. Whatever may have been said in the newspapers against the late ambassador, certainly it has never been charged that he lived with any undue display or in any other manner than as a dignified gentleman and in a manner to properly represent a great and friendly power. When we compare the compensation of the British ambassador here with that of our ambassador to England, who is paid $17,500 a year, with no other allowances whatever, the comparison becomes utterly and outrageously absurd, and simply brings us to the fact, which has not been and can not be denied, that under our system no one but a man of great wealth can under any conceivable circumstances represent this Government in high diplomatic office. It is a system that is utterly un-American, indefensible, and abhorrent to all our institutions.

We have spent some time this year in the discussion of the salaries of various Government officials, including our own. We have raised the salaries of the Vice-President, the Speaker of the House, and members of the Cabinet to $12,000 a year, and we have raised the salaries of Senators and our own to $7,500 a year. These increases, in my opinion, are just and proper. No salary paid to any official of this Government should be so large that the office should be sought for the money to be made out of it, and on the contrary no salary should be so small that men of ability, learning, and patriotism should be deterred from taking public office because they can not live properly upon their salary. The test of fitness of any man to hold public office should be his intellectual parts, not his financial circumstances. While it is true that the salaries to-day paid to many of our important public officials are inadequate, and that many men otherwise eminently well fitted are deterred from going into public life because of the very small salaries attached to these offices, yet it is also true that these offices have always been held and are to-day held by men of limited financial resources.

The great men in the history of our country have been almost without exception poor men, or at least men of very moderate means. This is as it should be. It is in accord with the spirit of our institutions, that it is the man and not his money that should determine his fitness for public service. It is utterly abhorrent to our institutions that wealth should ever be a necessary qualification to holding any public office, and yet there is one office under this Government for holding which wealth and wealth alone is the one absolutely necessary qualification. No man, however great be his ability, however profound his learning, or of however great distinction in the service of his country, can be chosen to represent this country as ambassador or minister to any great power unless he be a rich man, and not only rich, but very rich. In other words, under our system, we have to-day a class of offices reserved only for men of wealth, the only absolutely necessary qualification for which is wealth. If George Washington or Thomas Jefferson or Abraham Lincoln were alive to-day, they could not hold the office of ambassador to Great Britain or to any other great post.

Is there any possible defense for such a system? Is it not time that Congress should do something to remedy this condition? Can we much longer continue to vote to support, or, rather, to neglect to vote to abolish, an office-holding aristocracy, an aristocracy more repugnant than one of blood, an aristocracy of wealth and wealth only?

If we are prepared to do this, the way is simple. We have only to provide compensation sufficient to pay the cost of our

ambassadors or ministers living in foreign capitals in a way that the Americans demand that they shall live—in other words, a compensation large enough to pay the difference between the salary he now gets and his necessary expenses.

This could be done either directly or indirectly. The plan that I advocate would indirectly increase his compensation. It would provide a suitable and dignified residence and eliminate the item of rent, which is the principal expense to which he is subjected. The advantages of this method are that it would involve little, if any, ultimate cost to the Government, for suitable buildings which we would acquire in foreign capitals could not fail to advance in value.

This is true of all the legation property that we own to-day. It has, without exception, since its acquisition increased in value. And permit me to call attention to the fact that it was all acquired by legislation on appropriation bills. The same is true in the experience of almost every other country. To give one instance, I am informed on good authority that the ground upon which the British embassy in this city stands was purchased some years ago at the rate of 40 cents a square foot, and that property to-day, I think, in the estimation of experts, is valued at not less than $10 a square foot.

Another advantage of this plan would be that it would provide a building which would always be the residence of the American minister or ambassador, a building over which the American flag would always fly, and which would properly represent the power and dignity and influence of this nation in the affairs of nations. The residence of the representative of this nation would then always be the same, and externally, at least, would not reflect the condition of the pocketbook of each particular incumbent. And last and most important of all, it would enormously enlarge the range of eligibility for these offices. It would create a condition under which men of moderate means might represent us abroad. It would go far toward making it possible for men of ability, learning, and patriotism to hold these offices, among the most important and dignified in the gift of the American people, regardless of what their financial circumstances may be.

Mr. Chairman, I will again ask the gentleman from Illinois if he does not think that it is consistent with his duty as a Member not to press his point of order? [Applause.]

Mr. MANN. Mr. Chairman, the gentleman from Ohio on this subject is always interesting, and he may be right. I do not propose to discuss at this time the question as to the advisability of housing our foreign ambassadors. I wish the gentleman from Ohio would stop for a moment and remember this: Our ambassadors abroad probably have no more expensive duty to perform in the way of living than ambassadors from abroad here. The ambassadors from abroad in Washington are put to no greater expense than the Cabinet officers of the President of the United States. A few years ago a young man without money and without influence came over from New York and went into one of the Departments here in a very humble capacity. He has been a Cabinet officer representing one Department of the Government, is a Cabinet officer representing another Department of the Government, and is about to be a Cabinet officer representing the chief Department of the Government. He is leading the simple life, and I often wish that some of the American representatives abroad would show to the world that they could lead the simple life. I insist upon the point of order.

The CHAIRMAN. The Chair sustains the point of order.

Mr. COUSINS. Mr. Chairman, I move that the committee do now rise and report the bill, with amendments, favorably to the House.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. STERLING, 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. 24538, the diplomatic and consular appropriation bill, and had directed him to report the same back to the House with an amendment, and with the recommendation that as amended the bill do pass.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time; and was accordingly read the third time, and passed.

On motion of Mr. COUSINS, a motion to reconsider the last vote was laid on the table.

UNITED STATES COURTS, SOUTH CAROLINA.

Mr. LEVER. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H. R. 22334) to amend an act to regulate the sitting of the United States courts within the district of South Carolina.

The bill was read, as follows:

Be it enacted, etc., That the regular terms of the circuit court of the United States for the district of South Carolina shall be held in each year as follows: In the city of Greenville, on the third Tuesday in April and on the third Tuesday in October; in the city of Columbia, on the third Tuesday in January and on the first Tuesday in November, the latter term to be solely for the trial of civil cases; in the city of Charleston, on the first Tuesday in April, and in the city of Florence, on the first Tuesday in March.

SEC. 2. That the regular terms of the district court of the United States for the western district of South Carolina shall be held in each year in the city of Greenville, on the third Tuesday in April and on the third Tuesday in October.

SEC. 3. That the regular terms of the district court of the United States for the eastern district of South Carolina shall be held in each year in the city of Charleston, on the first Tuesday in June and on the first Tuesday in December; in the city of Columbia, on the third Tuesday in January and on the first Tuesday in November, the latter term to be solely for the trial of civil cases, and in the city of Florence, on the first Tuesday in March.

SEC. 4. That all acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby, repealed.

With the following amendments recommended by the Committee on the Judiciary:

Strike out the word "first," in line 9, and insert the word "third."
Strike out the word "April," in line 10, and insert the word "March."

The SPEAKER. Is there objection?

There was no objection.

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.

CHICAGO DRAINAGE CANAL.

Mr. MANN. Mr. Speaker, I hold in my hand a joint resolution passed by the legislature of the State of Illinois on the subject of limiting the flow of water from the Great Lakes through the Chicago Drainage Canal. I ask unanimous consent to have it printed in the RECORD.

The SPEAKER. The gentleman from Illinois asks unanimous consent to print in the RECORD a joint resolution of the legislature of the State of Illinois. Is there objection?

There was no objection.

The joint resolution is as follows:

[Forty-fourth general assembly, special session, Chicago Drainage Canal.]

Whereas the Congress of the United States is now considering the report of the International Waterways Commission; and

Whereas said report contains a recommendation that the amount of water to be diverted from the Great Lakes through the Chicago Drainage Canal be limited to 10,000 cubic feet per second; and

Whereas said limitation would in the future render futile the expenditure of $50,000,000 already expended by the sanitary district of Chicago and render impossible the completion of said project and endanger the health of the people of Illinois and of the city of Chicago; and

Whereas the amount of water to be diverted for domestic and sanitary purposes should under no circumstances be limited by a treaty with a foreign power, or by any legislation to be enacted by Congress, thus placing the sanitary district of Chicago—organized to preserve the health of the people—upon the same plan as commercial enterprises organized for private gain: Now, therefore,

Be it resolved by the senate of the forty-fourth general assembly of the State of Illinois, convened in extraordinary session (the house of representatives concurring therein), That in any treaty to be hereafter entered into, no statement whatever, binding the trustees of the Sanitary District of Chicago, shall be made, and the local conditions of such canal and the volume of water to be accommodated therein should be left wholly and solely to the regulation of the Federal Government, as the conditions of the canal's drainage may require; and be it further

Resolved, That in any legislation to be hereafter enacted by Congress a provision should be included permitting the Sanitary District of Chicago to use such water as may be necessary in the discretion of the Secretary of War, and such legislation, if any, should specifically provide that that portion of the report of the said International Waterways Commission referring to the Sanitary District of Chicago and the amount of water to be diverted through its channels should be entirely ignored; and be it further

Resolved, That the two Senators and the Members of Congress, representing this State be, and they are hereby, respectfully requested to do all in their power to incorporate the provision above referred to in any legislation to be passed by Congress and prevent the incorporation of any statement in any treaty to be entered into with a foreign power placing any restriction upon the amount of water to be withdrawn through the drainage canal of the Sanitary District of Chicago; and be it further

Resolved, That a copy of this resolution be forwarded immediately by the secretary of state to each Senator and Representative in Congress from this State and to the President of the United States.

Adopted by the senate May 15, 1906.
Concurred in by the house of representatives May 15, 1906.

OFFICE OF THE SECRETARY OF STATE.

UNITED STATES OF AMERICA, STATE OF ILLINOIS, *ss:*

I, James A. Rose, secretary of state of the State of Illinois, do hereby certify that the foregoing joint resolution of the forty-fourth general assembly of the State of Illinois, passed and adopted at the second session thereof, is a true and correct copy of the original joint resolution now on file in the office of the secretary of state.

In witness whereof I hereunto set my hand and affix the great seal of state, at the city of Springfield, this 14th day of June, A. D. 1906.

[SEAL.] JAMES A. ROSE, *Secretary of State.*

CHANGE OF REFERENCE.

By unanimous consent, the reference of House bill 23571, to ratify and confirm elections held under and by virtue of the provisions of an act to amend an act to prohibit the passage of special or local laws in the Territories, to limit the Terri-

torial indebtedness, etc., was changed from the Committee on the Territories to the Committee on the Judiciary.

MILITARY ACADEMY APPROPRIATION BILL.

Mr. HULL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 24537) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1908, and for other purposes.

Mr. HAY. Mr. Speaker, I reserve all points of order on the bill.

Mr. HULL. All points of order have been reserved.

The motion was agreed to.

Accordingly the House resolved itself into Committee of the Whole House on the state of the Union, with Mr. CRUMPACKER in the chair.

Mr. HULL. Mr. Chairman, I ask unanimous consent that the first reading of the bill be dispensed with.

The CHAIRMAN. The gentleman from Iowa asks unanimous consent that the first reading of the bill be dispensed with. Is there objection?

There was no objection.

Mr. HULL. Mr. Chairman, I have no desire to take the time of the House on this bill. It has been very carefully considered by the committee. There is one item, however, that I would like to call the attention of Members to before the reading begins, and that is the provision at the beginning of the bill on the top of page 2, as follows:

Provided, That hereafter cadets appointed to the Military Academy at West Point, N. Y., may be admitted on the 1st day of March in place of the 1st day of June.

I want to call the attention of Members to the fact that now cadets go there at the time of the graduating exercises, when there is a great deal of confusion at the Academy, when one class is going out and all classes are engrossed in passing examinations, and then they go into camp for the summer months. The evidence was that if we would admit them the 1st of March it would cost the Government the pay of the cadets from the 1st of March to the 1st of June additional to what they now pay, but it gives the cadets three months of attendance which is of the greatest value in the preliminary studies at a time when they can lay the foundation for their course. The professors state that they believe it would be worth more to the cadets than any six months' time that they might have afterwards in the Academy. There are large numbers of these cadets all over the country who have not had the advantages that those cadets have from the city of being thoroughly prepared to enter the Academy. This would largely equalize that by being in the nature of preliminary instruction so that they would be entirely fitted to enter their course, and from the testimony given before us we would have fewer failures at the January examination than we have to-day.

I have no desire to take up any more time unless some gentleman desires to ask a question.

Mr. KEIFER. Mr. Chairman, I want to ask the gentleman a question.

Mr. HULL. Yes.

Mr. KEIFER. I notice that the clause to which the gentleman referred, near the top of page 2, reads as follows:

Provided, That hereafter cadets appointed to the Military Academy at West Point, N. Y., may be admitted on the 1st day of March in place of the 1st day of June.

I want to inquire whether that would require cadets for this year to go there the 1st of March, or whether it was intended to have this apply after the year 1907?

Mr. HULL. It would apply after this year, for this bill may not become a law before the 1st of March. It does not prohibit their coming the 1st of June. The testimony was that if they had the privilege of being admitted in March they would all come that could possibly get there. I will say to the gentleman from Ohio that if he thinks there is any question about this I would be willing to say "after the 1st day of June, 1907, all cadets may be admitted," etc.

Mr. KEIFER. I think some amendment of that kind should be offered, because there are appointees to cadetships at the Military Academy at West Point who are expecting to take their examinations in June, and probably they would feel unprepared to take it as early as the 1st of March.

Mr. HULL. There was no idea that they should be taken the 1st of March this year; this bill is for the fiscal year beginning July 1, 1907.

Mr. KEIFER. As the bill reads the bill may become a law in February, and I am not sure but the construction would be that they should go the 1st of March, 1907.

Mr. HULL. Well, if there is any doubt about it, it can easily be corrected.

Mr. KEIFER. I think it ought to be corrected.

Mr. HULL. Mr. Chairman, I will ask that the bill be read.

Mr. HAY. Mr. Chairman, I do not care to occupy any time myself, but I yield five minutes to the gentleman from Tennessee [Mr. GAINES].

Mr. GAINES of Tennessee. Mr. Chairman, for ten years I have had a great deal of trouble in getting a country boy to go to West Point or to Annapolis. He must advance the cash to go, and if he FAILS all the expense of his going to the academy from Tennessee and back to Tennessee comes out of that country boy's pocket. He returns home broken-hearted and "broke." While making many speeches on this tobacco-tax question and against the tobacco trust last year, not only in the edge of Kentucky that touches on Tennessee, but in Tennessee and in my district, I on each occasion announced from the platform that I was looking for a farmer boy, regardless of whether the boy was a Democrat or Republican or whether his father was a Democrat or Republican, to appoint to West Point who was capable of entering West Point.

Finally away over in Stuart County, where Fort Donaldson is situated, away in the edge of that county somewhere, I heard of such a young man who was recommended as a highly ambitious boy and wanted the appointment. He had gone through the course at the Cumberland City Academy—a very bright young fellow and who was very ambitious to go. I immediately appointed him. I told him to "rub up" in his studies. His old professor kindly and with pride agreed to teach him and did so, so that he might be better prepared to enter West Point. When the time came for the young man to go to his examination he did not have money enough to pay his expenses to and from West Point. The result of it was that the young man was deeply disappointed. I knew nothing of his financial trouble until he wrote and told me—after the day to appear had passed. Stuart County, over 100 years old, had never received a Federal appointment or Federal recognition of any kind. I did not know the boy's politics, I do not know now and do not care. I can not even recall the young man's name. The alternate went. He was another country boy, from Robinson County, which had never received a Federal appointment before that I recall. All of the appointees from my district, except one, I believe, since the civil war have come from the city of Nashville or near Nashville, because they were educated and able to pay their way.

This young alternate went up to West Point, took his entrance examination, and passed except as to a physical defect, caused by being hurt once when a boy at school—a little dent on the side of his eye socket. He was "turned down," and went home to help take care of his father, who has reared sixteen or eighteen children on a farm at the edge of Robertson and Davidson counties. He paid his son's expenses. And now to my point.

I do think that Congress should provide a reasonable allowance for transportation and necessary expenses to cover such cases—that is, when these appointees fail. Here is that splendid young fellow, of fine character and high morals, with a first-rate country education, who had been "rubbed up," as it were, by this kind teacher at the academy, and yet who fails because, as he wrote me, he did not have money enough to go to West Point and pay expenses. This game and manly alternate failed—both tried to help their country and themselves incidentally.

Now, whenever we have had a war we have always had to go to the country to get a large portion of our soldiers, and some of the best soldiers that we have ever had have come from the counties of Stewart and Robertson.

The soldiers who fought the battle of New Orleans in a large measure came from this section of the country. They came from the mountains of East Tennessee and middle Tennessee, and their fathers were poor people. They have had large families, and it is a hard thing for them to educate their children sufficiently high for the boys to even have a plain education and at the same time take care of their wives and families. A college country-reared boy is the exception. I have alluded to this condition in a general way before. To aid such appointees would not take very much public money. It would only be done in the cases of the boys who are not able to pay their expenses and fail. Suppose the boy is an orphan boy—and I would rather appoint an orphan boy than one who was not an orphan—what chance has he to go to West Point if appointed? God knows I have tried for ten years to get a boy appointed from my district, one who was reared and educated in the country and who wants to educate himself to fight for his country. For ten years I have tried and failed. I have made five or six appointments from the country, and one of the reasons why the boys fail if educated is that the country boy has not the means to

defray the expense of going to and from West Point or Annapolis and at the same time pay some teacher to coach him in the five or six months that intervene between the time of his appointment and the date that he must stand his examination.

I hope that the intelligent and patriotic and industrious chairman of this committee and its members will think about what I have said and cure this evil. I speak from my own personal knowledge and experience as a Member of this House, and I do think that a great Government that calls on these boys, whose parents have been called on ever since the beginning almost of the Government, should pay a reasonable sum for necessary expenses to these young men, who, in the morning of their ambition and the heyday of their hope, wish to prepare to serve their country in fighting its battles upon land and sea. [Applause.] We call on them in time of war to defend our homes and the flag, bear the *burdens* of *war*, let us make it *possible* for them to share in the *honors* we *distribute* in time of *peace*. [Applause.]

The CHAIRMAN. The Clerk will read the bill.

The Clerk proceeded with the reading of the bill.

The Clerk read as follows:

For pay of cadets, $260,000: *Provided*, That hereafter cadets appointed to the Military Academy at West Point, N. Y., may be admitted on the 1st day of March in place of the 1st day of June.

Mr. KEIFER rose.

Mr. MANN. Mr. Chairman, I reserve the point of order on that.

Mr. KEIFER. I propose to amend it.

Mr. MANN. I want to ask a question, if I may.

Mr. KEIFER. I think the gentleman had better ask the question before I make my proposition.

Mr. MANN. What effect will this have this spring in reference to appointments to West Point?

Mr. KEIFER. That is the very question that I am dealing with.

Mr. HULL. We have the impression that it would have none, that it would apply after this year, but the gentleman from Ohio [Mr. KEIFER] wants to guarantee that, and he proposes to amend it so as to fix the date.

Mr. MANN. Is that satisfactory?

Mr. HULL. Absolutely. No one expected it to apply this year.

Mr. MANN. So that there will be no question about the amendment.

Mr. HULL. No; it would be impractical to make it apply this year. This bill probably will not pass before the 1st of March.

Mr. MANN. The reason I ask is because the bill in effect—of course it is not mandatory—says that the cadets may be appointed the 1st of March, and I did not know whether the gentleman had a construction from the War Department as to whether they would be required to be appointed or not.

Mr. HULL. No; I have not. I want to answer this one question. We had a construction from the superintendent of the academy that it would apply after this year. That is all.

Mr. MANN. I withdraw the point of order.

Mr. HULL. This will do no harm.

Mr. KEIFER. Mr. Chairman, my proposition is to amend line 2 on page 2, the proviso, by striking out of that line the word "hereafter," and then to add in line 4, after the words "New York," the words "after the year 1907."

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 2, line 3, strike out the word "hereafter;" and in line 4, after the words "New York," insert "after the year 1907;" so that the paragraph will read:

"*Provided*, That cadets appointed to the Military Academy at West Point, N. Y., after the year 1907 may be admitted on the 1st day of March in place of the 1st day of June."

Mr. KEIFER. Mr. Chairman, I have no disposition to discuss at any length——

Mr. HULL. That is entirely satisfactory.

The amendment was agreed to.

The Clerk read as follows:

For purchase of one counting machine for use in the office of the quartermaster and disbursing officer, United States Military Academy, and cabinet for same, to be immediately available and to be purchased without advertising, $425.

Mr. HOLLIDAY. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

After line 8, page 26, amend by inserting an additional item, as follows:

"For maintaining the children's school, the Superintendent of the Military Academy being authorized to employ the necessary teachers, $3,520."

Mr. HAY. Mr. Chairman, I make the point of order against the amendment.

Mr. HULL. Mr. Chairman, I raise the point of order on that.

Mr. HOLLIDAY. Will the gentleman reserve the point of order?

Mr. HULL. I will reserve the point of order if the gentleman desires to speak on his amendment.

The CHAIRMAN. The gentleman from Iowa reserves the point of order on the amendment.

Mr. HAY. I raise the point of order.

Mr. HOLLIDAY. Do I understand the gentleman from Virginia makes the point of order?

Mr. HAY. If the gentleman wishes to make a speech, I will reserve the point of order.

Mr. HULL. I reserved the point of order on account of the gentleman's desire to make a speech.

Mr. HAY. I did not know that.

Mr. HOLLIDAY. Mr. Chairman, I do not desire to make a speech, but I simply wanted, in this connection, to present a few facts in regard to this school at West Point. There are 250 children of school age. Nearly all of those children are the children of enlisted men. They have a schoolhouse there, and the only teachers they have are enlisted men who are detailed to teach. The nearest schoolhouse from that is at Clinton Falls, about 1.6 miles from the place where the soldiers' barracks are at West Point. The authorities there have been notified frequently that the school authorities at Clinton Falls are not willing to take the children of West Point. They have not the facilities for them, and they have not room for them, and they protested not only to the authorities at West Point, but to the Board of Visitors last year against the children of the reservation going to the Clinton Falls school, and there is no other in that vicinity.

Now, Mr. Chairman, it seems to me that this Government of ours is big enough and rich enough to hire teachers for these 250 children. It is inconceivable to me that little girls of tender age should have to be taught by enlisted men. There is no other such condition in the United States, so far as I can learn, and we ought to have women teachers there, especially for the little children. And for a mere paltry sum we can hire them. The only argument I have heard against the proposition is that these soldiers, who are paid sometimes extra-duty pay, ought to hire the teachers themselves. Well, Mr. Chairman, this argument could be made anywhere. The workingmen are now receiving good wages, and we could make the argument that we ought to abolish taxation for maintaining schools and let everybody hire his own teacher. I believe that the education of the young of this country is a governmental function. I think a State, where it is possible to do so, should take care of the education of the young, and when it is not possible for the State to do it, when it becomes a part of the nation, then the nation ought to take care of the children of its defenders.

It has been sometimes said that this may involve the building of schools at other places. I do not know whether it will or not, and I do not care. If it is necessary, we should make an appropriation to build a school at every post where there are children of soldiers to be educated and to hire teachers to educate those children.

Mr. Chairman, there is a schoolhouse at West Point now built by Government funds. The plan which we have adopted and for which we are making appropriations to-day contemplates building a very fine schoolhouse and an elaborate one, not for the purpose of educating cadets, but for the purpose of teaching the children upon the reservation, and yet we have the anomalous condition, after putting several thousand dollars into a schoolhouse, of refusing to appropriate to pay the teachers. Now, I hope the gentleman will withdraw his point of order. This is a small sum, a mere trifle, a bagatelle. We are appropriating in a lump sum twelve hundred thousand dollars for buildings at West Point, and it seems to me that it is not a proper thing for the Government to keep the children of those soldiers in ignorance, and that we ought to make an appropriation.

Mr. SLAYDEN. Mr. Chairman——

The CHAIRMAN. Does the gentleman from Indiana [Mr. HOLLIDAY] yield to the gentleman from Texas [Mr. SLAYDEN]?

Mr. HOLLIDAY. Yes.

Mr. SLAYDEN. I would like to ask my colleague on the committee if he would be willing to accept an amendment providing similar appropriations for every post throughout this country and begin the policy thereby of establishing schools at all the posts?

Mr. HOLLIDAY. I would say in answer to my colleague from Texas that I am willing to support a proposition to build a school at every Army post in the United States where there

is a sufficient number of children to warrant it. I do not think it would be appropriate or germane to add that to this proposition, because we are legislating now upon the academy bill and not for the Army at large. It is a governmental function, as I said before; it is a part of the general plan. It is a part of the theory of this Government that the Government should educate those children, and the Government of the United States is setting a mighty bad example when it refuses to educate the 250 children of soldiers who are now at West Point. [Applause.]

Mr. HULL. Mr. Chairman, just one word and not to go into the matter fully. The whole theory of Army legislation has always been that we legislated for those belonging to the Army and not for the families of those who are in the Army, and if you are going to extend it now and include in the Army all the women and children who may hereafter be attached to it by marriage or otherwise, you are entering upon a very broad scope of legislation.

The gentleman says it is a function of the Government to provide education. I think that is true, but his mechanics in his district own their little homes, pay their taxes, and help to support the common schools of his section of the country, and so with every other section. These soldiers at West Point are almost invariably extra-duty men, getting not only the pay of the soldier, but they get quarters for themselves and their wives, something that is not done at other places, and they get their rations, they get their allowances, and they get their extra-duty pay; and they are better paid one year with another without loss of time than the average workingman in the United States of America. That does not apply so much to other posts as it does to this, but if you will look at this bill you will see there is one whole detachment on extra-duty pay, and a large part of the bill deals with extra duty.

Mr. WILLIAMS. Will the gentleman pardon a question?

Mr. HULL. Yes.

Mr. WILLIAMS. Has not the State of New York some schools right there to which these people can go?

Mr. HULL. Yes; but it is a hardship on the little village to take them. The Government has a building now assigned, and all the expense these men would have, in lieu of paying taxation—for they have nothing to pay for medical attendance for themselves and families—would be to pay these teachers. Now, if you commence it at West Point, where the conditions are away beyond favorable conditions of soldiers in any other part of the country, you might as well recognize that you are entering upon Army legislation that will not stop at West Point, but will gradually absorb every woman and child connected with the Army. I am not in favor of it, and I insist upon my point of order.

The CHAIRMAN. The point of order is sustained.

The Clerk read as follows:

For continuing the work of increasing the efficiency of the United States Military Academy, West Point, N. Y., and to provide for the enlargement of buildings, and for other necessary work of improvement in connection therewith, authorized in acts of Congress approved June 28, 1902 (Public, 181), April 28, 1904 (Public, 192), March 3, 1905 (Public, 137), and June 28, 1906 (Public, 310), in accordance with the general plan approved by the Secretary of War January 27, 1904, to remain available until expended, $1,200,000.

Mr. FITZGERALD. I move to strike out the last word. I wish to inquire whether the rebuilding and enlargement of this building will be completed within the limit of cost?

Mr. HULL. These buildings are part of the plan adopted by Congress, and I suppose the buildings will all have to be completed within the estimate formed for the whole and for each of the buildings. The committee has only had a submission made on the building they wanted to build this year. They asked for $1,500,000, but, after hearings, we have only provided for $1,200,000, which will be ample for the next fiscal year. Now, whether all the buildings will be completed within the estimate or not the gentleman is as able to say as I. We can only say this, that the bill limiting the total cost of the improvement of the academy provided it should not go beyond the amount of the plan which was adopted.

Mr. FITZGERALD. That was in the original provision.

Mr. HULL. Yes.

Mr. FITZGERALD. And after the plans were prepared, it necessitated an increase in the limit of cost by several millions of dollars.

Mr. HULL. We increased last year the total amount of cost for the entire completion of the plans and provided it should not exceed the amount so fixed. Now, these buildings will not all be completed under this appropriation. It is a continuing contract.

Mr. FITZGERALD. Is there any indication that it will be necessary to increase the limit of cost of these buildings?

Mr. HULL. No, sir; but this appropriation will not complete the buildings begun now. This is all that can be used in the next fiscal year.

Mr. FITZGERALD. When is it contemplated these buildings will be completed?

Mr. HULL. No time has been fixed, but the number of buildings and the character of improvements were settled upon by the adoption of the plan the Secretary of War submitted to us, and the total cost of the entire improvement is limited.

Mr. FITZGERALD. Does the gentleman from Iowa have any idea when these improvements will be completed?

Mr. HULL. I should say, taking the rate at which they are going on, it will be two years after this.

Mr. KEIFER. Mr. Chairman, after a conference with the chairman of the committee, I ask unanimous consent to go back to page 2 of the bill, and ask unanimous consent to insert before the words that I asked before to have inserted, and which were inserted, in line 4, the words "for admission;" so that it will read "that cadets appointed to the Military Academy at West Point, N. Y., for admission after the year 1907 may be admitted on the 1st day of March instead of the 1st day of June."

The CHAIRMAN. Will the gentleman restate his request?

Mr. KEIFER. I only desire to make clear what I supposed was clear, but about which some doubt is expressed as to the amendment which was inserted on page 2, line 4. The object is to make the cadets appointed to go to the academy after this year and fix it so that they go on there on the 1st of March. My amendment allowed it to apply to persons appointed after this year. So I desired it to be. They may be appointed to the academy the next year, and this is only to make it clear, so that it will apply to cadets appointed to the Military Academy, at West Point, N. Y., for admission after the year 1907, may be admitted on the 1st day of March in place of the 1st day of June.

The CHAIRMAN. The Clerk will first conclude the reading of the bill.

The Clerk read as follows:

Total buildings and grounds, $1,236,025.

The CHAIRMAN. The gentleman asks unanimous consent to recur to page 2 of the bill and submit an amendment, which the Clerk will read.

The Clerk read as follows:

Page 2, line 4, after the word "New York," insert the words "for admission;" so that it will read:

"*Provided*, That cadets appointed to the Military Academy at West Point, N. Y., for admission after the year 1907, may be admitted on the 1st day of March in place of the 1st day of June."

The CHAIRMAN. Is there objection?

Mr. CLARK of Missouri. I want to ask the gentleman from Ohio a question.

The CHAIRMAN. Does the gentleman reserve the point of order?

Mr. CLARK of Missouri. I do not even reserve the right to object.

The CHAIRMAN. Well, is there objection? [After a pause.] The Chair hears none.

Mr. CLARK of Missouri. What I wanted to ask the gentleman from Ohio was this: Why do you want the thing done?

Mr. KEIFER. Mr. Chairman, in answer to that question, I find that the Military Committee has left this proviso, which left it in doubt as to whether it would apply generally to the appointments that were made in this year. But I do not want it to apply, because some of us have cadets appointed that would not be prepared to go there until June, and if this goes into effect as amended let it go into effect next year.

Mr. CLARK of Missouri. I agree with the gentleman, if the thing is to be done at all. I should like to ask the gentleman from Iowa why he wants it done at all?

Mr. HULL. I tried to explain that, when the matter was up, and succeeded well enough so that no point of order was made on it, and it was agreed to by the Committee of the Whole House. The reason is that if cadets can enter on the 1st of March, they will get the benefit of three months' extra tuition, and the evidence was that this would be in the nature of a preparatory school for those who have not had the advantages of the best education, and that they would have more benefit from their summer studies in camp than if they went there on the 30th of May, entered on the 1st of June, and immediately went into camp without the preparatory three months' study.

Mr. CLARK of Missouri. Must they not already have the qualifications to enter before they can get in?

Mr. HULL. Yes; and I will say to the gentleman that a great many who have entered heretofore on the 1st of June, when it has come to the 1st of January, on account of not having the benefit of proper preparatory studies, have failed to pass the mid-winter examinations. The instructors all believe that

with this additional three months there will be a considerable decrease in the number of those unable to keep up with their classes. A great many go there who are barely able to enter. They are boys who have not had the advantages of the best schools. They are ambitious and anxious. They strain a point to get in and then fall down at the end of the first six months. It is believed this will make it so that they will—a much larger proportion of them—be able to continue through their course.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. KEIFER].

The amendment was agreed to.

Mr. HULL. Mr. Chairman, I ask unanimous consent to go back to line 23, page 5, to strike out the word "of" and insert the word "on." It is a misprint.

The CHAIRMAN. The gentleman from Iowa asks unanimous consent to recur to line 23, page 5, for the purpose of offering an amendment, which the Clerk will report.

The Clerk read as follows:

Page 5, line 23, the second word, change "of" to "on."

The amendment was agreed to.

Mr. HULL. Mr. Chairman, I move that the committee do now rise and report the bill to the House with the amendments and with a favorable recommendation.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. CRUMPACKER, 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. 24537, the Military Academy appropriation bill, and had directed him to report the same to the House with sundry amendments and with the recommendation that the bill as amended do pass.

The SPEAKER. Is a separate vote demanded on any amendment? If not, the vote will be taken in gross.

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. HULL, a motion to reconsider the last vote was laid on the table.

ENROLLED BILLS SIGNED.

The SPEAKER announced his signature to enrolled bills of the following titles:

S. 6898. An act concerning licensed officers of vessels;

S. 6299. An act for the relief of Pollard & Wallace;

S. 6166. An act for the relief of Edwin S. Hall;

S. 5675. An act for the relief of Maj. Seymour Howell, United States Army, retired;

S. 5560. An act for the relief of Matthew J. Davis;

S. 5531. An act for the relief of Francisco Krebs;

S. 5446. An act for the relief of John Hudgins;

S. 4948. An act for the relief of W. A. McLean;

S. 4926. An act for the relief of Etienne De P. Bujac;

S. 4860. An act for the relief of Peter Fairley;

S. 4348. An act for the relief of Augustus Trabing;

S. 3820. An act for the relief of Eunice Tripler;

S. 350. An act for the relief of the heirs of Joseph Sierra, deceased;

S. 319. An act to reimburse Abram Johnson, formerly postmaster at Mount Pleasant, Utah;

S. 4975. An act giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States;

S. 3923. An act to reorganize and increase the efficiency of the artillery of the United States Army;

S. 2724. An act for the relief of Delia B. Stuart, widow of John Stuart;

S. 1231. An act to reimburse the Becker Brewing and Malting Company, of Ogden, Utah, for loss resulting from robbery of the United States mails;

S. 1218. An act for the relief of Louise Powers McKee, administratrix;

S. 538. An act for the relief of Charles T. Rader;

S. 1169. An act for the refund of certain tonnage duties;

S. 505. An act for the relief of Jacob Livingston & Co.;

S. 503. An act to reimburse James M. McGee for expenses incurred in the burial of Mary J. De Lange;

S. 2262. An act for the relief of Pay Director E. B. Rogers, United States Navy;

S. 1933. An act for the relief of George T. Pettengill, lieutenant, United States Navy;

S. 1668. An act for the relief of the administrator of the estate of Gotlob Groezinger;

S. 1648. An act for the relief of the Hoffman Engineering and Contracting Company;

S. 1344. An act for the relief of John M. Burks;

S. 1236. An act to authorize payment to the Henry Philipps Seed and Implement Company for seed furnished to and accepted by the Department of Agriculture during the fiscal year 1902;

S. 3581. An act providing for the payment to the New York Marine Repair Company, of Brooklyn, N. Y., of the cost of the repairs to the steamship *Lindesfarne*, necessitated by injuries received from being fouled by the U. S. Army transport *Crook* in May, 1900;

S. 3574. An act for the relief of John H. Potter;

S. 2964. An act for the relief of the L. S. Watson Manufacturing Company, of Leicester, Mass.;

S. 2578. An act for the relief of Alice M. Stafford, administratrix of the estate of Capt. Stephen R. Stafford;

S. 2368. An act for the relief of the Postal Telegraph Cable Company; and

S. 1894. An act for the relief of P. S. Corbett.

FRANK G. HAMMOND.

The SPEAKER laid before the House the bill (H. R. 3980) granting a pension to Frank G. Hammond, with a Senate amendment thereto.

Mr. SULLOWAY. Mr. Speaker, I move that the House concur in the Senate amendment.

The motion was agreed to.

WILLIAM W. BENNETT.

The SPEAKER also laid before the House the bill (H. R. 15769) granting an increase of pension to William W. Bennett, with a Senate amendment thereto.

Mr. SULLOWAY. Mr. Speaker, I move that the House concur in the Senate amendment.

The motion was agreed to.

Mr. HULL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; and accordingly (at 4 o'clock and 23 minutes p. m.) the House adjourned.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, the following executive communications were taken from the Speaker's table and referred as follows:

A letter from the Secretary of the Treasury, submitting an estimate of additional appropriation for temporary quarters for public offices at Cedar Rapids, Iowa—to the Committee on Appropriations, and ordered to be printed.

A letter from the Secretary of the Treasury, transmitting a copy of a letter from the president of the Spanish Treaty Claims Commission submitting an estimate of appropriation for certain awards—to the Committee on Appropriations, and ordered to be printed.

A letter from the Secretary of the Treasury, transmitting a copy of a letter from the president of the Spanish Treaty Claims Commission submitting an estimate of appropriation for taking testimony abroad—to the Committee on Appropriations, and ordered to be printed.

A letter from the Secretary of the Treasury, submitting an estimate of appropriation for additional compensation in the assistant custodian and janitor service of the Department—to the Committee on Appropriations, and ordered to be printed.

A letter from the assistant clerk of the Court of Claims, transmitting a copy of the findings filed by the court in the case of Raleigh Sherman, administrator of the estate of William P. Leaman, against The United States—to the Committee on War Claims, and ordered to be printed.

A letter from the assistant clerk of the Court of Claims, transmitting a copy of the findings filed by the court in the case of George W. Pearson, administrator of estate of Charles Gotthardt, against The United States—to the Committee on War Claims, and ordered to be printed.

A letter from the Secretary of War, transmitting a memorial of agriculturists of La Carlota, province of Negros Occidental, P. I., praying for repeal of the Dingley tariff law and the establishment of an agricultural bank—to the Committee on Ways and Means, and ordered to be printed.

A letter from the Secretary of the Treasury submitting a draft of proposed legislation in relation to the inspection of accounts of clerk and marshal of the Supreme Court and of the officers in the District of Columbia by the Comptroller and Auditor of the Treasury—to the Committee on the Judiciary, and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, resolution of the following title was reported from committee, delivered to the Clerk, and referred to the Calendar therein named, as follows:

Mr. MANN, from the Committee on Interstate and Foreign Commerce, to which was referred the joint resolution of the House (H. J. Res. 207) declaring Sturgeon Bay, Illinois, not navigable water, reported the same with amendment, accompanied by a report (No. 6595); which said joint resolution and report were referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, private bills 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. ROBINSON of Arkansas, from the Committee on the Public Lands, to which was referred the bill of the House (H. R. 20490) for the relief of Frank J. Ladner, reported the same with amendment, accompanied by a report (No. 6589); which said bill and report were referred to the Private Calendar.

Mr. HOLLIDAY, from the Committee on Military Affairs, to which was referred the bill of the House (H. R. 11279) to remove the charge of absence without leave from the military record of Oscar O. Bowen, reported the same with amendment, accompanied by a report (No. 6596); which said bill and report were referred to the Private Calendar.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS INTRODUCED.

Under clause 3 of Rule XXII, bills and resolutions of the following titles were introduced and severally referred as follows:

By Mr. HUMPHREY of Washington: A bill (H. R. 24747) providing for the hearing of cases upon appeal from the district court for the district of Alaska in the circuit court of appeals for the ninth circuit—to the Committee on the Judiciary.

By Mr. FULLER: A bill (H. R. 24748) granting pensions to certain enlisted men, soldiers and officers, who served in the civil war—to the Committee on Invalid Pensions.

By Mr. KINKAID: A bill (H. R. 24749) for the resurvey of township 27 north, range 16 west, sixth principal meridian, in the county of Holt and State of Nebraska—to the Committee on the Public Lands.

By Mr. OLCOTT: A bill (H. R. 24750) amending section 553 of the Code of Law for the District of Columbia—to the Committee on the District of Columbia.

By Mr. SCROGGY: A bill (H. R. 24751) making an appropriation for the erection of a monument to Gen. U. S. Grant at Point Pleasant, Ohio—to the Committee on the Library.

By Mr. CALDER: A bill (H. R. 24752) to regulate the issue of certain stocks and bonds of common carriers engaged in interstate commerce—to the Committee on the Judiciary.

By Mr. SCHNEEBELI: A bill (H. R. 24753) for the recognition of the military service of the officers and enlisted men of certain Pennsylvania military organizations—to the Committee on Military Affairs.

By Mr. McGUIRE: A bill (H. R. 24754) to authorize the Secretary of the Treasury to accept a building erected upon a piece of land known as the land office reserve, in the city of Perry, Okla.—to the Committee on the Public Lands.

By Mr. HUMPHREY of Washington: A bill (H. R. 24755) to encourage private salmon hatcheries in Alaska—to the Committee on the Merchant Marine and Fisheries.

By Mr. SCROGGY: A bill (H. R. 24756) for the erection of a public building at the city of Xenia, in the State of Ohio—to the Committee on Public Buildings and Grounds.

By Mr. DAVIS of Minnesota: A bill (H. R. 24757) to provide an annual appropriation for industrial education in agricultural high schools and in city high schools and for branch agricultural experiment stations, and regulating the expenditure thereof—to the Committee on Agriculture.

By Mr. SULLOWAY: A bill (H. R. 24758) granting pensions to certain enlisted men, soldiers and officers, who served in the war of the rebellion—to the Committee on Invalid Pensions.

By Mr. WILEY of Alabama: A bill (H. R. 24759) to amend the acts to regulate commerce so as to provide that interstate railroads may grant free or reduced transportation to bona fide members of the Old Time Telegraphers' and Historical Association and the Society of the United States Military Telegraph Corps while attending annual reunions—to the Committee on Interstate and Foreign Commerce.

By Mr. JONES of Washington: A bill (H. R. 24760) authorizing the construction of a dam across the Pend d'Oreille River, in the State of Washington, by the Pend d'Oreille Development Company, for the development of water power, electrical power, and for other purposes—to the Committee on Interstate and Foreign Commerce.

By Mr. PAYNE: A bill (H. R. 24761) to amend section 46 of the act of Congress approved August 27, 1894, entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes"—to the Committee on Ways and Means.

By Mr. OLCOTT: A bill (H. R. 24762) making an appropriation for the erection of a new post-office in the city of New York—to the Committee on Public Buildings and Grounds.

By Mr. ANDREWS: A bill (H. R. 24763) granting pensions to certain enlisted men, soldiers, and officers who served in the civil war and the war with Mexico—to the Committee on Pensions.

By Mr. FOWLER: A bill (H. R. 24764) to amend section 9 of the act approved July 12, 1882, entitled "An act to enable national banking associations to extend their corporate existence, and for other purposes"—to the Committee on Banking and Currency.

By Mr. CLARK of Missouri (by request): A bill (H. R. 24765) in relation to costs of proceedings in error in certain cases—to the Committee on the Judiciary.

By Mr. BATES: A resolution (H. Res. 784) increasing compensation of the House printing and document clerk to $2,500 per annum—to the Committee on Accounts.

By Mr. SMITH of Iowa: A joint resolution (H. J. Res. 224) directing the Secretary of Commerce and Labor to investigate and report to Congress concerning existing patents granted to officers and employees of the Government in certain cases—to the Committee on Patents.

PRIVATE BILLS AND RESOLUTIONS INTRODUCED.

Under clause 1 of Rule XXII, private bills of the following titles were introduced and severally referred as follows:

By Mr. ANDREWS: A bill (H. R. 24766) for the relief of Louis Kahn—to the Committee on War Claims.

By Mr. BANNON: A bill (H. R. 24767) granting an increase of pension to Samuel Nickel—to the Committee on Invalid Pensions.

Also, a bill (H. R. 24768) granting an increase of pension to W. H. Stevens—to the Committee on Invalid Pensions.

By Mr. BEALL of Texas: A bill (H. R. 24769) granting an increase of pension to John George—to the Committee on Pensions.

By Mr. BEIDLER: A bill (H. R. 24770) granting an increase of pension to Joseph A. Fretter—to the Committee on Invalid Pensions.

Also, a bill (H. R. 24771) granting an increase of pension to William H. Polhamus—to the Committee on Invalid Pensions.

By Mr. BROWN: A bill (H. R. 24772) granting an increase of pension to John B. Gardner—to the Committee on Invalid Pensions.

By Mr. BRICK: A bill (H. R. 24773) granting a pension to Jacob Bell—to the Committee on Invalid Pensions.

Also, a bill (H. R. 24774) granting an increase of pension to James Amick—to the Committee on Invalid Pensions.

By Mr. CAMPBELL of Kansas: A bill (H. R. 24775) granting a pension to R. J. Hiner—to the Committee on Pensions.

By Mr. CROMER: A bill (H. R. 24776) granting an increase of pension to David T. Taylor—to the Committee on Invalid Pensions.

By Mr. DE ARMOND: A bill (H. R. 24777) granting an increase of pension to John R. Miller—to the Committee on Invalid Pensions.

By Mr. DIXON of Indiana: A bill (H. R. 24778) granting an increase of pension to John Wikel—to the Committee on Invalid Pensions.

Also, a bill (H. R. 24779) granting an increase of pension to Jonathan Curtis—to the Committee on Invalid Pensions.

Also, a bill (H. R. 24780) granting an increase of pension to N. C. Rucker—to the Committee on Invalid Pensions.

By Mr. FITZGERALD: A bill (H. R. 24781) granting a pension to John S. Woods—to the Committee on Invalid Pensions.

Also, a bill (H. R. 24782) granting an increase of pension to George W. Willis, jr.—to the Committee on Invalid Pensions.

By Mr. FOWLER: A bill (H. R. 24783) granting an increase of pension to Sarah Jackson—to the Committee on Invalid Pensions.

By Mr. GAINES of Tennessee: A bill (H. R. 24784) granting an increase of pension to Willis W. Wilkerson—to the Committee on Invalid Pensions.

Also, a bill (H. R. 24785) granting an increase of pension to Cynthia C. Pickard—to the Committee on Pensions.

By Mr. GARDNER of New Jersey: A bill (H. R. 24786) granting an increase of pension to Mary J. Merwin—to the Committee on Invalid Pensions.

Also, a bill (H. R. 24787) granting an increase of pension to Thomas T. Phillips—to the Committee on Invalid Pensions.

By Mr. HALE: A bill (H. R. 24788) granting an increase of pension to Joseph A. Brown—to the Committee on Invalid Pensions.

By Mr. HAYES: A bill (H. R. 24789) granting an increase of pension to James T. Bonnifield—to the Committee on Invalid Pensions.

By Mr. HEFLIN: A bill (H. R. 24790) granting an increase of pension to Margaret E. Lewis—to the Committee on Pensions.

Also, a bill (H. R. 24791) for the relief of John L. Hayes—to the Committee on War Claims.

By Mr. HUMPHREY of Washington: A bill (H. R. 24792) granting an increase of pension to William H. Penfield—to the Committee on Invalid Pensions.

By Mr. KINKAID: A bill (H. R. 24793) granting an increase of pension to Joseph Brown—to the Committee on Invalid Pensions.

By Mr. LITTLEFIELD: A bill (H. R. 24794) granting an increase of pension to Margaret J. Wood—to the Committee on Invalid Pensions.

Also, a bill (H. R. 24795) granting an increase of pension to Benjamin D. Arris—to the Committee on Invalid Pensions.

By Mr. LORIMER: A bill (H. R. 24796) granting a pension to Fred M. Mason—to the Committee on Invalid Pensions.

By Mr. McGUIRE: A bill (H. R. 24797) providing for the removal of the legal disabilities of James Terrapin, a member of the Cherokee tribe of Indians in the Indian Territory—to the Committee on the Public Lands.

Also, a bill (H. R. 24798) to reimburse Thomas P. Tobin for excess postage paid on the Indiahoma Union Signal—to the Committee on Claims.

By Mr. MURPHY: A bill (H. R. 24799) granting an increase of pension to Samuel K. Moore—to the Committee on Invalid Pensions.

Also, a bill (H. R. 24800) granting an increase of pension to Septimus Roberts—to the Committee on Invalid Pensions.

By Mr. POU: A bill (H. R. 24801) granting an increase of pension to George G. Martin—to the Committee on Invalid Pensions.

By Mr. RAINEY: A bill (H. R. 24802) granting an increase of pension to William C. Hall—to the Committee on Invalid Pensions.

By Mr. RICHARDSON of Alabama: A bill (H. R. 24803) for the relief of the estate of Enoch R. Kennedy, deceased—to the Committee on War Claims.

Also, a bill (H. R. 24804) for the relief of the estate of Marcus M. Massengale, deceased—to the Committee on War Claims.

Also, a bill (H. R. 24805) for the relief of Burwell J. Curry—to the Committee on War Claims.

Also, a bill (H. R. 24806) for the relief of the heirs of A. E. Mills, deceased—to the Committee on War Claims.

By Mr. SHERMAN: A bill (H. R. 24807) granting an increase of pension to Horace E. Heath—to the Committee on Invalid Pensions.

By Mr. STERLING: A bill (H. R. 24808) granting an increase of pension to Nathan E. Skinner—to the Committee on Invalid Pensions.

By Mr. TALBOTT: A bill (H. R. 24809) authorizing the President to nominate and appoint William Lay Patterson a captain and quartermaster, United States Army—to the Committee on Military Affairs.

By Mr. TYNDALL: A bill (H. R. 24810) for the relief of J. T. Blackman—to the Committee on Claims.

By Mr. WEISSE: A bill (H. R. 24811) granting an increase of pension to Samuel W. Bird—to the Committee on Invalid Pensions.

By Mr. WILSON: A bill (H. R. 24812) granting an increase of pension to Alfred Douglas Proctor—to the Committee on Invalid Pensions.

Also, a bill (H. R. 24813) granting an increase of pension to James E. Chadwick—to the Committee on Invalid Pensions.

Also, a bill (H. R. 24814) granting an increase of pension to Dennis Hurley—to the Committee on Invalid Pensions.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, committees were discharged from the consideration of bills of the following titles; which were thereupon referred as follows:

A bill (H. R. 1556) granting an increase of pension to Susan Wigley—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 11669) granting a pension to William J. Records—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 14384) granting an increase of pension to John Miller—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 22636) granting an increase of pension to Isaac Williams—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 23532) granting an increase of pension to Jacob Slemp—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 23971) granting an increase of pension to Mary E. C. Butler—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 3215) granting a pension to Raymond P. Snow—Committee on Invalid Pensions discharged, and referred 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 the SPEAKER: Petition of T. Hoeninghausen, of New York City, against interference in the Kongo Free State affairs—to the Committee on Foreign Affairs.

By Mr. ADAMSON: Petition of the Atlanta (Ga.) Wholesale Grocers' Association, for legislation to secure reciprocal demurrage on railway cars—to the Committee on Interstate and Foreign Commerce.

By Mr. BANNON: Petitions of Lawrence Council, No. 193; Rockwood Council, No. 105; Portsmouth Council, No. 38, and Gallipolis Council, No. 269, Junior Order United American Mechanics, favoring restriction of immigration (S. 4403)—to the Committee on Immigration and Naturalization.

By Mr. BARCHFELD: Petitions of citizens of Lawrence, Ind.; Cook County, Ill., and Westmoreland County, Pa., against bill S. 5221, regulating the practice of osteopathy in the District of Columbia—to the Committee on the District of Columbia.

By Mr. BEALL of Texas: Paper to accompany bill for relief of John Palmer—to the Committee on Pensions.

By Mr. BEIDLER: Paper to accompany bill for relief of J. Fretter—to the Committee on Invalid Pensions.

By Mr. BELL of Georgia: Paper to accompany bill for relief of Michael Evert—to the Committee on Pensions.

By Mr. CROMER: Petition of Bethel congregation, of Muncie, Ind., against restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. DOVENER: Papers to accompany bills for relief of Horatio N. Peabody, William L. Snider, and Lucinda F. Slater—to the Committee on Invalid Pensions.

By Mr. DRAPER: Petition of the Massachusetts board of agriculture, for an appropriation to suppress the gypsy moth—to the Committee on Agriculture.

By Mr. DRESSER: Paper to accompany bill for relief of John Maginnis—to the Committee on Invalid Pensions.

By Mr. EDWARDS: Paper to accompany bill for relief of C. B. Kinnett—to the Committee on War Claims.

Also, paper to accompany bill for relief of William McGee—to the Committee on Claims.

Also, papers to accompany bills for relief of Monroe Godby and Sarah Davidson—to the Committee on Invalid Pensions.

By Mr. FITZGERALD: Paper to accompany bill for relief of George W. Willis, jr.—to the Committee on Invalid Pensions.

By Mr. FOSTER of Vermont: Petition of the Evening News, against tariff on linotype machines—to the Committee on Ways and Means.

By Mr. FULKERSON: Paper to accompany bill for relief of Hiram King—to the Committee on Invalid Pensions.

By Mr. FULLER: Petition of Samuel Holmes, for the ship-subsidy bill—to the Committee on the Merchant Marine and Fisheries.

Also, resolution of the legislature of Illinois, for protection of the interest of the Chicago sanitary drainage district in its drainage canal in any legislation relating to deep water—to the Committee on Rivers and Harbors.

Also, petition of John G. Tiff, for an annual appropriation of

$50,000,000 for improving waterways and for a deep waterway from the Lakes to the Gulf—to the Committee on Rivers and Harbors.

By Mr. GAINES of Tennessee: Paper to accompany bill for relief of W. W. Wilkerson—to the Committee on War Claims.

By Mr. GOULDEN: Petition of the Chamber of Commerce of New York City, for bill H. R. 17347, increasing the efficiency of the artillery arm of the service—to the Committee on Military Affairs.

Also, petition of women principals of New York City public schools, for appointment of a Secretary of Education—to the Committee on Education.

By Mr. GROSVENOR: Paper to accompany bill for relief of Basel Hall—to the Committee on Invalid Pensions.

By Mr. HALE: Paper to accompany bill for relief of Frank Maloney—to the Committee on War Claims.

By Mr. HAYES: Paper to accompany bill for relief of James T. Bonnifield—to the Committee on Invalid Pensions.

Also, petition of the Board of Trade of Templeton, Cal., and the Paso Robles Improvement Club, for purchase of the Henry ranch, San Luis Obispo County, as a military reservation—to the Committee on Military Affairs.

Also, petition of J. K. Bryant et al., citizens of California, against employment of Asiatic coolies on the Panama Zone and for the Chinese-exclusion law to apply to Japanese—to the Committee on Foreign Affairs.

By Mr. HENRY of Connecticut: Petition of the Graduate Nurses' Association of Connecticut, for the bill providing for regulation and control of professional nurses—to the Committee on the District of Columbia.

By Mr. HOWELL of New Jersey: Petition of Samuel Gompers, favoring restriction of immigration and for an educational test in the immigration bill—to the Committee on Immigration and Naturalization.

Also, petition of the New Jersey Society, Sons of the Revolution, for an appropriation to preserve the records of the Continental Congress—to the Committee on Appropriations.

By Mr. KENNEDY of Nebraska: Petition of the Nebraska Duroc Jersey Breeders' Association, against free distribution of seeds—to the Committee on Agriculture.

Also, petition of the Nebraska State Swine Breeders' Association, against free distribution of seeds—to the Committee on Agriculture.

Also, petition of 85 citizens of Omaha, indorsing the Hamilton prisoners-of-war bill—to the Committee on Invalid Pensions.

By Mr. KENNEDY of Ohio: Petition of Frank W. Gratten et al., against employment of Asiatic coolies on the Canal Zone—to the Committee on Foreign Affairs.

Also, petition of the Trades and Labor Council of East Liverpool, Ohio, against the ship-subsidy bill—to the Committee on the Merchant Marine and Fisheries.

Also, petition of the Elbel Company, of Canton, Ohio, for an appropriation for a waterway from the Lakes to the Gulf—to the Committee on Rivers and Harbors.

Also, petition of Parlett Lloyd, of Baltimore, Md., against any claim of pension attorney for securing pension—to the Committee on Invalid Pensions.

Also, petition of the joint executive committee on the improvement of Philadelphia Harbor, for an appropriation to deepen Delaware River to a 30-foot channel—to the Committee on Rivers and Harbors.

Also, petition of the National Private Commercial School Managers' Association, for revision of the postal laws—to the Committee on the Post-Office and Post-Roads.

Also, petition of the Review, Alliance, Ohio, against tariff on linotype machines—to the Committee on Ways and Means.

By Mr. KNAPP: Paper to accompany bill for relief of Calvin J. Ripley—to the Committee on Invalid Pensions.

By Mr. LAW: Paper to accompany bill for relief of Henry C. Vedder—to the Committee on Invalid Pensions.

By Mr. LINDSAY: Petition of the Massachusetts State Board of Agriculture, for an appropriation to suppress the gypsy moth—to the Committee on Agriculture.

Also, petition of Bertrand Rockwell, for legislation to increase the pay of the Regular Army—to the Committee on Military Affairs.

By Mr. LOUDENSLAGER: Petition of the New Jersey Society, Sons of the Revolution, for an appropriation to print and publish papers of the Continental Congress—to the Committee on Appropriations.

By Mr. McMORRAN: Petition of citizens, churches, Woman's Christian Temperance Union, and Epworth League, of Richmond, Mich., for the Littlefield bill, to limit the effect of the regulation of commerce between the States—to the Committee on Alcoholic Liquor Traffic.

By Mr. NORRIS: Petition of the Nebraska State Swine Breeders' Association, against free distribution of garden seeds—to the Committee on Agriculture.

By Mr. PARKER: Petition of the National Encampment of the United Spanish War Veterans, for restoration of the canteen in the Army—to the Committee on Military Affairs.

By Mr. RANDELL of Texas: Petition of citizens of Black Bridge, Grayson County, Tex., for an appropriation for the upper Red River—to the Committee on Rivers and Harbors.

By Mr. RAINEY: Petition of citizens of Sangamon County, Ill., for reciprocal demurrage on cars—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Business Men's Association of Winchester, Ill., against a parcels-post law—to the Committee on the Post-Office and Post-Roads.

By Mr. RICHARDSON of Alabama: Papers to accompany bills for relief of estate of Enoch R. Kennedy, Burwell J. Curry, heirs of A. A. Mills, and estate of Marcus M. Massengale—to the Committee on War Claims.

By Mr. RIXEY: Paper to accompany bill for relief of heirs of Joseph W. Robertson—to the Committee on War Claims.

By Mr. RYAN: Petition of the Massachusetts board of agriculture, for an appropriation to stay the gypsy moth—to the Committee on Agriculture.

By Mr. SCOTT: Petition of the Department of Kansas, Grand Army of the Republic, urging equalization of pensions—to the Committee on Invalid Pensions.

By Mr. SHEPPARD: Petition of citizens of Garvin, Okla., for an appropriation to improve upper Red River—to the Committee on Rivers and Harbors.

By Mr. SPIGHT: Papers to accompany bills for relief of heirs of Charles T. Alexander and Jane B. Alexander, Nancy P. Garrison, estate of W. M. Ham, and estate of John Housten—to the Committee on War Claims.

By Mr. STERLING: Paper to accompany bill for relief of Laura A. McKesell—to the Committee on Invalid Pensions.

By Mr. VAN WINKLE: Petition of the New Jersey Society, Sons of the Revolution, for preservation of records of the Continental Congress—to the Committee on Appropriations.

By Mr. WILSON: Paper to accompany bill for relief of Minnie Mae Blackburn—to the Committee on War Claims.

Also, petition of William McKinley Camp, No. 12, Spanish War Veterans, for restoration of the Army canteen—to the Committee on Military Affairs.

SENATE.

WEDNESDAY, *January 23, 1907.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

Mr. ANSELM J. MCLAURIN, a Senator from the State of Mississippi, appeared in his seat to-day.

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

The VICE-PRESIDENT. The Journal stands approved.

THE PHILIPPINE TARIFF.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of War, transmitting a cablegram from the governor-general of the Philippine Islands containing an appeal of the agriculturists of La Carlota, province of Negros Occidental, for the repeal of the Dingley tariff and for the establishment of an agricultural bank in that province; which was referred to the Committee on the Philippines, and ordered to be printed.

MESSAGE FROM THE HOUSE.

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

H. R. 3980. An act granting a pension to Frank G. Hammond; and

H. R. 15769. An act granting an increase of pension to William W. Bennett.

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

H. R. 22334. An act to amend an act to regulate the sitting of the United States courts within the district of South Carolina;

H. R. 24537. An act making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1908, and for other purposes; and

H. R. 24538. An act making appropriations for the diplomatic and consular service for the fiscal year ending June 30, 1908.