

Also, petition of S. W. Burkhardt and others, of Indianapolis, Ind., for H. R. 4029—to the Committee on the District of Columbia.

By Mr. PATTERSON: Paper to accompany bill for relief of Vance V. Pearsall—to the Committee on Invalid Pensions.

By Mr. POLLARD: Petition of sundry citizens of Tecumseh, Nebr., for the Sherwood pension bill—to the Committee on Invalid Pensions.

Also, petition of sundry citizens of Cook, Nebr., against the Penrose bill (post-office law amendment)—to the Committee on the Post-Office and Post-Roads.

Also, petition of sundry citizens of Nebraska, against sale of intoxicants in the District of Columbia—to the Committee on the District of Columbia.

By Mr. PRATT: Petition of Brotherhood of Locomotive Engineers and Firemen of Phillipsburg, N. J., for the La Follette liability bill—to the Committee on the Judiciary.

Also, petition of New Jersey Chapter American Institute of Architects, against change of site of the Grant Memorial—to the Committee on the Library.

Also, petition of Electrical Workers' Union, No. 190, of Newark, N. J., against Penrose bill (S. 1518) to amend Revised Statutes (previously referred to the Committee on Invalid Pensions)—to the Committee on the Post-Office and Post-Roads.

By Mr. RYAN: Petition of Andrew Carnegie and other citizens of New York City, against too much battle-ship building—to the Committee on Naval Affairs.

Also, petition of East Buffalo Live Stock Exchange, for the Culberson-Smith car-service bill—to the Committee on Interstate and Foreign Commerce.

By Mr. SMITH of Michigan: Petition of Baker Printing Company, of Newark, N. J., against the eight-hour bill—to the Committee on Labor.

Also, petition of Henry Robinson and 42 other veterans of Plymouth, Mich., and A. W. Thompson and 95 other veterans of Wayne, Mich., for the Sherwood pension bill—to the Committee on Invalid Pensions.

By Mr. SMITH of Missouri: Petition of citizens of Wayne County, Mo., for the Sherwood pension bill—to the Committee on Invalid Pensions.

By Mr. SPERRY: Petitions of citizens of Hamden and Cheshire, Conn., for national highway commission—to the Committee on Agriculture.

By Mr. STEVENS of Minnesota: Petition of Minnesota Dairymen's Association, for bill of Hon. C. R. Davis for Federal aid for agricultural schools—to the Committee on Agriculture.

By Mr. STEPHENS of Texas: Petition of W. J. Ropers and other citizens of Benjamin and Silverton, Tex., against the Penrose bill—to the Committee on the Post-Office and Post-Roads.

By Mr. STURGISS: Petition of C. C. Brown and others, of West Virginia State Grange, for a national highway commission—to the Committee on Agriculture.

Also, paper to accompany bill for relief of James Irwin, alias James Williamson—to the Committee on Invalid Pensions.

By Mr. SULZER: Petition of Polish organizations and press, against the Polish expropriation bill by the Prussian Diet—to the Committee on Foreign Affairs.

Also, petition of citizens of Polish birth, against the harsh measures of the Prussian Diet—to the Committee on Foreign Affairs.

Also, petition of Joseph Hart, of New York City, for the Kittredge copyright bill—to the Committee on Patents.

Also, petition of Music Engravers' Union of America, for amendments to both Currier and Kittredge copyright bills—to the Committee on Patents.

Also, petition of Travelers and Merchants' Association of Baltimore, against the Aldrich currency law—to the Committee on Banking and Currency.

By Mr. TIRRELL: Petitions of Central Congregational Church, of Dorchester, Mass., and Clarendon Street Baptist Church, of Boston, for the Littlefield original-package bill—to the Committee on the Judiciary.

By Mr. TOWNSEND: Petition of citizens of Milan, Mich., against Penrose amendment of postal laws—to the Committee on the Post-Office and Post-Roads.

By Mr. UNDERWOOD: Paper to accompany bill for relief of H. G. Martin—to the Committee on War Claims.

By Mr. WALLACE: Paper to accompany bill for relief of George W. Robinson (previously referred to the Committee on Pensions)—to the Committee on Pensions.

By Mr. WANGER: Petition of Maritime Exchange of Philadelphia, Pa., for H. R. 17044, providing for lading vessels at night and other purposes—to the Committee on Ways and Means.

Also, petition of Sam Sloan Division, No. 276, Brotherhood of Locomotive Engineers, for S. 4260—to the Committee on Interstate and Foreign Commerce.

Also, petition of Glasgow Iron Company, of Pottstown, Pa., against H. R. 16551—to the Committee on Labor.

Also, petition of Subdivision No. 325, of the International Brotherhood of Locomotive Engineers, of Pittsburg, for S. 4260—to the Committee on Interstate and Foreign Commerce.

Also, petitions of the Forestry Commission of Massachusetts and State Federation of Women's Clubs, for H. R. 10456 and 10457—to the Committee on Agriculture.

By Mr. WOOD: Petition of W. E. Halm, for H. R. 11562, for return of collateral inheritance tax to the Stevens Institute of Technology, of Hoboken, N. J.—to the Committee on Claims.

Also, petition of New Jersey State Board of Agriculture, for legislation that income from forest reservations apply to instruction and experimentation on forestry by agricultural colleges and experiment stations in the States and Territories—to the Committee on Agriculture.

Also, petition of New Jersey State Board of Agriculture, for liberal appropriation for highways—to the Committee on Agriculture.

SENATE.

WEDNESDAY, March 11, 1908.

Prayer by the Chaplain, Rev. EDWARD E. HALE.

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.

SEAL ISLANDS IN ALASKA.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of Commerce and Labor, transmitting, by direction of the President and in response to the resolution of the 2d instant, certain reports relating to the Alaskan seal fisheries, and requesting, as the reports transmitted are original ones, that if it is not the purpose of the Senate to publish them they be returned to the files of the Department of Commerce and Labor, which, with the accompanying papers, was referred to the Committee on Fisheries and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed the bill (S. 2948) to provide additional station grounds and terminal facilities for the Arizona and California Railway Company in the Colorado River Indian Reservation, Ariz.

The message also announced that the House had passed the following bill and joint resolution, in which it requested the concurrence of the Senate:

H. R. 11778. An act to amend an act approved June 11, 1906, entitled "An act to provide for the entry of agricultural lands within forest reserves;" and

H. J. Res. 148. Joint resolution donating to the Commonwealth of Oklahoma the new flag now floating over the National Capital.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the Vice-President:

S. 5155. An act authorizing the exchange of lands for the enlargement of maneuvering grounds; and

H. R. 2429. An act granting pensions and increase of pensions to certain soldiers and sailors of the war with Spain and other wars, and to the widows of such soldiers and sailors.

PETITIONS AND MEMORIALS.

Mr. PLATT presented a petition of United Division, No. 292, International Brotherhood of Locomotive Engineers, of Middle-town, N. Y., praying for the passage of the so-called "Rodenberg anti-injunction bill," which was referred to the Committee on the Judiciary.

He also presented a petition of the Florists and Gardeners' Union of New York City, N. Y., praying for the enactment of legislation providing for the construction of at least one of the proposed new battle ships at the Government navy-yards, which was referred to the Committee on Naval Affairs.

He also presented a petition of Silas Wright Grange, Patrons of Husbandry, of Canton, N. Y., praying for the passage of the so-called "parcels-post bill," and also for the establishment of postal savings banks, which was referred to the Committee on Post-Offices and Post-Roads.

Mr. GALLINGER presented a petition of Lafayette Grange,

No. 208, Patrons of Husbandry, of Franconia, N. H., and sundry petitions of citizens of New Hampshire, praying for the enactment of legislation to create a national highways commission, which were referred to the Committee on Agriculture and Forestry.

He also presented a petition of the Woman's Christian Temperance Union of Orange, N. J., and a petition of the Orange Political Study Club, of East Orange, N. J., praying for the enactment of legislation to regulate the employment of child labor, which were ordered to lie on the table.

He also presented petitions of sundry citizens of Washington, D. C., and of the Woman's Christian Temperance Union of Milwaukee, Wis., praying for the enactment of legislation to prohibit the manufacture and sale of intoxicating liquors in the District of Columbia, which were referred to the Committee on the District of Columbia.

Mr. DICK presented a petition of the Allied Printing Trades Council of Akron, Ohio, praying for the enactment of legislation providing for the construction of all battle ships at the Government navy-yards, which was referred to the Committee on Naval Affairs.

He also presented a petition of the Retail Druggists' Association of Philadelphia, Pa., praying for the enactment of legislation to classify certain grades in numbered post-office stations, which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of the Northwestern Ohio Post-masters' Association, of Toledo, Ohio, praying for the passage of the so-called "parcels-post bill" and also for the establishment of postal savings banks, which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a memorial of Akron Chapter American Insurance Union, of Akron, Ohio, remonstrating against the passage of the so-called "Penrose bill" to exclude nonmailable periodicals from second-class mail privileges, which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of George G. Barbee Division, No. 79, Brotherhood of Locomotive Engineers, of Columbus, Ohio, and a petition of Local Division No. 65, Brotherhood of Locomotive Engineers, of Chillicothe, Ohio, praying for the passage of the so-called "La Follette-Sterling employers' liability bill," which were referred to the Committee on the Judiciary.

He also presented a petition of the congregation of the Third Lutheran Church of Springfield, Ohio, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors, which was referred to the Committee on the Judiciary.

He also presented a petition of Local Union No. 5, International Typographical Union, of Columbus, Ohio, praying for the repeal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which was referred to the Committee on Finance.

He also presented a petition of Encampment No. 118, Union Veteran League, of Zanesville, Ohio, praying for the passage of the so-called "Sherwood pension bill," granting more liberal rates of pension, which was referred to the Committee on Pensions.

He also presented a memorial of the Lumbermen's Club of Cincinnati, Ohio, remonstrating against the passage of the so-called "Crumpacker bill," providing for the employment of additional clerks for the taking of the Thirteenth and subsequent censuses, which was referred to the Committee on the Census.

He also presented a petition of the United Mine Workers of America, of Indianapolis, Ind., praying for the establishment of a Bureau of Mines in the Department of the Interior, which was referred to the Committee on Mines and Mining.

Mr. SUTHERLAND presented a petition of Local Union No. 71, International Stereotypers and Electrotypers' Union, of Salt Lake City, Utah, and a petition of Local Union No. 21, International Typographical Union, of Salt Lake City, Utah, praying for the repeal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which were referred to the Committee on Finance.

Mr. WARREN presented a petition of W. E. Green Lodge, No. 288, Brotherhood of Railroad Trainmen, of Cheyenne, Wyo., praying for the passage of the so-called "La Follette-Sterling employers' liability bill," which was referred to the Committee on the Judiciary.

Mr. FRYE presented a petition of sundry citizens of West Peru, Me., and a petition of sundry citizens of Buckfield, Me., praying for the passage of the so-called "rural parcels-post bill," which were referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of Local Union No. 66, Interna-

tional Typographical Union, of Portland, Me., praying for the repeal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which was referred to the Committee on Finance.

Mr. KEAN presented petitions of sundry citizens of Linden, Newark, and of the Woman's Literary Club of Arlington, all in the State of New Jersey, and of the Sprague Electric Company, of New York City, N. Y., praying for the enactment of legislation to establish a national forest reserve in the Southern Appalachian and White Mountains, which was referred to the Committee on Forest Reservations and the Protection of Game.

He also presented a petition of Local Union No. 424, International Typographical Union, of Orange, N. J., praying for the repeal of the duty on white paper, wood pulp, and the materials used in the manufacture thereof, which was referred to the Committee on Patents.

He also presented a petition of Protection Lodge, No. 2, Brotherhood of Railroad Trainmen, of Phillipsburg, N. J., and a petition of Local Division No. 22, Brotherhood of Locomotive Engineers, of Camden, N. J., praying for the passage of the so-called "La Follette-Sterling employers' liability bill," which were referred to the Committee on the Judiciary.

He also presented a petition of Excelsior Lodge, No. 11, Brotherhood of Locomotive Engineers and Firemen, of Phillipsburg, N. J., praying for the passage of the so-called "Rodenberg anti-injunction bill," which was referred to the Committee on the Judiciary.

He also presented a petition of Liberty Grange, No. 99, Patrons of Husbandry, of Marlboro, N. J., and the petition of Frederick W. Kelsey, of New York City, N. Y., praying for the passage of the so-called "parcels-post bill," which were referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of Vineland Grange, No. 11, Patrons of Husbandry, of Vineland, N. J., praying for the enactment of legislation to create a national highways commission, which was referred to the Committee on Agriculture and Forestry.

He also presented the petition of Mrs. C. S. Haller, of Elizabeth, N. J., praying for the passage of the so-called "Kittredge copyright bill," which was referred to the Committee on Patents.

He also presented a memorial of the United Irish Societies of Middlesex County, N. J., remonstrating against the ratification of the treaty of arbitration between the United States and Great Britain, which was referred to the Committee on Foreign Relations.

Mr. CURTIS presented a petition of the Creditmen's Association of Wichita, Kans., praying for the adoption of certain amendments to the present bankruptcy law, which was referred to the Committee on the Judiciary.

Mr. RAYNER presented a petition of Dry Run Grange, No. 231, Patrons of Husbandry, of Swanton, Md., praying for the passage of the so-called "parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

Mr. DILLINGHAM presented a petition of sundry citizens of Sutton, Vt., praying for the passage of the so-called "rural parcels-post bill," which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of sundry citizens of Morrisville, Vt., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors, which was referred to the Committee on the Judiciary.

He also presented a memorial of the Vermont Unfading Green slate Company, of Fair Haven, Vt., remonstrating against the passage of the so-called "O'Connell bill" to amend the present interstate-commerce law, etc., which was referred to the Committee on Interstate Commerce.

THE UNITED STATES NAVY.

Mr. HALE. I present the memorial of sundry citizens of New York City, remonstrating against the great addition to the Navy involved in the plan of authorizing at once the construction of four new battle ships. I ask that the memorial be printed in the RECORD, with the names attached; that it also be printed as a document, and referred to the Committee on Naval Affairs.

There being no objection, the memorial was ordered to be printed in the RECORD, together with the names, also as a document, and referred to the Committee on Naval Affairs, as follows:

To the Representatives and Senators in Congress:

We, the undersigned citizens of New York City, voicing, as we believe, the sentiments of many thousands of American citizens, earnestly protest against the extravagant demand for an addition of over \$60,000,000 in the form of four new battle ships, cruisers, etc., to the naval budget of last year, inasmuch as no danger threatens the coun-

try not known last April when President Roosevelt told the world: "We are no longer enlarging our Navy. We are simply keeping up its strength. The addition of one battle ship a year barely enables us to make good the units which become obsolete."

Sixty-five per cent of the national income is now expended on war past and present. The increase of our naval budget has recently been used in the French Assembly as a reason for increasing its own; is largely responsible for the increase of armaments among Asiatic nations; and is well-nigh certain to retard that reduction in the armaments of the world for which we have so long been waiting.

The growing discontent throughout the world at the appalling increase of waste of national resources must be heeded. We feel that this protest is the more necessary inasmuch as there are various new and effective methods now available for promoting international friendship and rationally settling difficulties, which these new demands seem to ignore.

Andrew Carnegie, Robert Fulton Cutting, Robert C. Ogden, George Haven Putnam, Oswald Garrison Villard, Horace White, Samuel J. Barrows, Fanny Garrison Villard, Marcus M. Marks, Anna Garlin Spencer, Hamilton Holt, Robert Erskine Ely, George Foster Peabody, Spencer Trask, John Martin, Prestonia Mann Martin, E. Stillman Doubleday, Miriam Finn Scott, Leroy Scott, William G. Choate, Mrs. William G. Choate, Alfred J. Boulton, Francis Lynde Stetson, Mornill Goddard, A. Harport, Jr., A. Lueder, Robt. Walker, Cecil K. Leavitt, Evelyn G. Leavitt, Isabella McDonald, Anna Benner, C. B. Smith, W. C. Demorest, William A. Smith, William Henry Knox, John W. McAvoy, Joseph V. Land, P. B. Land, Sarah E. Gardner, John Ash, Martha Nixon, Melissa Sutton, Endora Magill, E. A. Eckhardt, George S. Baldwin, Gudron Halmith, Sarah Potter Paine, Alice Burns, Lee W. Beattie, Mrs. Ferdinand Herman, Albert G. Lawson, Martha Knight Lawson, Albert Lawson Frost, Anna T. Frost, William M. Frost, Isaac Yankauer, Charles G. Ehrlich, Albert Dublon, Louis F. Denike, Katharine Donegham, Hannah L. Wingate, James Purdy, Susanah Jarman, Edith K. Purdy, John B. Bogart, L. R. Greenberg, Kate Daniels, Fannie Dublin, Meyer Greenberg, Max Scott, Martha R. White, A. W. Howells, A. E. White, Marion R. Tabor, Samuel H. Bishop, Richard P. Messiter, James Thornton, S. Priester, Mrs. G. A. Harrington, George A. Dows, Annie Dows, Virginia Ostrom, Mrs. Francis J. Garrison, Janette Lylle, Mrs. Oswald G. Villard, Alice Morgan Harrison, Ellen Theresa Morgan, Jessie M. de Gagarza, W. G. Kains, G. W. Wenner, R. G. H. Cooper, R. E. Smythe, Mrs. C. Smith, E. G. Armstrong, H. Mason, Henry Mottet, F. D. Veiller, Mrs. W. C. Waters, Mrs. Leo Stein, James S. Dennis, Henry Feldmann, Gustav J. Voss, Frederick Kanter, E. F. Bockmann, W. Pilgrim, Frederick Herman, William J. Meager, Miss G. Kendall, Angelina de Champlin, Joseph Reading, Mrs. L. H. Badger, Lucy Whitin, Blanch Lucas, Bertha Brooks, Anna G. Du Bois, Louise Whitin, John E. Nichollans, Alfred Bosson, Edward J. Osborn, Raymond Dodge, Raymond Levy, Caroline Despard, Flora Harrison, Margaret S. Sutton, Margaret Bates, Gwendaren Despard, Maria Barton, Richard S. Collins, Sarah W. Collins, Stephen W. Collins, Sarah C. Isham, Annie Fellows Noid, Edward A. Grossmann, Mrs. E. A. Grossmann, Mrs. H. I. Ostrom, Joseph Marx, Nathan Holtz, R. A. Theodora Bliss, Mrs. B. B. Wilbur, M. R. Yost, K. Müller, Ruth Keir, Stephen S. Wise, L. J. Waterman, Louise E. Philips, Emile F. Leach, Laeta E. Leach, Ludwig Rothenbild, Jacob J. Koch, John H. Hawley, Edward Heath, Jr., Isaac H. Cohen, C. I. Hobson, Ellen Collins, Joseph E. Wisner, John Bauer, Elizabeth Kewe, Mary Collins, R. B. Quimelt, Mrs. M. G. Preston, May Preston Slosson, Mary Hess Brown, A. J. Joffe, E. E. Olcott, Silas Gerkes, Edwin Donaldson, Solomon Schwartz, B. C. Hammond, William M. Schumann, George Marshall, Philip F. Nolan, David H. Scott, William Schmidt, Mary E. Crygier, Albert Crygier, Arthur Constant, R. W. Dolson, Jonathan Pierce, Thomas Locken, W. W. Passage, Percy Russell, William de Voce, George W. Waldron, Sydney H. Cox, Joseph A. Wells, Herbert Vandebek, John H. Washburn, Mrs. H. C. Havens, Miss C. Marsh, H. Collin Havens, Willinore Marsh, Mrs. W. W. Jones, Albert Adler, Arthur B. Goodkind, Augusta L. Wetmore, Francis J. Potter, Etta Potter, L. D. Austin, Mary W. Somerville, Lelia Chevalier, Clarissa V. Prescott, John E. Roiser, John C. Bliss, Mrs. L. C. Wagner, Dr. L. Lambert, Gotthell Pach, Francis Poch, Teresa A. Egan, Edward D. Page, Homer G. Ostrom, Denis T. S. Denison, Camille Solomon, Robert C. Wey, Victor Baar, Mary R. Davis, Lillie Benedict, James J. Bibby, C. P. Bixby, John D. Long, John S. Festerson, D. J. Meserole, Louis W. Pfau, E. V. Alford, A. M. Callender, William M. Jackson, Anna M. Jackson, Jane M. Carpenter, Louis E. Thompson, Edward Palmer, James Ferguson, William Stift, Mrs. William Stift, Mrs. James Ferguson, Helen Matthews, Harry C. Abbe, Hubert Howson, L. Lippmann, C. Schulhafer, Harry Samuelson, M. S. Perser, Paul J. Marks, Robert D. von Rentsch, Abraham Cofo, J. Budwig, Henry Dilg, Helen McDowell, Isabella Waters, Howard Bradstreet, Henry Moskowitz, Robert Cabmovit, Lydia M. Storey, Dwight, N. Graham, William K. Austin, William K. Austin, Jr., Thomas B. Austin, William K. Austin, Henry W. Hardon, Cora Burr Hardon, Adolph Spiegel, Orrin S. Wood, Mrs. Orrin S. Wood, Matilda Woodrow, George Edgar, Thomas C. Edgar, Joachin Elmendorf, David Black, Dennis H. Cox, Florence Ida Hacket, H. E. Poyer, C. B. Eaton, Isabelle S. Whitin, Jessie Morris, C. A. Morris, Harold A. Content, B. A. Sullivan, J. L. MacDonald, Stanhope Wheatcroft, Marjorie A. Content, Jennie D. Frank, M. B. Cleveland, Annette B. Collins, John W. T.

Nichols, Horace J. Jaquith, Jas. C. Bany, Charles G. Bliss, Stephen S. Haight, J. J. Falvey, H. L. Clark, N. M. Nielsen, E. Osterwalder, A. D. Banston, Jacob Ropbach, Thomas P. Ryan, Michael Raphaci, C. F. Watkins, W. B. Veneam, William Kranth, Charles Wiesman, William Bandom, George Dambert, Sophie Kranth, W. G. Creamer, H. C. Creamer, Joseph R. Dorman, Julius Libeman, Joseph M. Guinness, Cynthia T. Meeker, Maude Arundel Colliver, J. A. L. Gardner, J. G. B. Heath, C. F. F. Hall, Mrs. Thompson, L. Strachey, G. C. Evis, M. A. Beament, George Beament, W. Stevenson, Mrs. R. A. Todd, R. A. Todd, Mrs. J. H. Blanchard, Margaret J. Sexton, John T. Sexton, Alice Caffrey, Alex Pargiter, W. A. Steremun, John Mead Howells, Fred L. Stearns, Louise A. Stearns, Albert S. Bard, Charles Henry Davis, Robert R. White, Michael Kley, Bernard Kirsch, Anna A. Short, Charles W. Snow, Rosa Welt Straus, Nellie Straus, Josiah C. Pumpelly, W. H. Straight, Robert G. Boville, William O. McDowell, William E. Stark, Percy Waxman, C. L. Armstrong, Katharine Dubois McKnight, J. R. Winchester, W. D. Schaffer, Anna R. Brewster, Charlotte H. Simpson, Florence Van Wyck, Robert Baker, Richard F. George, Edmund Corkill, Peter Aiken, John Fehner, S. Grace Royce, Florence H. Holden, Alice G. Raymond, Hannah D. Sharps, Mary Root, Fanny Finn Miller, William Miller, E. B. Grannis, S. L. Kibbe, S. C. Hazen, M. L. Woodberry, Mrs. Raymond, Panouyota Alexandrakis, A. P. Hazen, Augustus White, Stephen Loines, Henry B. Hathaway, R. H. Loines, Mary H. Loines, Oliver E. Saylor, Mrs. George Place, M. A. Livar, Frederick A. Camp, Lynn Camp, Amzi Camp, C. C. Mead, Kate C. Carpenter, L. W. Robbins, Bailey B. Burritt, K. Richards, M. L. Reid, Arthur Dow.

REPORTS OF COMMITTEES.

Mr. SMOOTH, from the Committee on Public Lands, to whom was referred the bill (H. R. 17277) for the relief of George S. Patten, of Williams, Coconino County, Ariz., reported it without amendment and submitted a report thereon.

Mr. SUTHERLAND, from the Committee on Indian Affairs, to whom was referred the bill (S. 3207) for the relief of the White River Utes, the Southern Utes, the Uncompahgre Utes, the Tabeguache, Muache, Weeminuche, Yampa, Grand River, and Unita bands of Ute Indians, known also as the "Confederated Bands of Ute Indians of Colorado," reported adversely thereon and the bill was postponed indefinitely.

Mr. CULBERSON, from the Committee on Public Buildings and Grounds, to whom was referred the bill (S. 3530) to provide for the erection of a public building at Oklahoma City, Okla., reported it with an amendment.

Mr. CULLOM, from the Committee on Foreign Relations, reported an amendment proposing to appropriate \$25,000 to enable the United States suitably to participate in the International Congress on Tuberculosis to be held in the city of Washington, September, 1908, intended to be proposed to the diplomatic and consular appropriation bill, and moved that it be referred to the Committee on Appropriations and printed, which was agreed to.

Mr. HEYBURN, from the Committee on Public Buildings and Grounds, to whom was referred the bill (S. 124) to establish a Government building at the town of Pocatello, County of Bannock, State of Idaho, reported it with amendments and submitted a report thereon.

He also, from the Committee on Public Lands, to whom was referred the joint resolution (S. R. 68) providing for additional lands for Idaho under the provisions of the Carey Act, reported it without amendment and submitted a report thereon.

Mr. STONE, from the Committee on Public Buildings and Grounds, to whom was referred the bill (S. 513) to provide for the purchase of a site and the erection of a public building thereon at Maryville, in the State of Missouri, reported it with an amendment and submitted a report thereon.

Mr. BURKETT, from the Committee on Public Buildings and Grounds, to whom was referred the bill (S. 1072) to authorize the extension and enlargement of the post-office building at Fremont, Nebr., reported it with an amendment and submitted a report thereon.

SUPERANNUATION IN THE CLASSIFIED CIVIL SERVICE.

Mr. WARREN, from the Committee on Appropriations, to whom was referred the message of the President of the United States transmitting a report by the Committee on Department Methods on the subject of superannuation in the classified civil service, etc., asked to be discharged from its further consideration and that it be referred to the Committee on Civil Service and Retrenchment, which was agreed to.

CHANDLER BASSETT.

Mr. FULTON. I report back from the Committee on Public Lands, without amendment, the bill (H. R. 12803) allowing Chandler Bassett to perfect final proof in his homestead entry, and I submit a report thereon. It is a private bill, and I ask for its present consideration.

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 a third reading, read the third time, and passed.

FUNERAL OF THE LATE SENATOR REDFIELD PROCTOR.

Mr. KEAN, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the resolution submitted yesterday by Mr. DILLINGHAM, reported it without amendment, and it was considered by unanimous consent and agreed to, as follows:

Resolved, That the Secretary of the Senate be, and he hereby is, authorized and directed to pay, from the miscellaneous items of the contingent fund of the Senate, the actual and necessary expenses incurred by the committee appointed by the Vice-President in arranging for and attending the funeral of the late Senator from the State of Vermont, Hon. REDFIELD PROCTOR, upon vouchers to be approved by the Committee to Audit and Control the Contingent Expenses of the Senate.

BILLS INTRODUCED.

Mr. STEPHENSON introduced a bill (S. 6048) to provide that no conveyance of lands allotted to Indians on the Stockbridge Munsee Reservation, Wis., shall be valid without the approval of the Commissioner of Indian Affairs, which was read twice by its title and referred to the Committee on Indian Affairs.

Mr. WETMORE introduced the following bills, which were severally read twice by their titles and, with the accompanying papers, referred to the Committee on Pensions:

A bill (S. 6049) granting an increase of pension to Lewis Holley; and

A bill (S. 6050) granting a pension to Ella Richmond Shaw.

Mr. MARTIN introduced a bill (S. 6051) providing for the placing of marble columns and entablature on the post-office building at Charlottesville, Va., which was read twice by its title and referred to the Committee on Public Buildings and Grounds.

He also introduced a bill (S. 6052) authorizing the Secretary of War to have constructed a direct road leading from the southern end of the new highway bridge across the Potomac River to the national cemetery at Arlington and Fort Myer, which was read twice by its title and referred to the Committee on Military Affairs.

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

A bill (S. 6053) granting an increase of pension to Jefferson Wood (with the accompanying papers); and

A bill (S. 6054) granting an increase of pension to William Tremper.

Mr. GALLINGER introduced a bill (S. 6055) to amend section 601 of subchapter 7, building associations, of the Code of Law for the District of Columbia, which was read twice by its title and referred to the Committee on the District of Columbia.

He also introduced a bill (S. 6056) granting an increase of pension to Ira A. Taylor, which was read twice by its title and referred to the Committee on Pensions.

He also (by request) introduced a bill (S. 6057) to provide for the creation of a National Highways Commission, and for the construction, improvement, and maintenance of public highways, which was read twice by its title and referred to the Committee on Agriculture and Forestry.

Mr. DICK introduced a bill (S. 6058) for the erection of a public building at the city of Alliance, in the State of Ohio, which was read twice by its title and referred to the Committee on Public Buildings and Grounds.

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

A bill (S. 6059) to reimburse the W. J. Wilcox Lard and Refining Company; and

A bill (S. 6060) to reimburse the Baltimore Bridge Company.

Mr. CURTIS introduced a bill (S. 6061) granting an increase of pension to J. W. Cullimore, which was read twice by its title and, with accompanying papers, referred to the Committee on Pensions.

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

A bill (S. 6062) granting an increase of pension to William Ford, Jr.;

A bill (S. 6063) granting an increase of pension to Henrietta Kimball; and

A bill (S. 6064) granting an increase of pension to Jefferson H. Montgomery (with accompanying papers).

Mr. MCENERY introduced the following bills, which were severally read twice by their titles and, with the accompanying papers, referred to the Committee on Claims:

A bill (S. 6065) for the relief of the heirs of Rodolphe Chachere;

A bill (S. 6066) for the relief of the heirs of Joseph D. Guidry;

A bill (S. 6067) for the relief of the heirs of Pierre Goudeau;

A bill (S. 6068) for the relief of the heirs of J. Casimir Le Blanc;

A bill (S. 6069) for the relief of the heirs of Felix J. Guidry; and

A bill (S. 6070) for the relief of the heirs of Felix Dejean.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. MARTIN submitted an amendment relative to the construction of a public road near the southern end of the new highway bridge across the Potomac River to a convenient point on or near the southern boundary line of the Arlington reservation, etc., 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. NIXON submitted an amendment providing that whenever a postmaster certifies to the Post-Office Department that, owing to unusual conditions in his community, he is unable to procure the services of efficient employees, etc., the Department may, in its discretion, authorize the appointment of clerks and letter carriers for that office, etc., intended to be proposed by him to the Post-Office appropriation bill, which was referred to the Committee on Post-Offices and Post-Roads and ordered to be printed.

AMENDMENTS TO OMNIBUS CLAIMS BILL.

Mr. PLATT submitted four amendments intended to be proposed by him to House bill 15372, known as the "omnibus claims bill," which were ordered to lie on the table and be printed.

Mr. STONE submitted four amendments intended to be proposed by him to House bill 15372, known as the "omnibus claims bill," which were ordered to be printed and, with the accompanying papers, ordered to lie on the table.

AMENDMENTS TO FINANCIAL BILL.

Mr. McCUMBER submitted three amendments intended to be proposed by him to the bill (S. 3023) to amend the national banking laws, which were ordered to lie on the table and be printed.

NORTHERN PACIFIC RAILROAD COMPANY.

Mr. HEYBURN submitted the following resolution, which was ordered to lie on the table and be printed:

Resolved, That the Attorney-General be, and he is hereby, requested to inform the Senate whether the Northern Pacific Railroad Company, created by Congress a corporation by act of July 2, 1864, hath ceased to exercise the functions for which it was created, and if so, whether there exists any reason why its Federal charter should not be repealed or why legal proceedings for the forfeiture of such charter should not be instituted by the Government.

SURVEY OF GALVESTON HARBOR, TEXAS.

Mr. BAILEY submitted the following concurrent resolution, which was referred to the Committee on Commerce:

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be, and he is hereby, authorized and directed to cause to be made an examination and survey of Galveston Harbor, as a whole, including Galveston Harbor, Galveston channel, Texas City channel, and Port Bolivar channel, in the State of Texas, for the purpose of establishing a broad, comprehensive, and systematic plan for the future extension, enlargement, and deepening of said harbor, so as to meet the growing needs of commerce, and to estimate the probable cost thereof.

UNITED STATES V. THAYER—CONTRIBUTIONS FOR POLITICAL PURPOSES.

Mr. CULBERSON. Mr. President, I rise to make a request for printing. On the 9th instant the Supreme Court of the United States passed upon the question of soliciting contributions for campaign purposes under the act of January 16, 1883. The opinion of Mr. Justice Holmes is of general interest, and I ask that it may be 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. 390. October term, 1907. The United States, plaintiff in error, v. Edward S. Thayer. In error to the district court of the United States for the northern district of Texas. March 9, 1908.

Mr. Justice Holmes delivered the opinion of the court.

This is an indictment for soliciting a contribution of money for political purposes from an employee of the United States in a post-office building of the United States occupied by the employee in the discharge of his duties. By the civil-service act of January 16, 1883 (chap. 27, sec. 12, 22 Stat., 403, 407), "No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution

of money or any other thing of any value for any political purpose whatever." By section 15 a penalty is imposed of fine, imprisonment, or both. The indictment is in eleven counts, and charges the sending of letters to employees, which were intended to be received and read by them in the building, and were so received and read by them in fact. It is admitted that the defendant was not in the building. There was a demurrer, which was sustained by the district court on the ground that the case was not within the act. (154 Fed. Rep., 508.) The only question argued or intended to be raised is whether the defendant's physical presence in the building was necessary to create the offense.

Of course it is possible to solicit by letter as well as in person. It is equally clear that the person who writes the letter and intentionally puts it in the way of delivery solicits, whether the delivery is accomplished by agents of the writer, by agents of the person addressed, or by independent middlemen, if it takes place in the intended way. It appears to us no more open to doubt that the statute prohibits solicitation by writing as well as by spoken words. It forbids all persons to solicit "in any manner whatever." The purpose is wider than that of a notice prohibiting book peddling in a building. It is not, even primarily, to save employees from interruption or annoyance in their business. It is to check a political abuse, which is not different in kind, whether practiced by letter or by word of mouth. The limits of the act, presumably, were due to what was considered the reasonable and possibly the constitutional freedom of citizens, whether officeholders or not, when in private life, and it may be conjectured that it was upon this ground that an amendment of broader scope was rejected. If the writer of the letter in person had handed it to the man addressed, in the building without a word, and the latter had read it then and there, we suppose that no one would deny that the writer fell within the statute. We can see no distinction between personally delivering the letter and sending it by a servant of the writer. If the solicitation is in the building, the statute does not require personal presence, so that the question is narrowed to whether the solicitation alleged took place in the building or outside.

The solicitation was made at some time, somewhere. The time determines the place. It was not complete when the letter was dropped into the post. If the letter had miscarried or had been burned, the defendant would not have accomplished a solicitation. The court below was misled by cases in which, upon an indictment for obtaining money by false pretenses, the crime was held to have been committed at the place where drafts were put into the post by the defrauded person. (*Commonwealth v. Wood*, 142 Mass., 459, 462; *Regina v. Jones*, 4 Cox C. C., 198.) But these stand on the analogy of the acceptance by mail of an offer and throw no light. A relation already existed between the parties, and it is because of that relation that posting the letter made the transaction complete. (See *Brauer v. Shaw*, 168 Mass., 198, 200.) Here a relation was to be established, just as there is at the first stage of a contract when an offer is to be made. Whether or not, as Mr. Langdell thinks, nothing less than bringing the offer to the actual consciousness of the person addressed would do (*Contra*, sec. 151) certainly putting a letter into a post-office is neither an offer nor a solicitation. "An offer is nothing until it is communicated to the party to whom it is made." (*Thomson v. James*, 18 Ct. of Sess. Cas. (2d series), 1, 10, 15.) Therefore, we repeat, until after the letter had entered the building the offense was not complete, but, when it had been read, the case was not affected by the nature of the intended means by which it was put into the hands of the person addressed. Neither can the case be affected by speculations as to what the position would have been if the receiver had put the letter in his pocket and had read it later at home. Offenses usually depend for their completion upon events that are not wholly within the offender's control and that may turn out in different ways.

No difficulty is raised by the coupling of solicitation and receipt in the statute. If receipt required personal presence, it still would be obvious that "solicit in any manner whatever" was a broader term. But the cases that have been relied upon to establish that the solicitation did not happen in the building, although inadequate for that, do sufficiently show that the money might be received there without the personal presence of the defendant. If, in answer to the defendant's letter, the parties addressed had posted money to him in the building where they were employed, the money undoubtedly would have been received there. To sum up, the defendant solicited money for campaign purposes, he did not solicit until his letter actually was received in the building, he did solicit when it was received and read there, and the solicitation was in the place where the letter was received. We observe that this is the opinion expressed by the Civil Service Commission in a note upon this section, and the principle of our decision is similar to that recognized in several cases in this court. (In re *Palliser*, 136 U. S., 257, 266; *Hornor v. United States*, 143 U. S., 207, 214; *Burton v. United States*, 202 U. S., 344, 387 et seq.) We do not cite them more at length, as the only dispute possible is on the meaning of the particular words that Congress has used.

We may add that this case does not raise the questions presented by an act done in one jurisdiction and producing effects in another which threatens the actor with punishment if it can catch him. Decisions in that class of cases, however, illustrate the indisputable general proposition that a man sometimes may be punished where he has brought consequences to pass, although he was not there in person. They are cited in *In re Palliser*, sup. Here the defendant was within and subject to the jurisdiction of the United States to the extent of its constitutional power, and the power is not in dispute. (Ex parte *Curtis*, 106 U. S., 371; *United States v. Newton*, 9 Mackey (D. C.), 226.) Judgment reversed.

True copy.

Test:

Clerk Supreme Court United States.

HOUSE BILL REFERRED.

H. R. 11778. An act to amend an act approved June 11, 1906, entitled "An act to provide for the entry of agricultural lands within forest reserves," was read twice by its title and referred to the Committee on Public Lands.

COMPANIES B, C, AND D, TWENTY-FIFTH INFANTRY.

The VICE-PRESIDENT laid before the Senate the following message from the President of the United States, which was read and referred to the Committee on Military Affairs and ordered to be printed:

To the Senate:

On December 12, 1906, the Secretary of War by my direction issued the following order:

"Applications to reenlist from former members of Companies B, C, and D, Twenty-fifth Infantry, who were discharged under the provisions

of Special Orders, No. 266, War Department, November 9, 1906, must be made in writing and be accompanied by such evidence, also in writing, as the applicant may desire to submit to show that he was neither implicated in the raid on Brownsville, Tex., on the night of August 13, 1906, nor withheld any evidence that might lead to the discovery of the perpetrators thereof."

Proceedings were begun under this order, but shortly thereafter an investigation was directed by the Senate, and the proceedings under the order were stopped. The Senate committee intrusted with the work has now completed its investigation and finds that the facts upon which my order of discharge of November 9, 1906, was based are substantiated by the evidence. The testimony secured by the committee is therefore now available and I desire to revive the order of December 12, 1906, and to have it carried out in whatever shape may be necessary to achieve the purpose therein set forth, any additional evidence being taken which may be of aid in the ascertainment of the truth. The time limit during which it was possible to reinstate any individual soldier in accordance with the terms of this order has, however, expired. I therefore recommend the passage of a law extending this time limit, so far as the soldiers concerned are affected, until a year after the passage of the law, and permitting the reinstatement by direction of the President of any man who, in his judgment, shall appear not to be within the class whose discharge was deemed necessary in order to maintain the discipline and morale of the Army.

THEODORE ROOSEVELT.

Mr. WARREN. Mr. President, the Committee on Military Affairs begs leave to make the following report. I will ask that the report, being very short, may be read at the desk.

The VICE-PRESIDENT. The report will be read.

The Secretary read as follows:

The Committee on Military Affairs, pursuant to the authority and direction given it by the following resolution:

"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, 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 affray at 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 sessions or recess of the Senate, and, if deemed advisable, at Brownsville, or elsewhere; the expenses of the investigation to be paid from the contingent fund of the Senate," hereby reports to the Senate due performance of the duty imposed upon it, and presents herewith three large volumes of testimony given before the committee, two volumes of proceedings of general courts-martial, which sat in San Antonio, Tex., to investigate certain charges growing out of the Brownsville affray, and one volume (in three parts) containing the President's messages regarding the Brownsville affray (S. Doc. 155, 59th Cong., 2d sess., pts. 1 and 2); letter from the Secretary of War, transmitting additional testimony and exhibits (pt. 3); these volumes covering, in all, nearly 6,000 pages. Each volume of matter has been fully and carefully indexed under the direction of your committee for the convenience of the Senate.

The committee commenced taking testimony February 4, 1907, and continued until June 14, 1907. Meetings were again resumed November 18, 1907, and concluded March 10, 1908. One hundred and sixty or more witnesses were brought before the committee and testified under direct and cross examination. All documents (regular and irregular), printed matter, letters, telegrams, petitions, etc., pertaining to the case were laid before the committee and received due consideration.

There is considerable contradiction in the testimony; much of it is, however, upon irrelevant and immaterial points. Taking the evidence as a whole and reconciling it where possible, and giving it due and proper weight in view of admitted facts and circumstances, your committee has considered and agreed to the following resolutions:

First. That in the opinion of this committee the shooting in the affray at Brownsville, on the night of August 13-14, 1906, was done by some of the soldiers belonging to the Twenty-fifth United States Infantry, then stationed at Fort Brown, Tex.

Second. That the testimony fails to identify the particular soldier or soldiers who participated in the shooting affray at Brownsville, Tex., on the night of August 13-14, 1906.

The following facts, in the opinion of your committee, have been proven and established:

About the hour of midnight on the night of August 13-14, 1906, a number of soldiers of the First Battalion, Twenty-fifth United States Infantry, then stationed at Fort Brown, Tex., armed with the new-model (1903) Springfield rifle and Government ammunition, then in use in that battalion, jumped over the wall of the Government reservation separating the post from the town, went hurriedly into the nearby town of Brownsville, and wantonly shot into the houses and attacked the citizens thereof. This squad of soldiers, numbering, perhaps, not less than eight nor more than twenty, deliberately attacked and shot at citizens wherever seen in the streets and shot into many houses. They fired into hotels filled with guests and into residences occupied by men, women, and children. In fact their conduct indicated a wanton purpose to terrorize the inhabitants of the town and to kill and destroy with utter and reckless disregard of age, sex, or condition of helplessness. In carrying out their unlawful purpose they respected neither the sanctity of the home nor the innocence and helplessness of women and children. They fired into houses where women and children were sleeping, in some instances the bullets passing through the rooms and only a few feet over the beds in which the people were lying.

In this midnight raid one unoffending citizen, Frank Natus, was killed in his place of business; the lieutenant of police, M. Ignacio Dominguez, was so severely wounded in the arm that amputation was necessary; the horse he was riding was killed under him; and the inhabitants of the town, men, women, and children, were aroused to a high state of excitement and fear.

We believe that the above facts are clearly established by incontestable evidence. Fifteen eyewitnesses testified that they saw and recognized the raiders who did the shooting as persons dressed in the uniforms of United States soldiers, with guns, and most of these witnesses recognized them as negroes. Two witnesses testified that they saw a number of men (one recognizing them as soldiers) on the inside of the wall of the reservation, moving rapidly to the point where they went over the wall. Five witnesses testified to firing occurring inside the wall of the fort. One witness heard voices inside the wall of the reservation calling to others to "hurry up!" to "jump!" etc., and heard the men when they jumped the wall and proceeded up the alley where the firing continued. Several witnesses who were situated

so as not to be able to see, heard the voices of members of the attacking party, and recognized them as the voices of negroes. They spoke in English. One witness saw a negro soldier with his gun returning from the direction of the town where the firing had occurred, and saw him enter the reservation immediately after the shooting had ceased. Three witnesses testified as to having seen the men carrying their guns, running back in the direction of the fort immediately after the shooting ceased, and others to having heard them. The greatest distance from the fort at which any firing occurred did not exceed 350 yards, and the entire time consumed in the raid was probably not more than ten or twelve minutes.

These witnesses, so far as the committee could ascertain, were respectable and trustworthy people; no one of them was impeached, neither was his or her reputation for honesty or truthfulness seriously questioned. The testimony of these witnesses alone would be sufficient to establish the fact beyond reasonable question that the shooting was done by negro soldiers, and there were no negro soldiers in that part of the country except those of Companies B, C, and D, of the Twenty-fifth Infantry.

But there are other facts and circumstances corroborative of the positive testimony of the eyewitnesses, which, when taken in connection therewith, are conclusive of the guilt of some of said soldiers.

First. There is no evidence whatever on which to base a claim that the shooting was done by any person or persons other than by soldiers of the Twenty-fifth Infantry. There was no class of people or individuals in that vicinity known to entertain any hostility toward the people of Brownsville. There was no friction between the citizens and the police, nor ill feeling of one part of the citizenship against any other part.

Second. Early in the morning of August 14, soon after the shooting, there were picked up in the streets of Brownsville, at the points where the firing had occurred, a large number of empty shells, some loaded cartridges, clips, and one bandoleer. Of this ammunition picked up in the streets, thirty-two empty shells, seven loaded cartridges, two or three clips, and one bandoleer were presented in evidence to this committee and identified as those manufactured for and used with the Springfield rifle, model of 1903, with which the colored battalion was armed. A number of bullets were extracted from the houses into which they had been fired on the night of August 13-14, 1906, and were found to be substantially of the weight, size, and material, as shown by analyses, of those used in the Springfield rifle.

It further appears, from the marks of the four lands upon the bullets, from actual tests, and other evidence, that these cartridges, with these bullets and shells in combination, could not have been fired from any gun other than the Springfield rifle, model of 1903, and that the only rifles of that kind in that section of the country were those with which the First Battalion, Twenty-fifth Infantry, was armed.

It was further established from the sound of the explosions that the firing was from high-power rifles. Many witnesses testified to the peculiar sound made by loading the guns and working the levers in extracting the empty shells during the progress of the firing, as similar to that made by the Springfield rifles.

From the foregoing facts and circumstances and many others corroborative thereof, to be found in the voluminous evidence taken, we do not entertain any doubt that the midnight attack of August 13 and 14, 1906, on the people of Brownsville was made by members of the First Battalion of the Twenty-fifth Infantry.

Third. Although the committee has devoted much time to the investigation and has diligently followed every clew that has been suggested, and while the proof is abundant and conclusive that members of the Twenty-fifth Infantry were the perpetrators of this unprovoked attack, the evidence, we regret to say, fails to identify the particular soldier or soldiers who participated in the affray. It is perfectly manifest, however, both from the nature and character of the attack and the number of persons engaged in it, that it was preconcerted and probably deliberately planned and executed. And it is reasonably certain that soldiers who did not actually participate in the attack must have known of it and aided those actively engaged in it in procuring their arms and ammunition and in concealing their identity when they returned. When we consider the fact that from ten to twenty guns had to be taken from the garrison, some of them from the gun racks, supposedly locked, and located near to the sleeping bunks of the soldiers upstairs; when we consider the testimony with relation to the first firing—that it was within the reservation wall, that there were a number of shots fired from the upper porches of the barracks; when we consider the fact of the firing of volley after volley by from ten to twenty men, beginning just back of the barracks, extending into the town, and lasting from ten to twelve minutes; that this shooting began within four or five hundred feet of a guard with a sergeant and several privates on duty; that the participants had to return to the reservation after the firing had ceased and join their companies, then being formed, we are forced to the conclusion that soldiers other than those who actively participated in the raid must have known of what was taking place and were aiders and abettors thereof, either before or after the fact.

Mr. SCOTT. I think the Secretary should read the names signed to that report. It is not signed by the full committee.

The VICE-PRESIDENT. The names will be read.

The Secretary read the names, as follows:

F. E. WARREN, H. C. LODGE, WM. WARNER, H. A. DU PONT, JAMES P. TALIAFERRO, MURPHY J. FOSTER, LEE S. OVERMAN, J. B. FRAZIER, JAMES B. McCREARY.

Mr. WARREN. The Secretary has not read all of the report. I ask that he may read the remainder.

The VICE-PRESIDENT. The Secretary will complete the reading of the report.

The Secretary read as follows:

The undersigned members of your committee desire to add the following to the above report:

While under the evidence it has been shown that the assault was perpetrated by members of the aforesaid battalion, it is reasonable to believe, as appears in the report of the committee, that all the soldiers were not concerned in the commission of the crime, either as principals or accessories.

It is unquestionably true that in military administration the maintenance of discipline is ever a primary consideration and of paramount importance, for without it no degree of efficiency can be attained or preserved. Hence it will sometimes happen that honest and guiltless men must be subjected to injustice to the end that vicious men may be

deprived of the opportunity to weaken or destroy the morale of the Army. In the present case, however, it would seem but justice to restore to all the innocent men of these companies the rights and privileges which had accrued to them by reason of their previous service in the Army, and of which they will be permanently deprived unless their former status shall be restored by legislation, for the reason that under existing statutes the time has already expired in which they could have reenlisted and secured the benefits of their prior service had they been honorably discharged because of the expiration of their several terms of enlistment.

On many occasions in the past the nation has had reason to be proud of the enlisted men serving in the four colored regiments of our Regular Army. The action of the soldiers who participated in or withheld knowledge of the attack on the town of Brownsville was not only a crime under the statutes of the United States, but was also a grievous wrong to their colored comrades in the Army, whose good name and fame it should have been their duty to sustain.

We recommend the enactment of a bill reading as follows:

"A bill for the relief of certain former members of the Twenty-fifth Regiment of United States Infantry.

"Be it enacted, etc., That if at any time within one year after the approval of this act the President shall be satisfied that any former enlisted man of the Twenty-fifth Regiment of United States Infantry who was discharged from the military service as a member of said regiment under the provisions of a special order, No. 266, and dated at the War Department on the 9th day of November, 1906, had no participation in or guilty knowledge of the affray that took place at Brownsville, Tex., on the night of August 13-14, 1906, the President may authorize the enlistment of said men, and any man who shall enlist in the military service under authority so given by the President shall be held and considered, from the date of his enlistment under such authority, to have reenlisted on said date and to be entitled to the pay, allowances, and other rights and benefits that he would be entitled to receive from said date of enlistment if he had been honorably discharged under the provisions of the special order hereinbefore cited and had re-enlisted immediately."

(Signed)

F. E. WARREN.
H. C. LODGE.
WM. WARNER.
H. A. DU PONT.

Mr. CULBERSON. I should like to ask the Senator in charge of this report a question.

I noticed previous to the reading of the report the reading of the message of the President on the same general subject, in which he recommends the passage of a law allowing the enlisted men of this regiment a year within which to exonerate themselves by evidence from participation in the riot. In that message the order of the President in 1906 is recited, in which he authorized reenlistment if the innocence of the enlisted men could be established.

What I desire to ask the Senator in charge of the report is why the President can not by Executive order extend the time for a year, covering the question of the order issued by him in 1906, rather than requiring a law to be passed upon the subject?

Mr. WARREN. I will tell the Senator.

Mr. SCOTT. Will not the Senator please allow me to submit the minority report, and then take this matter up after getting it all before the Senate?

Mr. WARREN. I will say to my colleague on the committee that it will take me but a moment to answer the question.

The present statutes are such that an enlisted man loses his connection with the Army and loses all rights unless he seeks to reenlist and does reenlist inside of ninety days from the date of his discharge. At the time the President issued the order the ninety days had not expired. It has expired in the meantime, so that now it requires a statute in order to enable anyone of those men to be restored to the Army with the rights of previous service, and so forth.

Mr. CULBERSON. The Senator's opinion is that the President is without authority to extend the order for reenlistment?

Mr. WARREN. Entirely so.

Mr. CULBERSON. I was not familiar with the law on the subject and desired to know the status of it in that respect.

Mr. SCOTT. I desire to submit a minority report signed by four members of the committee, and then a supplemental report that goes with it signed by two members who had already signed the minority report. They go one step farther than the minority report. I ask to have it read.

The VICE-PRESIDENT. The Secretary will read as requested.

The Secretary read as follows:

On August 13, 1906, about midnight, a shooting affray occurred in the city of Brownsville, Tex., in which Frank Natus, a bartender in the Ruby saloon, was killed; M. Ignacio Dominguez, a lieutenant of police was wounded and had his horse shot under him.

At this time Companies B, C, and D of the First Battalion of the Twenty-fifth United States Infantry, colored, were at Fort Brown, Brownsville, Tex., which has a population of from 6,000 to 8,000 people, of which perhaps five-sixths are Mexicans. After an investigation by the War Department the following order was issued on November 9, 1906:

Special Orders, }
No. 266.

WAR DEPARTMENT,
Washington, November 9, 1906.

1. By direction of the President, the following-named enlisted men who, on August 13, 1906, were members of Companies B, C, and D, Twenty-fifth Infantry, certain members of which organizations participated in the riotous disturbance which occurred in Brownsville, Tex.,

on the night of August 13, 1906, will be discharged without honor from the Army by their respective commanding officers and forever debarred from reenlisting in the Army or Navy of the United States, as well as from employment in any civil capacity under the Government; * * *

By order of the Acting Secretary of War:

ARTHUR MURRAY,
Chief of Artillery, Acting Chief of Staff.

Official:
HENRY P. McCANN,
Military Secretary.

On the — day of December, 1906, the following resolution was adopted by the United States Senate:

"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, 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 affray at Brownsville, Tex., on the night of August 13-14, 1906. Said committee is authorized to send for persons or papers, to administer oaths, to sit during sessions or recess of the Senate, and, if deemed advisable, at Brownsville or elsewhere; the expenses of the investigation to be paid from the contingent fund of the Senate."

Pursuant to the above resolution, the Committee on Military Affairs took "testimony for the purpose of ascertaining all of the facts with reference to or connected with the affray at Brownsville, Tex., on the night of August 13-14, 1906."

The testimony taken was as thorough as it was possible to obtain, but it is very unsatisfactory, indefinite, and conflicting in its nature.

We have been unable to arrive at any conclusions as to what motive could be alleged that the colored troops might have had to incite them to do this shooting. The only evidence produced which would in any way give the least color to a motive is the evidence that shows that there were eight gambling houses conducted in connection with saloons in the city of Brownsville, Tex.; and that while the white soldiers were stationed at Brownsville a number of them frequented the saloons and gambling houses and that these gambling houses profited largely from their patronage, and that under the rules of the gambling houses the colored soldiers could not be admitted. This resulted in great loss of business to these concerns, and it is evident that the parties engaged in the gambling and saloon business were extremely anxious to have the colored troops withdrawn from Brownsville and replaced by white soldiers. We are led to doubt, however, whether or not the gamblers who conducted these eight places in Brownsville, Tex., have given the committee as complete information as they could give in regard to this shooting affray.

While Major Penrose and other officers of the battalion at first concluded that some of the members of these companies were guilty, yet they later became convinced that the men of the battalion had nothing whatever to do with the shooting, and so testified before the Committee on Military Affairs. It should be remembered in this connection that these officers are white men, and some of them born and reared in the South.

It is proper to note in this connection that a grand jury of citizens of Cameron County, Tex., after investigation, failed to find sufficient evidence to indict the members of this battalion who were suspected and who were held at Fort Sam Houston, Tex., awaiting action by the grand jury.

We have not felt that the conflicting and circumstantial evidence given by many of those who testified against the members of this battalion should be given more consideration, and in many instances even as much consideration, as the testimony of the officers and of the soldiers themselves, many of whom had served their country loyally and faithfully for a number of years, and some of whom have been wounded in battle—having participated in the Indian wars, in the Spanish-American war and in the Philippine service.

The strongest evidence, if undisputed, implicates no greater number than from seven to twelve, and even if it were admitted for the sake of argument that from seven to twelve of these soldiers were guilty (which fact has not been proven), that fact could not, in our opinion, justify a discharge of the whole battalion without honor.

It is not our purpose, nor desire, to uphold any guilty party, nor to criticise necessary Army discipline, but we do feel that it is essential to stand by those who are giving their services to their country and who obey the law. The persons who were guilty of the shooting affray at Brownsville, Tex., should be severely punished—after they are proven guilty.

Therefore, having carefully considered all the testimony, we have reached the following conclusions:

1. The testimony wholly fails to identify the particular individuals, or any of them, who participated in the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

2. The testimony wholly fails to show that the discharged soldiers of the Twenty-fifth United States Infantry, or any of them, entered into any agreement or so-called "conspiracy of silence," or that they had among themselves any understanding of any nature to withhold any information of which they, or any of them, might be possessed concerning the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

3. The testimony is so contradictory, and much of it so unreliable, that it is not sufficient to sustain the charge that soldiers of the Twenty-fifth United States Infantry, or any of them, participated in the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

4. Whereas the testimony shows that the discharged men had a good record as soldiers, and that many of them had by their long and faithful service acquired valuable rights of which they are deprived by a discharge without honor; and

Whereas the testimony shows beyond reasonable doubt that whatever may be the fact as to who did the shooting, many of the men so discharged were innocent of any offense in connection therewith: Therefore it is, in our opinion, the duty of Congress to provide by appropriate legislation for the correction of their record and for their re-enlistment and reinstatement in the Army, and for the restoration to them of all the rights of which they have been deprived, and we so recommend.

N. B. SCOTT.
J. B. FORAKER.
J. A. HEMENWAY.
M. G. BULKELEY.

Mr. FORAKER and Mr. BULKELEY, in addition to the conclusions set forth in the foregoing minority report, make also the following finding, namely:

The weight of the testimony shows that none of the soldiers of the Twenty-fifth United States Infantry participated in the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

J. B. FORAKER.
M. G. BULKELEY.

Mr. FORAKER. Mr. President, I ask leave of the Senate to make a further minority report, if it is in order to call it such. The report I ask leave to make is an expression of the individual views of the Senator from Connecticut [Mr. BULKELEY] and myself. From the report that has just been read it appears that we make a finding that our colleagues of the minority did not join us in making; and the report I ask leave to make, I repeat, is an expression of our views of the testimony and the reasons whereby we support not only the findings of the minority report, but the additional finding as to which we are agreed. I suppose the leave I ask will be granted as a matter of course.

The VICE-PRESIDENT. Without objection, the report referred to by the Senator from Ohio will be received.

Mr. FORAKER. Mr. President, if the Senate will indulge me for a moment, I ask to give an excuse for not following the precedents which have been established here this morning of having these reports read. It would take too long to read this report. This report is not a generalization, not a mere statement of conclusions, but it is a review of the testimony, and an extended review of the testimony. As the majority report has shown, there are over 6,000 printed pages of this record, and it is impossible to do justice in the form of a report to such an investigation and such a mass of testimony in three or four pages of typewritten matter. Our report would require more than an hour, perhaps, to read, and I shall not, under the circumstances, ask the indulgence of the Senate to have it now read; but at an early day I shall take occasion to explain this report to the Senate and undertake to satisfy the Senate that there is not a finding in this report which is not justified by the testimony, and overwhelmingly justified by the testimony.

Mr. President, this report has already been printed, but there are some corrections in it, and so I will ask to have it printed again. I now ask that the Secretary read, not the report, but from the recapitulation as indicated near the close of the report down to the point I have marked. That will take only a few minutes. I also ask, Mr. President, that the entire report be printed in the RECORD.

The VICE-PRESIDENT. Without objection, it is so ordered; and the Secretary will read as requested by the Senator from Ohio, in the absence of objection.

Mr. TILLMAN. Mr. President, I ask that the President's message, the majority and minority reports, and the supplemental report all be printed as a document, so that we can get the whole thing in a handy shape.

Mr. LODGE. All the reports?

Mr. TILLMAN. All of them, and the message, too. Let that lead the procession.

The VICE-PRESIDENT. The Senator from South Carolina requests that the President's message and the majority and minority reports—

Mr. TILLMAN. Put in also, either behind or before—it does not matter where it comes in—the order discharging these men. Let us have a full record and report.

Mr. LODGE. The Senator from South Carolina does not mean to include the volumes of testimony?

Mr. TILLMAN. Oh, not the evidence. I simply want all the conclusions of the committee, with the action of the President in discharging these men, the reasons given therein, and then his message to-day taking it all back.

Mr. WARREN. Mr. President, I assume, since this report does not come from the committee accompanied by a bill, that it will not go to the Calendar, but may be printed as a committee report and lie on the table. Now, I ask the Senator from South Carolina [Mr. TILLMAN] if he wishes to have it printed also as a miscellaneous document and have all these reports and the President's message included in one document?

Mr. TILLMAN. Of course. I want the entire case as it is at present made up to be in handy shape, so that it can be sent over the country for the benefit of the negroes North and South.

Mr. WARREN. Then I ask that these documents may be printed in the usual way as a report from the committee, and also that there may be printed in one pamphlet the President's message and the three reports—not, of course, the 6,000 pages of testimony, but all the balance—in a miscellaneous document.

Mr. FORAKER. Including the report of the bill?

Mr. WARREN. Yes.

Mr. TILLMAN. Do I understand the Senator from Wyoming

to include the order of discharge in this document that is to be printed?

Mr. WARREN. The order of discharge may be included.

Mr. TILLMAN. I want that in.

Mr. FORAKER. The order of discharge, I will say to the Senator from South Carolina, is incorporated in the report I have made, just now filed. It is set out in that report.

The VICE-PRESIDENT. Is there objection to the request?

Mr. FORAKER. I should like now to have the recapitulation of the report submitted by the Senator from Connecticut and myself read.

The VICE-PRESIDENT. The Chair will first put the request for printing. It is requested that the President's message and the reports made by the members of the Military Affairs Committee be printed in the ordinary manner, and also as a public document. Is there objection? The Chair hears none, and it is so ordered. The Secretary will now read as requested by the Senator from Ohio [Mr. FORAKER].

The Secretary read the "recapitulation" of the supplemental report submitted by Mr. FORAKER and Mr. BULKELEY.

The entire report is as follows:

[Senate Report No. —.]

THE BROWNSVILLE AFFRAY.

The Committee on Military Affairs having completed the investigation authorized by the following resolution (S. Res. 208, 59th Cong., 2d sess., January 21, 1907):

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, 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 affray at 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 sessions or recess of the Senate, and, if deemed advisable, at Brownsville or elsewhere; the expenses of the investigation to be paid from the contingent fund of the Senate.

Mr. FORAKER, with leave of the committee and the Senate, on behalf of Mr. BULKELEY and himself, submitted the following report of their views of the testimony in support of the conclusions reached by them:

I. THE AFFRAY.

On the night of Monday, August 13, 1906, commencing about eight or ten minutes before midnight, a shooting affray occurred in the town of Brownsville, Tex., in the course of which one man, a private citizen by the name of Frank Natus, employed at the time as a barkeeper in the Ruby saloon, otherwise known as "Tillman's saloon," was killed, and the lieutenant of police, M. Y. Dominguez, was wounded and had his horse shot under him, and another citizen by the name of Paulino S. Preciado, the editor of a newspaper called "El Porvenir," published in Brownsville, in the Spanish language, claimed to have been slightly injured by a bullet grazing the back of his hand and passing through his clothing, striking and injuring a pair of spectacles he carried in his pocket.

OFFICERS OF BATTALION.

Companies B, C, and D of the First Battalion of the Twenty-fifth United States Infantry, colored, were at the time stationed at Fort Brown.

The commanding officer of the battalion and the post was Maj. Charles W. Penrose.

The companies were respectively commanded as follows: B Company, by Second Lieut. George C. Lawrason; C Company, by Capt. E. A. Macklin; D Company, by Capt. Samuel P. Lyon; Lieut. Harry S. Grier was quartermaster and commissary of the post, and also acting adjutant.

Major Penrose, Lieutenant Lawrason, and Lieutenant Grier were all graduates of West Point; Major Penrose of the class of 1884, Lieutenant Grier of the class of 1899, Lieutenant Lawrason of the class of 1904.

Captain Macklin was appointed from civil life in 1892. He has been in the service fifteen years, and been a commissioned officer since July 9, 1898. Captain Lyon entered the service as an enlisted man in 1890, and was promoted to the rank of a commissioned officer in 1895.

These officers had therefore, respectively, been in the service: Major Penrose, for twenty-seven years, including four years at the Academy; Captain Lyon, seventeen years; Captain Macklin, fifteen years; Lieutenant Grier, twelve years, including four years at the Academy; Lieutenant Lawrason, seven years, including four years at the Academy.

The testimony shows that the record of each down to the time of this shooting affray was without any kind of stain or blemish, and that all these officers were of high character not only as officers of the Army, but as men; that they were honorable, upright, truthful, and trustworthy in every sense of the word.

ENLISTED MEN OF THE BATTALION.

The testimony further shows that these three companies had, to quote the exact language of Major Blockson, "an excellent reputation up to the 13th of August," the date of the shooting.

This statement of Major Blockson is confirmed by even stronger and more elaborate statements by every witness familiar with the record of these companies who testified on the subject.

There will be found in the record official reports from the War Department of two or three shooting affrays and difficulties of one kind and another occurring during the forty years of service since the regiment was organized with which other companies of the Twenty-fifth Infantry were identified, or in which they had some kind of participation, or to which they had some kind of relation, or for which they had some sort of responsibility, but, so far as these three companies which were at Brownsville are concerned, there is no stain whatever on the record of any one of them. No company in all the Army had any clearer or better record for discipline and for the general conduct of the men belonging to it than had each and all of these companies down to August 13, 1906.

Almost all the men in these companies had served more than one enlistment. Their respective terms of service ranged in duration all the way from five or six years up to more than twenty years. One of them, Sergt. Mingo Sanders, of Company B, had served continuously

for twenty-six years; a part of that service had been outside of the United States, and for that reason he was entitled to double time therefor, on account of which he would have been entitled after eighteen months of additional service to retire on three-quarters pay and with all the rights and allowances provided by law for men who serve continuously for thirty years.

The following extracts from the evidence given by the different witnesses named show the exceptionally high character of the men of these three companies and their good record as soldiers:

Major Penrose says, as to the character of men (page 3023):

"By Senator FORAKER:

"Q. Now, something was said by Captain Kelly (a citizen of Brownsville) and some others about your troops being not well disciplined. Can you tell us what the record of your battalion is in that respect, down to the 13th of August?—A. I think the records will show, sir, that it was an excellently disciplined battalion.

"Q. And well drilled?—A. Well drilled. I consider it one of the best that I have ever seen.

"Q. Were the men of a character hard to get along with or otherwise?—A. No, sir; they were very easy to discipline.

"Q. As a rule, deported themselves well?—A. As a rule, they behaved themselves very well. That can be borne out by the records of the post, the summary court record, the records of courts-martial, and also, I think, by any officers who have seen them, either before this occurrence or afterwards.

"Q. Now, afterwards, since August 13, and particularly since they have been discharged, what has been their records, in so far as you know, as to deporting themselves properly?—A. So far as I know, their record has been excellent. I know at the time of their discharge, when we were discharging them at Fort Reno, I was in constant communication with the chief of police at El Reno, the town 5 miles distant, and he told me that he did not see a drunken man nor did he have any disorder among those men of any kind. He told me that he would not know that the men were being discharged at all.

* * * * *

"Finally the order came for their discharge. They were discharged at that post, a half a company at a time. They were paid off. They had anywhere from fifty to sixty dollars to—some of them—twelve or thirteen hundred dollars. They went to this little town, which was full of temptations, and, as I stated before, there was not a single man found drunk nor was there a disturbance of any kind or character reported of these men, and I talked with the chief of police over the telephone frequently. Now, taking into consideration the conduct of these men both before and afterwards, and what I have before stated, leads me to believe that the men did not do that shooting."

(Page 3103).

"By Senator HEMENWAY:

"Q. Do you know Captain Kelly?—A. Capt. William Kelly?

"Q. Yes.—A. Yes, sir.

"Q. You heard his statement, or heard of his statement, before this committee that he would be as quick to believe the colored soldiers as he would the Mexican residents, barring a few of the leading families, did you, and that he would not care to believe either?—A. Yes, sir; I have heard that he made such a statement.

"Q. How many men in your battalion had been under fire, either in battles or in skirmishes?—A. Well, I do not know that I could answer that positively at all, Senator, but as a rough estimate I should think that there probably were 30 per cent of them, maybe 40 per cent of them.

"Q. From your knowledge of these men, their bravery in battle, following the flag of their country, and their general behavior, would you believe them on oath?—A. I would, sir.

"Q. You think their evidence should be given the same weight as that of any other American citizen?—A. I do, sir.

"Q. You think it equally as good as the testimony of the Mexican residents of Brownsville?—A. Yes, sir; I do."

Brig. Gen. Andrew S. Burt (retired 1902) was commander as colonel of the Twenty-fifth Infantry for about ten years. *As to character of men he says* (pp. 3189, 3190, 3191, 3192, 3193, and 3195):

"Q. Give the stenographer your full name, General, and your present position.—A. Andrew S. Burt, brigadier-general, United States Army, retired, Washington, D. C.

"Q. What time did you retire?—A. In 1902; in May of that year.

"Q. What regiment were you in command of when you were promoted to a brigadier-general?—A. The Twenty-fifth Infantry.

"Q. How long had you been commander of it?—A. For about ten years, excepting the time I was brigadier-general of volunteers, during the Spanish-American war. That was a very short time, only a few months. I joined it in 1892, and was mustered out, or rather promoted to brigadier-general, retired, in 1902. It was about ten years.

"Q. General, the question has come up before the committee as to the character of some of the men of the battalion which was dismissed from the service without honor last year. I will name over some of the men in that battalion, and as I name them I would like you to give me your opinion as to their reliability and their truth; whether they could be trusted or their word taken. The first man I find here is this man Sanders—Mingo Sanders.—A. Sergt. Mingo Sanders?

"Q. Yes.—A. I know him very well, sir. He served with me. There is no better first sergeant in the United States Army than Sergt. Mingo Sanders. His veracity, as he sees a thing, is beyond question.

"Q. How about Sergeant McCurdy? Do you remember him?—A. McCurdy is a good man and a trustworthy man. I do not know him as well as I do Sanders.

* * * * *

"I can say in general terms that those men are all to be believed on their oath. I would believe them if I were sitting on a court-martial and they were even called in their own defense."

Captain Macklin says (pp. 1788-1789):

"Q. What was the character of the men who constituted that battalion, speaking in a general way? Were they a peaceable, orderly, well-behaved set of soldiers or not?—A. They were, sir; those reports in these books to the contrary notwithstanding.

"Q. Had this battalion or any company of it or any men in it had special trouble during all the time you were connected with it?—A. Never; no, sir. There were individual fights, you understand, sir.

"Q. They would fight one another?—A. Among themselves, sir, over drinking or something of that kind, but no other disturbances.

"Q. State whether or not they did any drinking to excess as compared with other soldiers.—A. No; they did not. I have commanded white soldiers a good deal, and I found that the drinking among our men was much less.

"Q. Drinking among the colored soldiers was less than among the white soldiers?—A. Yes, sir; very much.

"Q. You would get through pay day with fewer arrests?—A. Well, sir, they were through that pay day at Brownsville and there was only one single arrest in town.

"Q. In the whole battalion?—A. In the whole battalion. There was not an arrest in the post at all."

Capt. Samuel P. Lyon says (pp. 1836-1838):

"Q. So that you have had a good deal of experience, not only with these men, but with other commands. I want to ask you how, in your opinion, this battalion, Companies B, C, and D, compared as soldiers with other soldiers of the United States Army?—A. In my opinion they would compare most favorably.

"Q. Was it or not a battalion that was well disciplined and well drilled?—A. Yes, sir; the drill and discipline were excellent. I never saw better.

"Q. As to the conduct of the men generally as men, what is your opinion as to that?—A. It was, in my opinion, exceptionally good.

"Q. I want to ask you particularly as to the older men in service in that battalion, particularly the noncommissioned officers. What kind of men were they?—A. They were a most excellent lot of men, and an excellent lot of noncommissioned officers."

CONDUCT OF MEN AT BROWNSVILLE.

This battalion had been, together with other companies of the regiment, stationed at Fort Niobrara, Nebr., for two or three years immediately prior to their going to Brownsville, and prior to that they had served in the Philippines, in Cuba, on the frontier, and elsewhere. They arrived at Fort Brown on Saturday, the 28th of July, 1906. They had been there only two weeks and two days when this shooting occurred. There is practically no conflict in the testimony as to their conduct at Brownsville. The great preponderance is in accord with the statement made by Victoriano Fernandez, a member of the police force of Brownsville, who testified in part as follows (pp. 2257-2258):

"By Senator SCOTT:

"Q. Witness (Victoriano Fernandez, policeman), do you know any reason why these soldiers would have any spite against the citizens of Brownsville, to want to shoot up the town and kill people?—A. No, sir; I don't know anything about it.

"Q. And you never heard them threaten anybody who was in the barracks, did you?—A. No, sir; oh, no. They used to treat everybody right there.

"By Senator FORAKER:

"Q. They were very well-behaved people, were they not?—A. Yes, sir; very orderly, and I never saw one drunk.

"Q. You never saw one drunk, and you were on this Elizabeth street beat?—A. Always; yes, sir.

"Q. Every day?—A. Every day and sometimes part of the night.

"Q. And you never saw one of them drunk?—A. No, sir.

"Q. During the whole time?—A. No, sir.

"Q. It was your business to watch?—A. Yes, sir.

"Q. Do you remember when they had pay day?—A. Yes, sir; it was the quietest day I ever saw.

"Q. It was very different when the white soldiers were there?—A. Yes, sir; the white soldiers used to know lots of people and just have a little fun, but it didn't amount to nothing.

"Q. The white soldiers, when they had pay day, would go and spend a good deal of their money in saloons?—A. Yes, sir.

"Q. But the colored soldiers were much better in that respect?—A. Yes, sir; they used to go to the saloon and have drinks in the back there, and they never said a word and would go out.

"Q. They were fine, orderly looking soldiers?—A. Yes, sir.

"Q. Good discipline?—A. Yes, sir; good soldiers. Good discipline, too.

"Q. Favorably with the Twenty-sixth Infantry, the white regiment there just ahead of them?—A. Well, of course I don't know nothing about

"Q. Or any other regiment.

"Senator WARREN. Let him answer.

"A. But they were all right. To my knowledge I think they were better than the white soldiers—that is, on discipline.

"By Senator FORAKER:

"Q. Better in discipline?—A. Yes, sir.

"Q. If anything, they were a good deal better in their habits, apparently?—A. Well, two or three months they were there; yes.

"Q. You never saw one of them drunk all the time you were there?—A. No, sir.

"Q. You were in a situation where you could have known about it if they had been drunk, were you?—A. Certainly.

"Q. Or disorderly?—A. Certainly.

"Q. You never arrested one?—A. No, sir."

TRROUBLES AT BROWNSVILLE.

When they went to Brownsville they relieved a battalion of the Twenty-sixth United States Infantry, white soldiers, which had been stationed there for about one and one-half years.

Although the battalion did not reach Brownsville until the 28th of July, it was announced in the newspapers as early as the latter part of May, 1906, that it was to be sent there. There is some conflict in the testimony as to the feeling of the citizens of Brownsville toward negro soldiers, but the overwhelming weight of testimony is to the effect, as stated by Major Blocksom in his official report, found at page 61 of Senate Document 155, part 1:

"2. The people did not desire the colored troops and thought they should not be sent there. I learned this * * * from prominent citizens, members of the committee of safety, etc."

Major Blocksom further finds, page 61, Senate Document 155, part 1:

"3. Soldiers of the Twenty-fifth were not allowed to drink with white people at the principal bars in town, though in some cases saloon keepers put up a separate bar for their use."

The testimony shows that in many of these saloons, particularly those kept by Mexicans, there was no such discrimination.

There is no proof that the soldiers showed any resentment on account of this regulation debarring them from the saloons by either words or conduct. In so far as there is any testimony on the subject, it is all to the effect that they observed the regulations without any complaint and without showing any resentment whatever on that account. The testimony further shows that they frequented such saloons as they were at liberty to visit but very little, and that on Saturday, August 11, two days before the shooting affray occurred, one of their number, William Allison by name, was discharged on

account of the expiration of his term of service, and that he at once opened a saloon for their special accommodation, which they all patronized, spending their money there with their discharged comrade instead of in the saloons kept by the citizens of Brownsville.

During their short stay there were three altercations between the citizens and the soldiers, but only two of them were of serious enough character to really merit mention.

Major Blocksom (p. 61, S. Doc. 155) refers to these cases as follows:

"4. Tate-Newton, Baker-Reed cases, etc. (see B and B''). Tate-Newton case was that of a party of ladies standing on street side, sidewalk, claimed that two colored soldiers rudely jostled them. Mr. Tate, inspector of customs, husband of one of the ladies, knocked down one of the soldiers with his revolver. The ladies were obstructing the sidewalk, although anybody could have easily gotten by them. The soldier was rude and probably insulting in his manner. Tate's remedy was too drastic. It was "in the manner of the South." He told me he would have used it against any man, white or black. Mr. Vann, collector of customs, invited Major Penrose to assist at an investigation of this case, but latter had no time after the 13th. Reed and another colored soldier were at ferry landing, having returned from Matamoras. Mr. Baker, inspector of customs, claimed they were drunk and disorderly (confirmed by an unprejudiced witness); that he told them to move on, and finally pushed one, who fell off plank walk into mud and water about knee-deep, more through his condition than strength of the push. Baker probably used more force than he acknowledged. Facts in these two cases were exaggerated on both sides and increased the bitter feeling between soldiers and citizens. I heard of several cases of threats from both sides before the 13th, but believe them manufactured."

THE EVANS AFFAIR.

In addition it was claimed that the night before the shooting a soldier assaulted a Mrs. Evans and that the people of Brownsville were greatly incensed toward the soldiers on that account, but no testimony has been adduced to prove such assault, and if there had been it would only constitute a reason why the citizens might attack the soldiers and not a reason why the soldiers should attack the citizens. It is not necessary, therefore, to give the matter special consideration in this connection.

There is positive conflict and contradiction as to the facts connected with the other difficulties, but the testimony most unfavorable to the soldiers does not make the cases worse for the soldiers than the statement of Major Blocksom, while, according to the testimony of the soldiers, the assault upon Newton was unprovoked and without any excuse whatever.

THE NEWTON CASE.

Private Newton testified on this point, at page 2959, as follows:

"By Senator FORAKER:

"Q. It has been testified here that there was some trouble in Brownsville between a man by the name of Tate and a soldier by the name of Newton who belonged to Company C. Are you the soldier?—A. Yes, sir; I am.

"Q. Please describe to us what occurred. Tell us all about it in your own way. First, let me ask you when it was, if you can tell?—A. The 5th of August.

"Q. On the 5th day of August, 1906?—A. Yes, sir.

"Q. Do you remember what day of the week that was?—A. It was on a Sunday, if I am not mistaken.

"Q. About what time was it—what o'clock?—A. Between 8 and 9 o'clock, as nearly as I can recollect it.

"Q. In the evening?—A. Yes, sir.

"Q. Was it before or after dark?—A. After dark, sir.

"Q. Well, now, where did it happen?—A. It happened below the post-office, sir; in that section.

"Q. Can you tell us on what street the post-office is situated?—A. I don't know but one street; I think it is Elizabeth street. That is the only street I know there.

"Q. Is it situated on the street that leads out from the gate of the garrison?—A. I think it is, sir.

"Q. At your left is a map hanging on the wall [referring to the map]. This is the reservation. Here are the barracks. That is Elizabeth street.—A. Yes, sir.

"Q. Here is D barracks, and B barracks, and C barracks, and the unoccupied barracks.—A. Yes, sir.

"Q. The guardhouse up here, the hospital over here, the officers' quarters over here, and the administration building here. Now, where is the post-office? Is it on this street that you enter when you go out at the gate and proceed in a straight direction?—A. Yes, sir; I think that is the street it is on, sir.

"Q. Do you think it is. Well, about how far from the garrison is the post-office situated, if you can tell?—A. I think it is three or four blocks, more or less, sir.

"Q. You don't know exactly?—A. No, sir.

"Q. You were not familiar with the streets there?—A. No, sir.

"Q. How long had you been at Brownsville?—A. I had been there ever since my battalion arrived there.

"Q. Only about a week prior to this time, I suppose?—A. Yes, sir.

"Q. The testimony is that you arrived there on the 28th of July?—A. Yes, sir.

"Q. And this was the 5th of August?—A. Yes, sir.

"Q. Had you been around through the town any, up to that time?—A. I think I had taken a walk about three times.

"Q. Had you become familiar with the streets?—A. No, sir; not very.

"Q. Or with the location of the buildings?—A. No, sir.

"Q. Well, this was Sunday evening, August 5, between 8 and 9 o'clock. Where were you going and were you in company with anybody; and if so, with whom?—A. With Private Frank J. Lipscomb.

"Q. Was he of that same company?—A. Yes, sir.

"Q. Where were you going?—A. We were taking a walk, and had been by the post-office, sir.

"Q. You had been by the post-office?—A. Yes, sir; and on the way from there up the street.

"Q. And you were beyond the post-office, were you, going from the garrison?—A. Yes, sir.

"Q. Were you armed?—A. No, sir.

"Q. Neither of you?—A. No, sir.

"Q. Did you have any kind of weapon?—A. No, sir.

"Q. Were either of you drunk?—A. No, sir.

"Q. Had either of you been drinking?—A. No, sir.

"Q. It was Sunday evening. Well, now, what occurred? Just tell that in your own way.—A. As we passed beyond the post-office here,

there was a party of ladies standing on the sidewalk, and they were standing in such a position that we had to walk by file in order to pass them, and as I passed them I said something to Frank—I have forgotten what it was—and when I looked around this way again, why, some one had drawn back, and as I turned that way he struck me with a revolver and knocked me down.

“Q. Did you pass through that crowd of ladies?—A. No, sir.

“Q. Standing on the sidewalk?—A. No, sir; between them and the fence.

“Q. You went between them and the fence?—A. Yes, sir; they standing around to my left—to our left—and we had to walk by file in order to keep from pushing against them.

“Q. Were you going from the post still?—A. Yes, sir.

“Q. On which side of the street were you—the right-hand side as you went out?—A. The right-hand side; yes, sir.

“Q. And the ladies were standing on the sidewalk?—A. Yes, sir.

“Q. And there was a space to the right between them and the fence?—A. Yes, sir.

“Q. Between the sidewalk and the fence?—A. Yes, sir.

“Q. And when you came up you say you stepped off toward the fence and passed around in single file?—A. Yes, sir.

“Q. Did you strike any lady?—A. No, sir.

“Q. Or touch any lady?—A. No, sir.

“Q. Did you try to go through the crowd of ladies?—A. No, sir.

“Q. Did you speak to any of the ladies?—A. No, sir.

“Q. Did you speak to anybody?—A. No one at all, only my comrade who was with me, sir.

“Q. Did you know the man was going to strike you until he did so?—A. No, sir.

“Q. What was it he struck you with?—A. It was a revolver, sir.

“Q. And what effect did it have on you?—A. It knocked me insensible for a few seconds.

“Q. You fell?—A. Yes, sir.

“Q. Then what did you do?—A. After I came to myself he was covering me with his revolver, and he told me to get up and leave.

He is confirmed in all he says by his comrade, Private Lipscomb, who was with him.

NEWTON'S CHARACTER.

Captain Macklin says of Newton:

“* * * He was not incensed or angry, but he felt hurt. Newton was a splendid soldier, a man of good habits, and I do not believe, knowing the man, that he would deliberately pass any people on the sidewalk, white or colored, and brush against them or knock them off. He was my company clerk for a long time, and was extremely polite and obedient.” (Penrose Court-Martial, p. 543.)

Captain Macklin was further interrogated about the Newton trouble (p. 1784, Senate committee), as follows:

“Q. Did you investigate it sufficiently to find out whether or not he pushed his way through among the ladies, jostling them as he did so?—A. I investigated the matter as far as I could with Privates Lipscomb and Newton. They were both very reliable men and very quiet soldiers, very inoffensive in their manner and everything, and I tried to find out and did find out who the man was that struck Newton, and also made a report to the commanding officer, and the commanding officer said that he would make a report to the collector of customs, a Mr. Van. I went down and got Mr. Van's name, and I also found out from the cashier of one of the banks in town the name of the man that struck Newton. It seemed that he had bragged about it in town, and the cashier had a little hesitancy in telling me his name, but finally gave it to me. I gave his name to the commanding officer, and the commanding officer said he would make a complaint and go down and see Mr. Van, but Mr. Van was out of the city.

“Q. It has been testified here that Newton was a quarrelsome man and was in the habit of getting drunk and getting into trouble. Is that true or not?—A. No; it is not. He was my company clerk for about a year and I came into intimate contact with him every day.

“Q. Was his conduct that of a good man as well as a good soldier or not?—A. Yes, sir; it was. I would be glad to have him back any time. He was the kind of a man that any captain would like to have in his company.

“Q. A truthful, reliable man?—A. Yes, sir.

“Q. Would you believe his statement?—A. Yes, sir; I would.

“Q. Do you know of anything at all in his character or in his record that would warrant you in distrusting a statement he would make under oath?—A. Not in any way; no, sir.

“Q. Was he or not a man who would be offensive, especially in a city like that, where there was, perhaps naturally, some prejudice against colored men, when he was passing white people as he was passing those people?—A. I do not think he would speak to anybody or offend anyone, Senator. He had a good deal of sense.

“Q. What kind of a man was Lipscomb, who was with him?—A. Lipscomb was very much the same kind of a man; very quiet and inoffensive, a man who very seldom spoke.

“Q. Where were they going when they got into this trouble?—A. They reported to me that they were simply taking a walk on Elizabeth street. The position they were in was somewhere out in the residence district. The walks were broad and it was the best street to walk on.

“Q. Did Newton report that he had any warning whatever that he was going to be struck with this revolver in this way?—A. No, sir. Do you want the report he made to me?

“Q. What did he say as to whether or not Mr. Tate gave him any warning whatever that he was going to strike him?—A. None whatever; no, sir.

“Q. Just as he came around by the ladies—A. Just as he got opposite to him he whipped out a revolver and hit him in the head with it.

“Q. Knocked him down, did he?—A. Yes, sir.

“Q. Was he badly wounded or not?—A. No, sir; he did not seem to be. He seemed to be feeling bad, offended about it.

“Q. What did he say about it?—A. He said he thought as long as they were going along and both behaving themselves it was a very unjust thing, and I told him I would lay the whole matter before the commanding officer, Major Penrose, and that I was sure he would take the matter up. We did not know at that time who it was that hit him.

“Q. Did that seem to be satisfactory to him or not?—A. Yes, sir; entirely so. I talked to him the next day. He was not excited any more than anyone would be over a thing of that kind.

“Q. Did he show any revengeful disposition or make any remarks that indicated he would seek to revenge himself for this kind of treatment?—A. Not in the least; no, sir.

“Q. Was he a man who would, in your judgment, be likely, even though mistreated in the way he claimed, to hatch a conspiracy or or-

ganize it to go out and shoot up a whole town full of men, women, and children indiscriminately at midnight?—A. No, sir; he was not that kind of a man.

“Q. Was not that kind of a man at all?—A. No, sir.

“Q. Did you ever hear of his making any threats of revenge at all at any time before this firing?—A. No, sir. I talked with him several times about the thing, and I told him that Major Penrose and myself had taken the matter up, and we would try and have it fixed, and I also told him the name of the man.

“Q. Did that seem to be satisfactory?—A. Yes, sir.

“Q. He did not even know the name of the man?—A. No, sir; he did not know the name of the man.”

Captain Macklin further testified, at page 3125, Senate committee—

“* * * A. Soon after I took command of my company—Company C of the Twenty-fifth Infantry—which was in December, 1894, I made Newton my company clerk. I always regarded him as a very trustworthy man and a man of very good character.”

In addition to what Captain Macklin thus says as to the character of man Private Newton was, it was manifest to the committee before which he appeared, and where he was examined and cross-examined most exhaustively, that he was entirely too nonaggressive a man to have conceived such a scheme for the resentment of his wrongs as was involved in the charge of forming and executing such a conspiracy as must have been entered into if the shooting was done by the soldiers. Moreover, Newton testifies, and is supported in this by the testimony of Captain Macklin and others, that he did not know the name of the man who struck him, nor know anything about him—either who he was, or where he lived, or in what business he was engaged.

Captain Macklin describes in the following manner the other two difficulties. We quote his testimony in full to show their inadequacy and the extreme improbability, in view of the character of the soldiers, that they furnished a motive for the affray. (Page 1785 et seq., Senate hearings.)

“Q. Others of your men had trouble also—one man by the name of Clifford Adair had some kind of trouble. Can you tell us what that was?—A. Adair came over from Matamoros and brought with him a little silver pen.

“Q. Was that a pen or a pin?—A. A pen.

“Q. I have seen it sometimes put down in the reports as a pin.—A. It was a penholder.

“Q. Something that he had bought at Matamoros?—A. He told me he paid a dollar Mex. for it, 50 cents gold, and he brought it over and had it in his pocket, and as soon as he came opposite the custom-house one of the officials there came out and stopped him and he said, ‘Here, I will not allow any nigger to bring anything over here. You are smuggling; I am going to report you to your company commander.’ He said, ‘All right, go ahead and report it,’ and he took the penholder away from him.

“Q. How did the custom-house officer know that he had this pen?—A. He searched him, sir.

“Q. Searched him and found it?—A. Yes, sir.

“Q. And then he used that language to him?—A. Yes, sir.

“Q. What was the rule or the custom as to exhibiting articles for inspection to the custom-house officer when they were not in packages?—A. Well, I really could not tell you, sir. I have not been over there but once. I was there once, and they never inspected officers at all; but I have understood that they never inspected for any small packages at all, and that that penholder was a nondutiable article.

“Q. What did that officer do about the pen? Did he leave it with Adair or did he take it away from him?—A. He took it away from him, and we have never seen it since.

“Q. He kept it, did he?—A. Yes, sir.

“Q. Did he make any report to the officers about it?—A. Adair reported to me.

“Q. What was it?—A. He reported it to me on the morning of August 12—that was Sunday morning—and I told Adair that I would endeavor to get the penholder for him, but the affair came up on the 13th, and I was never allowed in town after that time. None of us were allowed in town.

“Q. Never got to investigate it?—A. No, sir; I never had any opportunity at all.

“Q. You did not have any opportunity to see the customs officer or take it away from him?—A. No, sir; he has the penholder yet. Adair told this man he was perfectly willing to pay the duty on it; and the man said: ‘No; I am going to report you for trying to smuggle.’

“Q. How much did the man claim the duty was?—A. He did not claim there was any duty. He told Adair he would not let him pay it.

“Q. As a matter of fact, was there any duty on it?—A. I don't think so; no, sir. As a matter of fact, they brought in cigars and everything there.

“Q. What kind of a soldier was Clifford Adair?—A. Clifford Adair was an excellent soldier. He was what we call an ‘orderly character,’ very neat and clean; nearly always got orderly for the commanding officer when he went on guard.

“Q. Was he a quarrelsome man?—A. Not in the least; no, sir.

“Q. Or the reverse of it?—A. Yes, sir.

“Q. A quiet, peaceable man?—A. Well, he talked a good deal, like a good many colored men do, but he was inoffensive, and a very neat, clean soldier.

“Q. Was he or not a man who was impertinent in his manner, or the reverse of that?—A. He was not impertinent; no, sir.

“Q. Was he a truthful man?—A. I have always found him so; yes, sir.

“Q. Now, there was one other trouble—Private Reed had some trouble. What was that, if you remember?—A. Private Reed was also returning from Matamoros, and he came along the board walk there and one of the custom-house men boosted him off the sidewalk into the river.

“Q. What were the facts about that, if you know?—A. I took the matter up and investigated it as far as I could with the other men, and had Reed in the next day, and he laughed and told me that he thought he had gotten just what he deserved.

“Q. He had been drinking, hadn't he?—A. Yes, sir; he had been drinking and was noisy, and he said he was perfectly satisfied to let the matter drop.

“Q. That was on Sunday evening, the 12th, was it not?—A. I think that was the night; yes, sir.

“Q. And it was the next day, the 13th, when he told you this?—A. Yes, sir; I investigated it the following morning.

“Q. Did he look as though he was busy at that time getting up a shooting party to shoot up the town?—A. No, sir; he was a happy, good-natured sort of a man.

“Q. He did not have any murderous instincts, as far as you were aware?—A. No, sir.

“Senator WARNER. Let me ask one question right there.

"Senator FORAKER. Certainly.

"By Senator WARNER:

"Q. Could you tell whether he had any such purpose? Could you tell from his looks whether he had any such purpose or not?—A. No, sir; I did not think so.

"By Senator FORAKER:

"Q. There was nothing in his manner and nothing in his tone, and nothing in his language, as I understand you, to indicate that he was seriously offended even?—A. No, sir.

"Q. On the contrary, he said he got just about what he deserved?—A. Yes, sir; that is exactly what he told me. He laughed and told me those words.

"Q. Did not ask you to do anything further?—A. He said he thought he had better let the matter drop.

"Q. Were there any other troubles of any kind that your men got into there?—A. Those are the only ones that I recall at this time, sir. I don't think there were any others at all."

BROWNSVILLE.

The testimony shows that Brownsville has a population of from 6,000 to 8,000, and that it is perhaps five-sixths Mexican. It is situated on the Rio Grande River, immediately opposite Matamoros.

The testimony further shows that the town, like other frontier towns, has had its fair share, if not more, of one kind and another of violators of the law. Smuggling has been quite common. The testimony shows that there are some seven or eight mounted customs officers constantly on duty, looking out for smugglers at that point and up and down the river in that locality. One of these customs officers, Mr. Fred E. Starck, testified that in the nine years of his service he had made more than 600 arrests. Others, presumably, in so far as the testimony throws any light on the subject, had the same general experience.

The following testimony of Doctor Combe, the mayor, shows that the citizens were well supplied with firearms and ready to use them on short notice:

He says, at page 2405:

"Q. Are you reasonably familiar with the arms that are used [in Brownsville]? There are a good many people have guns, do they not?—A. Yes, sir.

"Q. You may state if you are reasonably acquainted with the kind or character of arms there?—A. Well, the most common weapon there is the .44 or .45 caliber Colt, so far as pistols are concerned. It is a hunting country, a cowboy country, and almost every family has arms."

He further testified, at page 2429, that "it was a very common thing for the citizens of Brownsville to carry arms; that he was the first man to enforce the law."

"Q. Was it not a very customary thing for men to be going about with pistols strapped to them?—A. Yes, sir; but you must remember that Brownsville is the only town in that vicinity, and these ranchmen coming in there for a number of miles around would ride into town with their six-shooters on.

"Q. I am not finding any fault, but it was the custom?—A. Yes, sir; but I was talking about concealed weapons.

"Q. Well, concealed weapons. Did not almost every man carry some kind of an arm?—A. No, sir.

"Q. Those that came in from the ranges would?—A. Oh, yes, sir.

"Q. They had a carbine or a pistol?—A. Or a pistol; yes, sir.

"Q. That was not an uncommon thing?—A. That was not an uncommon thing."

Before the Penrose court-martial he testified, at page 172, that immediately after the firing he found assembled in front of the Ruby saloon "the chief of police, and all of the policemen that had been called in from their beats, and quite a number of citizens armed with shotguns, pistols, and rifles and such weapons as they could get together." * * * The people were quite excited, and they addressed me especially to lead them down to the post; but that he appealed to them and persuaded them to desist from such a purpose.

He made a similar statement before Mr. Purdy, reported at page 146 of the Purdy testimony, Senate Document No. 155, part 2.

Captain Lyon, at page 1856, Senate hearings, testified as to what Mayor Combe said to him that night:

"Q. Did the people seem to be excited?—A. They were quiet then, but Mayor Combe told me that he had just succeeded in dispersing a band of about 200 armed men who were headed toward the post."

The testimony also shows that the town had a full supply of saloons and that they were generously patronized by the citizens of the place and of that vicinity, and that in the conversation carried on in these drinking places before the arrival of the negro soldiers, after it was learned that they had been ordered there, and after their arrival, and before the shooting affray and subsequent thereto, many ugly expressions were employed, among them numerous threats of violence, coupled with such announcements as that "the negro soldiers would not stay long if they did come;" that "they would soon get rid of them," etc.

At page 23, Senate Document No. 155, appears the following telegram from Senator CULBERSON to the Secretary of War:

[Telegram.]

DALLAS, TEX., August 17, 1906.

SECRETARY OF WAR,
Washington, D. C.:

Some time ago I called your attention to the danger of locating negro troops in Texas, especially at Brownsville. The recent outrageous conduct of such troops there fully justifies the fact of the people of that locality. Can not these troops be removed at once?

C. A. CULBERSON.

At page 165, same document, appears the following affidavit, made by Lieut. E. P. Thompson, Twenty-sixth United States Infantry:

SAN ANTONIO, COUNTY OF BEXAR,
The State of Texas, ss:

Personally appeared before me, the undersigned authority, one Edwin P. Thompson, who, being sworn, deposes and says:

"That he is a second lieutenant in the Army of the United States; that in such capacity he served at Fort Brown, Brownsville, Cameron County, State of Texas, from September 4, 1903, until August 13, 1906; that when it was known that a battalion of the Twenty-fifth United States Infantry was to garrison the post many derogatory remarks were made before its arrival by some citizens in reference to the colored soldiers in words as follows, or words to the like effect: 'We don't want the damn niggers here,' 'Niggers will always cause trouble,' 'To hell with the colored soldiers; we want white men,' and

that he is unable to fix any one of such remarks upon any one citizen owing to the frequency with which like remarks were made and the period of time covered; that various minor clashes occurred between the individual citizens of the town and the soldiers; that one Teofilo Crixell, a saloon keeper of Brownsville, Tex., told him that a row had occurred in the 'White Elephant' saloon, owned by one Vicente Crixell, in words to this effect, to wit: That one Bates, a Federal officer, was at the bar drinking when a colored soldier entered and asked for a drink; that the said Bates then turned to the soldier and said no nigger could drink at the same bar with him, and that upon the soldier remarking that he was as good as any white man, said Bates drew his revolver and hit the soldier over the head; said Bates then going to the police headquarters and offering to pay his own fine.

"Further deponent saith not.

E. P. THOMPSON.

"Second Lieutenant, Twenty-sixth Infantry."

Sworn to and subscribed before me this 27th day of September, 1906.

L. M. PURCELL,

Second Lieutenant, Twenty-sixth Infantry, Judge-Advocate.

Hundreds of pages of additional testimony might be cited to the same effect.

On account of the story of the alleged assault on Mrs. Evans there was on Monday, the 13th of August, much excitement among the citizens, accompanied with expressions of a hostile and menacing character toward the soldiers.

The situation was such that Mayor Combe deemed it his duty to call at about 5 o'clock of the afternoon of the 13th of August upon Major Penrose, who had not heard the story, and told him about it and requested him to keep his men in quarters that night, on the ground that they might be harshly dealt with by the citizens if they should be found in the town.

His exact language was, as given in his own testimony, at page 2382: "Major, this is a terrible affair. The people in town are very much incensed and excited, and I protest against any of your officers or men—I do not remember now whether I said 'officers,' but positively I said his men—'going into town to-night.' Then I made use of one or the other of these expressions, 'Major, if you allow those men to go into town to-night I will not be responsible for their lives,' or, 'Major, do not allow your men to go out of the post, because there is a great deal of danger in town.' One or the other of those expressions I used; I am not sure which."

While this testimony of Mayor Combe shows that the citizens were in a frame of mind to "shoot up" the soldiers, there is no testimony in connection with either that matter or any other to show that the soldiers ever thought of such a thing as "shooting up" the town.

On the contrary, the testimony shows, and shows conclusively, that in the Tate-Newton affair, where Newton was knocked down with a revolver, Newton made no resistance to Tate and made no threats of revenge and exhibited no special resentment; that Private Reed, who was pushed off the gang plank into the water, reported the matter to his captain, but laughingly remarked that he "guessed he got about what he deserved," or words to that effect, while the Adair matter was so trifling in character as to be hardly worthy of notice, yet the testimony shows with respect to it that the soldier was not at fault, and that he showed no resentment and made no threats against anybody.

Newton, Reed, and Adair all belonged to Company C, and are all satisfactorily accounted for and shown beyond any room for doubt not to have participated in any way in the shooting affray.

This, in connection with the breaking open of their gun racks, and the fact that they had no ammunition of the character indicated by the shells, bullets, and cartridges that were found the next morning at the places where the shooting occurred, would seem to make a conclusive showing that nobody belonging to Company C had any part in the shooting.

Not a man in either Company B or Company D had any trouble of any kind with anybody at Brownsville. There is not a word of testimony to indicate that anybody in either of these two companies had any reason for the slightest disposition to shoot up the town to revenge the wrongs, real or imaginary, of their comrades in Company C.

Hence there was an entire absence of motive for them or any of them to have engaged in such a raid.

THE FIRST SHOTS.

Major Penrose said:

"Q. Please tell us about the occurrences of the night of August 13-14, 1906, with reference to the shooting affray which occurred in Brownsville that night. Where were you when it commenced?—A. I was in my quarters, sir.

"Q. What time of night was it when it commenced, as nearly as you can tell?—A. It was soon after midnight, sir.

"Q. Had you retired for the night?—A. I had retired for the night.

"Q. Were you awake or asleep?—A. I was awake, sir.

"Q. Just proceed in your own way—though I may interrupt now and then—to tell us all you can recollect about what occurred that night—what you did, and what you saw, and what you ordered, and so forth and so on.—A. Yes, sir. I was awakened by two shots first.

"Q. You say you were awakened? I understood you to say you were awake.—A. I mean to say I was aroused—my attention was called—by two shots. I was not asleep, sir; I was awake. I had spoken to my wife only a moment before. The two shots were followed almost immediately by six or seven shots, fired very rapidly. Then there were three shots that stood out prominently, more so than the others, and that was immediately followed by a number of other shots fired irregularly. Some of them might have been attempts at volleys.

"Q. Now, let me interrupt you there to ask you where, as nearly as you could tell, were those first shots fired from?—A. The first shots were fired, as nearly as I could locate them, from some point between the vacant staff barracks and the guardhouse.

"Q. Inside or outside the reservation?—A. They were outside of the reservation, sir.

"Q. You were in your room at the time?—A. I was in my room at that time.

"Q. And in your bed at that time?—A. I jumped at once out of bed and commenced to dress. My wife said: 'What is that? Do you suppose it is a fire?' Almost instantly after that these several shots that I spoke of sounded.

"Q. Where did they seem to be fired from?—A. They seemed to me to be in the rear of C Company or B Company barracks, in that direction of the town.

"Q. Could you tell from where you were whether they were outside or inside the reservation?—A. I took them to be outside of the reservation, sir.

"Q. Can you tell us what kind of firearms those shots were fired from?—A. The first two shots I heard were undoubtedly pistol shots, sir, and I think they were fired with black powder. The other shots that I heard were from high-power guns undoubtedly.

"Q. By high-power guns, what kind of guns would be included in that term?—A. Well, sir, the Springfield rifle, such as we use in the Army now, is one; the Winchester, and all the sporting rifles.

"Q. The Krag?—A. The Krag is one of them; yes, sir.

"Q. The Savage?—A. The Savage and the Mannlicher.

"Q. The Marlin?—A. Yes, sir.

"Q. The Mauser?—A. Yes, sir.

"Q. They are all high-power rifles?—A. Yes, sir.

On this point Captain Lyon said:

"Q. How many shots did you hear at that time?—A. I heard two shots first.

"Q. Do you know whether or not they were the first shots fired?—A. I do not, sir; they were the first I heard.

"Q. They were the first you heard. About where were they fired from—about what location?—A. They were fired apparently from the road dividing the post from the town and over beyond the building No. 41, the commissary-sergeant's quarters; off in that direction somewhere. That is where they appeared to me.

"Q. That would be about opposite the guardhouse, you mean? I will ask Senator Scott to explain the map to you.—A. I think I understand it.

"Q. You do understand it? Can you indicate about where you think those first shots were?—A. In this general direction here [indicating on map].

"Q. Yes. You heard two shots?—A. Yes, sir.

"Q. Can you tell from what kind of a firearm they were fired?—A. Those shots were undoubtedly revolver shots; black powder.

"Q. What?—A. Black powder.

"Q. Black powder?—A. Yes, sir.

"Q. Those were the first you heard. Then what did you do?—A. After I heard those first two shots there were five or six shots fired at a few seconds' interval—that is, a few seconds after the first two, and they were also, in my mind, revolver shots. They were fired in rapid succession.

"Q. About where were they located?—A. I could not attempt to locate them definitely, but they were apparently down more in the direction of the quarters here; somewhere about here [indicating on map].

"Q. Some little time elapsed between the firing of the two shots and the firing of those others?—A. Yes, sir.

"Q. Then what did you next hear?—A. Almost immediately following those revolver shots there were a number of shots fired which, in my opinion, were fired from small-caliber high-power rifles.

"Q. When you say high-power rifles, what kind of rifles do you refer to?—A. The modern rifles of approximately .30 caliber, using a smokeless powder, and of high velocity, having a muzzle velocity of 1,700 feet or over.

"Q. How many rifles are there that might be described by the term 'high-power rifles'?—A. I do not think that I could name them all. The Winchester people make several patterns of high-power rifles. Then there is the Marlin, and the Savage, and the Ballard.

"Q. It might have been any of those kinds of rifles?—A. Yes, sir.

"Q. You do not mean, necessarily, when you say high-power rifles, the Springfield rifles?—A. No, sir.

By Senator OVERMAN:

"Q. But it might have been the Springfield rifle?—A. Yes, sir.

"Q. The Springfield is a high-power rifle?—A. Yes, sir."

Lieutenant Grier said (pp. 1689-1690):

"Q. What awakened you?—A. I was awakened by what I thought were two pistol shots.

"Q. Can you tell from where they seem to have been—the firing—at what location?—A. Yes; they seemed to be back over here in the rear of B Company barracks.

"Q. Outside or inside of the wall?—A. I could not state.

"Q. You were in the officers' quarters. Were you upstairs or downstairs?—A. Upstairs.

"Q. You only heard the sound coming from that general direction?—A. That is the idea.

"Q. It seemed to you to be somewhere over in the rear of B quarters?—A. Yes, sir."

George W. Rendall testified at pages 2039-2040 about the first shots, as follows:

"Q. Do you know anything about how many shots were fired before you got awake?—A. No, sir; I do not.

"Q. You do not?—A. No, sir.

"Q. All you know is that you were awakened by firing?—A. Yes, sir.

"Q. Now, what kind of shots were they?—A. I couldn't say.

"Q. Out of what kind of an arm were they fired?—A. I think they were pistols.

"Q. Yes; you have so testified, have you not, that they were pistol shots?—A. I don't know whether I have or not, but that was my impression at the time, that they were pistol shots, because they were so close together that it was peculiar, and I took more notice of it.

"Q. You testified before the citizens' committee, did you not?—A. No, sir; there was no testimony taken.

"Q. You made a statement, did you not?—A. Yes, sir.

"Q. Did you not state before the citizens' committee the following day after this occurrence, or within a day or two afterwards?—A. Maybe so, sir.

"Q. (Continuing.) That these were pistol shots?—A. No, sir.

"Q. You did not?—A. No, sir; I do not think so.

"Q. We will see, after a while. Then you testified before Mr. Purdy?—A. Yes, sir.

"Q. And you told him that these were pistol shots, did you not?—A. I told him that the shots that I saw the flashes from were pistol shots."

George W. Rendall, at pages 75-76 of Senate Document 155, is reported as testifying August 14, the day after the shooting affray occurred, before the citizens' committee, as follows:

"Well, I was sleeping about 10 o'clock and was woken up by pistol shots fired close to my house, about 60 feet from garrison, inside of garrison wall."

Later, December 6, 1906, he testified before the grand jury, and said:

"I was awakened by the shooting. There were two shots fired before I got up and looked out of the window. I judge they were pistol shots. The men I saw moving were inside the garrison wall, and the only shots that I saw as they left the weapons were pointed nearly upward."

Mayor Combe says (page 2383):

"Q. Now, proceed, Doctor, if you please. Just state where your home was.—A. My home was at the corner of Ninth and Elizabeth

streets. I read for a while, and, as I said a few moments ago, retired about half past 11. I was sleeping on the back porch. I dozed off and was not very sound asleep when I heard what I thought to be four or five pistol shots in a southerly direction from my home."

On this same subject he testified on cross-examination, page 2415, as follows:

"Q. Now, what awakened you?—A. Sir?

"Q. Did you hear the first shots that were fired; did they awaken you?—A. I think I was awakened with the first shot.

"Q. And I understood you to say that you heard four or five shots in quick succession?—A. Yes, sir.

"Q. And that they were pistol shots?—A. I was so impressed.

"Q. They did not sound like the shots you heard later?—A. No, sir.

"Q. Which you describe as appearing to you to be from high-power guns?—A. No, sir."

He testifies as follows at page 2423:

"Q. Now, Mr. Mayor, these first shots you say were pistol shots? Where did they seem to you to be located?—A. In a southerly direction.

"Q. Down somewhere toward the barracks?—A. Yes, sir; south of my house some distance.

"Q. But you could not tell whether they were inside or outside of the wall?—A. No, sir.

"Q. You do not pretend to know anything about that?—A. No, sir.

"Q. You did not see any of the men who did the firing?—A. No, sir.

"Q. And all you know is that on account of this incident there was a very ugly feeling among the citizens, which caused you to request Major Penrose to keep his men in the fort that night?—A. Yes, sir.

"Q. And notwithstanding those precautions, about midnight you were awakened by this firing, and the first shots seemed to be from pistols?—A. Yes, sir.

"Q. What kind of pistols were those, if you can tell, .45-caliber pistols?—A. I should imagine it to have been a pistol of a similar character, possibly a .38, but not less than a .38 or a .44 or a .45.

"Q. You heard other pistol shots that night, also?—A. Yes, sir; I was wider awake then."

He also testified as follows at page 2440:

"By Senator FORAKER:

"Q. These first shots you think were fired by the policemen out of their pistols?—A. From what I have heard since I suppose it was Padron—just that one. I do not remember whether there were four or five shots—

"Q. I am speaking of the first you heard.—A. No; they were away down in the lower part of the town. The reports of the .45-caliber pistol I have spoken of, that I heard afterwards, were mixed up. There was volley firing, but I could hear the boom of the .45 in contradistinction to the sharp, quick sound of the other.

"Q. Mixed in with the rest of the shots?—A. Yes, sir.

"Q. First one and then the other. As to the pistol shots, did you make any effort to find out who had fired those pistol shots?—A. Yes; I found out that Padron had.

"Q. Those were the first you heard?—A. Not the first; I heard four or five pistol shots immediately followed by the—

"Q. Did you find out who that was?—A. No, sir; we all supposed that that came from the garrison, afterwards. It was farther away, than the last shots we heard.

"Q. What I am trying to get at is whether you made any effort to find out who fired those first four or five pistol shots?—A. None; except two or three days afterwards we were talking, and Mr. Rendall said he had heard pistol shots.

"Q. Did he say that he had heard pistol shots from the garrison?—A. He thought that he had heard pistol shots, or something of the kind, and I came to the conclusion that those shots were from the garrison.

"Q. And therefore you made no further investigation?—A. No, sir; no further investigation."

LOCATION OF FIRST SHOTS.

There is much contradiction as to the location of the first firing that was heard. There were two men more able to give reliable information on this point than any others, and they were the sentinel on duty at the time very near to the point where the firing commenced, Private J. H. Howard, of Company D, and Matias Tamayo, a Mexican citizen of Brownsville. He was employed as scavenger for the reservation, and when the firing commenced was in the rear of B barracks near to the place where the first shots were fired. These men were both wide awake. They were in a situation to know accurately and definitely. Both have given intelligent, straightforward testimony.

Howard testifies that as soon as he heard the first fusillade of firing he passed between C and B barracks to a point near the walk in front of the barracks and held his piece in the air, fired it three times, each time calling the guard for the purpose of giving alarm. He testifies that there were no shots fired from within the walls of the reservation, except only these three shots fired by himself.

The scavenger testifies that after the first fusillade of shots he mounted his cart and rapidly drove away; that no shots were fired from within the reservation while he was in the rear of the barracks, but that all the first shots were fired from some place outside the reservation, somewhere in the neighborhood of the mouth of the Cowen alley.

Rendall testifies that the firing awakened him; that he at once went to his window, looked out over the reservation in the direction of D barracks; that while so looking he heard a shot to his left that caused him to turn and look to his left, and that he then saw two shots fired, as he thought, in the air. These were undoubtedly the shots fired by the sentinel. It is probable that others who claim that they saw shots fired from the barracks or from inside the reservation wall were misled in the same way. But, however that may be, the testimony of Howard and Tamayo is intelligent. It is based on actual knowledge and there is no excuse for not accepting and believing it except only upon the theory that these men deliberately committed perjury. So far as Howard is concerned, it might be claimed, if he were guilty or his comrades were, that he had a motive for committing perjury, namely, to shield himself and his comrades, but no such motive and no other kind of a motive for committing perjury can be ascribed to Tamayo. He was not a soldier. He practically had no acquaintances among the soldiers. He was a citizen of Brownsville. In so far as he is shown to have any interest whatever in the controversy it was an interest in favor of the community in which he lived rather than for the soldiers. He is not impeached in any way.

The following is the testimony of Tamayo and Howard on this point:

Testimony of Matias G. Tamayo.

(Page 1204.)

"By Senator FORAKER:

"Q. Please give us your name in full.—A. Matias G. Tamayo.

"Q. Where do you reside?—A. Right now I reside at Fort Brown.

"Q. At Fort Brown?—A. Yes, sir.
 "Q. Do you live in the fort or in the city of Brownsville?—A. I live in the fort.
 "Q. You live in the fort?—A. Yes, sir.
 "Q. How are you occupied there, if at all?—A. Right now?
 "Q. Yes.—A. Carpenter in Brownsville.
 "Q. Carpenter?—A. Yes, sir; at Brownsville, Tex.
 "Q. For the fort, do you mean?—A. No, sir; for Brownsville.
 "Q. For Brownsville?—A. Yes, sir.
 "Q. That is, your business is the business of a carpenter?—A. Right now; yes, sir.
 "Q. Are you employed in any way by the Government?—A. Yes, sir; I have been employed for six years by the Government as a scavenger.
 "Q. I mean are you now?—A. No, sir.
 "Q. You were the scavenger at Fort Brown, were you?—A. Yes, sir.
 "Q. And you held that place for six years?—A. Yes, sir.
 "Q. Where were you born?—A. At Brownsville, Tex.
 "Q. Lived there all your life?—A. Yes, sir.
 "Q. What nationality are you?—A. Mexican.
 "Q. Wholly Mexican?—A. Yes, sir.
 "Q. A full-blooded Mexican?—A. Yes, sir.
 "Q. Your father and mother?—A. Both Mexicans.
 "Q. They live there in Brownsville, do they?—A. Yes, sir.
 "Q. Did they ever live in Mexico?—A. Yes, sir; I believe my father and mother were born in Mexico.
 "Q. Both across the river somewhere in Mexico?—A. Yes, sir.
 "Q. And you are how old, did you say?—A. Thirty years old.
 "Q. Then, as long ago as six years, when you were 24, you became scavenger for the fort?—A. In 1900, the 30th of November.
 "Q. Were you employed as scavenger at Fort Brown in August of last year?—A. No, sir; in November.
 "Q. No; I mean were you scavenger in August of last year?—A. Yes, sir.
 "Q. At the time when there was a shooting affray?—A. Yes, sir.
 "Q. Where were you at the time of that shooting affray, at Fort Brown?—A. I was inside of Fort Brown.
 "Q. Were you engaged at that particular time, on that night, as scavenger?—A. Yes, sir.
 "Q. Tell us where you were and what occurred, as nearly as you can.—A. I was back of B Company's kitchen, right at the corner of the barracks, while I heard the shooting at Brownsville. I heard two shots, and then I heard all the rest of the shooting.
 "Q. Now, at what time did you start on your rounds as scavenger? Did you go around every night?—A. Every night I had to go around between half-past 10 and 11 o'clock.
 "Q. It was your business to go to the sinks?—A. To the sinks and ash cans.
 "Q. To the ash cans, and so forth?—A. Yes, sir.
 "Q. Where did you start from on that night?—A. I started from the quartermaster's corral and went to the post hospital.
 "Q. Yes.—A. From the post hospital to the guardhouse, from the guardhouse to the laundry quarters, where I live now. I can show them to you.
 "Senator OVERMAN. Do you understand the map there?
 "The WITNESS. Yes, sir.
 "Senator FORAKER. Where is the corral?
 "(The map was here explained to the witness by Senator OVERMAN.)
 "The WITNESS. The wagon shed—I think the corral is right here. Here is the corral right here [indicating].
 "The CHAIRMAN. Right near the pump house.
 "The WITNESS. This is the wagon shed right here [indicating].
 "By Senator FORAKER:
 "Q. What sort of a vehicle did you have to use in your duty as scavenger?—A. An iron cart.
 "Q. With an iron bed, you mean, and an iron lid?—A. Yes, sir; and one mule.
 "Q. One mule?—A. Yes, sir.
 "Q. Where did you keep it in the daytime?—A. I used to keep it right outside here; right along here, outside this wall of the house here [indicating].
 "Q. Did you do all your work in the nighttime?—A. Yes, sir; by myself.
 "Q. By yourself. What time did you start that night from the corral on your work?—A. I started about a quarter to 11.
 "Q. Tell us now where you went, indicating on the map.—A. I started right here and came along here and came to the post hospital [indicating].
 "Senator FORAKER. The post hospital is down to the left there.
 "Senator OVERMAN. Here is the hospital right here [indicating].
 "The WITNESS. That is it; this place here [indicating].
 "By Senator FORAKER:
 "Q. And you were coming down to the hospital?—A. Down this road here, and then to here [indicating].
 "Q. Did you have to stop at the hospital?—A. Yes, sir; I used to stop there about ten minutes.
 "Q. Then where did you stop next?—A. I came along here [indicating].
 "Q. What is the next building?—A. The guardhouse. Here is this road here [indicating].
 "Q. The road is not marked; but there is a road running around in rear of the guardhouse?—A. Yes, sir.
 "Q. And you came on that road in rear of the guardhouse. Did you stop at the guardhouse?—A. Yes, sir; I stopped at the guardhouse.
 "Q. Then where did you go?—A. I went to the laundry quarters; I believe it is here. That is marked on that. That is where the non-commissioned officers stop. I think this is where I live, right here [indicating]. They used to call them the laundry quarters. The commissary-sergeant lives opposite the ice plant.
 "Q. We know that the map is not correct, so that we will not stop for that. You stopped at the laundry quarters; then where did you go from there?—A. To the company barracks, right here [indicating].
 "(At this point Senator OVERMAN further explained the map to the witness.)
 "By Senator FORAKER:
 "Q. Now tell us how you came.—A. I worked here about ten minutes.
 "Q. Wait a minute. Is there a road along the wall, between the wall and the barracks?—A. Yes, sir; right here [indicating].
 "Q. There is a road here?—A. Right there; yes, sir.
 "Q. Not shown on the map. All right.
 "The WITNESS. From here I came to B barracks.
 "Q. You stopped at B, then at C?—A. Right at the entrance to the barracks. I worked there for about ten minutes, and when I got through there I was feeling a little thirsty and I went in the company to get a drink of water, and I came out and jumped on my cart and drove about here, say [indicating].
 "The CHAIRMAN. What time was that?
 "The WITNESS. It was pretty near 12 o'clock when I drove to this place here.
 "By Senator FORAKER:
 "Q. What did you do after that time?—A. Right here I had an ash can to pick up.
 "Q. An ash can?—A. Yes, sir.
 "Q. That was back of the kitchen?—A. Yes, sir; right here [indicating on map].
 "Q. Did you stop?—A. I stopped right there and took hold of the ash can and emptied it on the cart.
 "Q. That is, you got off your cart, or were you on the cart?—A. No, sir; I was off the cart.
 "Q. Got down on the ground and picked up a can and emptied it?—A. Yes, sir; and then I set it on the ground. I heard the first shot.
 "Q. Where was that fired from?—A. I think it was fired from right along this alley here [indicating on map].
 "Q. What did you do after that?—A. I heard a lot of shooting.
 "Q. Then what did you do?—A. I put my lantern out as soon as I heard the first two shots.
 "Q. Then what did you do?—A. I stood for a little while facing the place where the firing was going on.
 "Q. Yes.—A. And at the same time I could see the galleries, right here [indicating on map], and the place where the firing was taken place, right in front of me.
 "Q. What was taking place?—A. The firing taking place.
 "Q. You are not pointing to the town?—A. No, sir; I am not [pointing on the map].
 "Q. The firing was in town?—A. Yes, sir.
 "Q. Did you see any men moving about there before that first shot was fired?—A. No, sir.
 "Q. Did you see any lights about the barracks?—A. No, sir.
 "Q. Was there any noise about, anywhere?—A. No, sir; everything was quiet.
 "Q. Everything was quiet?—A. Yes, sir.
 "Q. Did you see any men moving about inside the wall near the sink of B Company?—A. No, sir.
 "Q. Did you see anybody jump over the fence or the wall there in rear of B Company, opposite the mouth of Cowen alley?—A. No, sir.
 "Q. Or at any other place?—A. No, sir.
 "Q. If there had been any shots fired from the upper windows of B, C, and D barracks, were you in a situation to have seen them?—A. Yes, sir; I could very easily have seen them, because I could see the barracks here—around right here in front of me [indicating on map].
 "Q. Now, were any shots fired from the barracks?—A. Not while I was there; no, sir.
 "Q. How about the first shots?—A. I heard the first shots and then about 20 more shots, and then I drove off.
 "Q. When they commenced shooting, then you left immediately?—A. I went away immediately.
 "Q. With your cart?—A. Yes, sir. At the same time when I heard this first shot I heard a few bullets going into the post over the administration building.
 "Q. That is important. Which way were they going?—A. They went up into the air.
 "Q. Went up in the air?—A. Yes, sir.
 "Q. Could you tell which way?—A. Across that way [indicating on map].
 "Q. Across that way, you thought?—A. Yes, sir.
 "Q. Then where did you go with your cart?—A. I went toward the administration building, but before I got to the administration building I stopped for a few seconds in front of this company, D [indicating on map].
 "Q. That is D Company?—A. Yes, sir.
 "Q. How did you come to stop there?—A. I stopped there to see the men, because the first sound of the bugle had already gone.
 "Q. What?—A. The first bugle.
 "Q. You heard the first bugle; when was that?—A. As soon as I jumped from my cart I heard the first bugle call.
 "Senator FOSTER. Where was that?
 "The WITNESS. And right after that I heard all the bugles at the barracks.
 "Q. When the firing commenced and the bugles commenced, what happened in the barracks?—A. Everybody commenced to get up.
 "Q. Did they make any noise about it?—A. Yes, sir; lots of noise."
Testimony of Joseph H. Howard (colored).
 Joseph H. Howard (colored), after being first duly sworn, testified as follows:
 "By Senator FORAKER:
 "Q. Please state your full name.—A. Joseph Henry Howard.
 "Q. Were you in August last a member of the Twenty-fifth United States Infantry?—A. Yes, sir.
 "Q. What company did you belong to?—A. Company D.
 "Q. Who was the captain of that company?—A. Captain Lyon.
 "Q. Were you with that company at Brownsville, Tex., in August last?—A. Yes, sir.
 "Senator FORAKER. I will put in at this point the record of this soldier as furnished by the War Department, and found at page 271 of Senate Document No. 155.
 "The record is as follows:
 "JOSEPH H. HOWARD.
 "Enlisted November 8, 1903; was discharged without honor as a private of Company D, Twenty-fifth Infantry, November 25, 1906.
 "By Senator FORAKER:
 "Q. I observe by looking at this record that you were serving your first enlistment?—A. Yes, sir.
 "Q. This shows that you were enlisted November 8, 1903, and that you were discharged November 25, 1906, without honor, as a private of Company D. That is right, is it?—A. Yes, sir.
 "Q. In what State did you live before you enlisted?—A. Georgia.
 "Q. Whereabouts in Georgia?—A. Columbus, Ga.
 "Q. Where were you enlisted?—A. Phoenix, Ala.
 "Q. Now, where were you on the night of August 13, when this shooting affray occurred in Brownsville?—A. I was on post in the rear of the soldiers' barracks.
 "Q. You were on guard that night?—A. Yes, sir.
 "Q. As a detail from Company D?—A. Yes, sir.
 "Q. And you were on post?—A. Yes, sir.

"Q. Tell us just what happened. Wait a moment until that map at your left is explained to you so that we can understand your testimony. That is a map of the fort and a part of Brownsville. Senator SCOTT will explain it to you.

"(Senator SCOTT pointed out to the witness the various localities as indicated on the map.)

"Q. What post were you on?—A. Post No. 2, sir.

"Q. Where is post No. 2?—A. In the rear of the soldiers' barracks.

"By Senator SCOTT:

"Q. In the rear or in front?—A. In the rear. It extends around the soldiers' barracks.

"Q. Clear around the barracks?—A. Yes, sir.

"By Senator FORAKER:

"Q. That is, your beat extended all the way around?—A. Yes, sir.

"Q. In walking your beat, did you keep the barracks to your left or to your right?—A. To the left.

"Q. So that you walked up toward the guardhouse when you were in front of the barracks?—A. Yes, sir.

"Q. And down toward the gate and D barracks when you were in rear of the barracks?—A. Yes, sir.

"Q. How near were you to the wall?—A. I was right up by the side of the barracks when I was walking.

"Q. Your beat ran right along by the barracks, did it?—A. Yes, sir.

"Q. How far would you be from the wall when you were walking your beat in the rear of the barracks?—A. Just about 50 feet.

"Q. Now, you say you were on post at the time of this shooting. What time did you go on post that night?—A. Half past 10 o'clock.

"Q. Do you remember what relief you belonged to?—A. I think it was the first relief.

"Q. Who was the corporal of that relief, if you remember?—A. Corporal Wheeler.

"Q. You were in his relief?—A. Yes, sir.

"Q. Where were you when the firing commenced?—A. I was in the rear of the barracks, in the interval between B and C Companies' quarters.

"Q. What did you hear, and tell us as nearly as you can recollect all that occurred?—A. The first I heard was about two shots down the road.

"Q. Whereabouts; what road?—A. Down the road, right outside the gate, along the wall.

"By Senator OVERMAN:

"Q. Do you mean down toward the river, or the other way?—A. No, sir; they were away from the river, down toward the vacant staff barracks.

"Q. That is, you stood behind the wall near the gate, as I understand you. Now, do you mean near the gate or near the barracks?—A. Near the vacant staff barracks.

"Q. You heard two shots there?—A. Yes, sir.

"Q. Were they inside or outside the wall?—A. They were outside the wall.

"Q. Did you see anybody at all about the barracks, up and about at that time?—A. No, sir; not at that present time.

"Q. Was there anybody moving about inside this wall behind the barracks at that time?—A. The post scavenger.

"Q. Who was that?—A. He is a Mexican. He is the post scavenger.

"Q. Is that Matias Tamayo?—A. Yes, sir.

"Q. He was post scavenger. Where was he?—A. He was at B Company's sink, over next to the wall.

"Q. Over next to the wall?—A. Yes, sir.

"Q. How do you know he was there?—A. Because as the firing began he got on his cart and drove off.

"Q. Had you seen him before the firing commenced?—A. No, sir.

"Q. When the firing commenced what attracted your attention to him?—A. By a wagon rolling off. I heard the noise of his horse and wagon.

"Q. Did it make a noise?—A. Yes, sir.

"Q. You saw him go away and knew who he was and what it was?—A. I knew it was the scavenger's cart.

"Q. Did he come in there or not every night at about that time to do that kind of work?—A. Yes, sir.

"Q. Now, you heard two shots. What occurred next?—A. Well, I stopped and looked in that direction—the way I heard the two shots—and then, about thirty seconds after that, I heard a fusillade of shots.

"Q. A fusillade of shots?—A. Yes, sir.

"Q. Where was the fusillade of shots, as nearly as you can locate it?—A. They were right over to the right of me, across the wall.

"Q. That is right behind what barracks?—A. Well, they were to the right of me. I was in the interval between B and C Companies' barracks, and the shooting seemed to be over in that little alley.

"Q. There is an alley there, is there?—A. Yes, sir.

"Q. And this fusillade seemed to be over about the mouth of that alley?—A. Up in the alley.

"Q. Up in the alley?—A. Yes, sir.

"Senator FOSTER. What alley does he refer to?

"Senator FORAKER. There is an alley between Washington street and Elizabeth street, immediately to his right, where he was posted, in the interval between C barracks and B barracks.

"Q. When you heard the fusillade what did you do?—A. I yelled the alarm.

"Q. Did you do that in accordance with instructions or not? Was that your duty under such circumstances?—A. Yes, sir.

"Q. What alarm did you yell—what did you do?—A. 'Guard No. 2.'

"Q. That is the regular call, is it?—A. Yes, sir.

"Q. What does that mean? When a man on post calls 'Guard 2,' what does that mean?—A. Well, sir, the corporal of the relief at the guardhouse is supposed to come to the sentinel's rescue.

"Q. So it was your duty to call out and the duty of the corporal at the guardhouse to come to your rescue?—A. Yes, sir.

"Q. Then what further did you do?—A. I think at that time the shooting was still going on, and I came around on the front side of the barracks.

"Q. How did you get on the front side of the barracks?—A. Came right through the interval between the barracks.

"Q. How far were you up in the interval?—A. I was right out on the parade ground, right in front of the barracks on the parade ground side.

"Q. What did you do when you got there?—A. Discharged my piece and called the guard three times.

"Q. You discharged your piece and called the guard and what?—A. Three times."

FORMATION OF COMPANIES.

The testimony of the officers and men alike is to the effect that the call to arms was sounded immediately after the first volley of shots was

fired upon order of Major Penrose, and that in response to the firing and the call to arms the men in the barracks were aroused, the gun racks were opened, and they were formed on their respective company parade grounds. There was delay in the formation of Company C, because the noncommissioned officer in charge of quarters refused to open the gun racks until he could get an order therefor from some superior officer. On account of this delay Major Penrose ordered the gun racks broken open, and two of them were broken open by the men with the use of axes and other implements. This company was not formed until five or ten minutes after the firing ceased, but D and B Companies were formed, or at least forming, before the firing ceased. The roll of B Company was called, the call ending at about the time the firing ceased.

Captain Lyon personally inspected his men—Company D—as they fell in line and under orders from Major Penrose immediately placed them behind the wall of the reservation, where the roll was called and every man found to be present or accounted for. The roll call of Company B showed the same result. As soon as Company C was formed and placed in position the men were verified with like result. The officers are all of the opinion that while it was possible that men engaged in the firing could have rejoined their companies before verification, yet all are of the opinion that no one did so join; and they are of this opinion because they failed to observe, as they think, they would have done if such a thing had occurred, any such excitement or quick breathing or other evidence of participation in the shooting affray on the part of any of their men, such as they are confident would necessarily have been observable if they had participated in the shooting, and then, in such haste as must have been necessary, joined their respective companies.

CITIZENS' COMMITTEE.

The next day after the shooting, August 14, the citizens organized a committee and made an investigation to ascertain who had done the shooting. Before this committee a large number of citizens appeared and made statements. These statements were not under oath, but they were reported stenographically. At that time the occurrences of the night before were fresh in their minds and their statements were free from any character of restraint or improper influence, except only that they were under great excitement, and the committee proceeded and the witnesses testified, as the record shows, upon the assumption that the shooting had been done by the negro soldiers and that the only inquiry was which of the soldiers were the guilty parties.

In support of this statement that the committee proceeded upon the theory that the shooting was done by the soldiers and that the witnesses so testified, the following is quoted from the record:

"Herbert Elkins called to the stand:

"You know the object of this meeting. We know that this outrage was committed by negro soldiers. We want any information that will lead to a discovery of who did it." (Page 85, Senate Document No. 155.)

Other quotations might be made to the same general effect, but on this point there is practically no dispute.

No one of all the witnesses called before this citizens' committee could say more than that, hearing the firing, he had looked out into the darkness of a very dark night and seen a party of men who appeared to be uniformed and armed like the soldiers from the garrison, and who, on that account, were recognized as soldiers.

It seemed to Major Blockson and other investigators so improbable that the citizens of Brownsville would thus shoot up their own town, and so natural that the soldiers would, that these statements were readily accepted as satisfactory and sufficient to show their guilt. That it was at least possible, if not probable, that the shooting was done by others than the soldiers might have occurred to the Major and his associate investigators if they had recalled the numerous occurrences of similar character that have happened in other towns.

The following from the newspapers of December 8, 1907, shows that the most unexpected occurrences of that nature are liable to happen in the best-regulated communities:

"NIGHT RIDERS' WORK—TERRORIZE ENTIRE TOWN—DESTROY PROPERTY VALUED AT \$200,000—"SHOOT UP" HOUSES.

"HOPKINSVILLE, KY., December 7, 1907.

"Five hundred 'night riders,' masked and heavily armed, marched into Hopkinsville early to-day and destroyed property valued at over \$200,000, while citizens, in terror of their lives, feared even to open their windows. The police and fire departments, telephone and telegraph offices, and even the railroad stations, were in possession of a wild mob, shooting right and left, flames from burning buildings meanwhile lighting up the city and the surrounding country until it seemed that the whole town was ablaze.

"Windows in the front of business houses and banks on the main street of the city were shot out, and the entire front of the building of one newspaper which had been especially severe in its condemnations of the raids of the 'night riders,' and which was owned by the mayor of the city, was demolished.

"Only two men were injured, one being Lindsay Mitchell, a tobacco buyer, who was severely beaten with switches and clubs, and the other, a brakeman, who was shot in the back while trying to move his train from the path of the flames.

"The raid caught the city unawares, as for some time the depredations resulting from the tobacco war had been of a minor nature, and it was generally thought that in the 'dark district' at least the worst was over.

"The property destroyed was as follows: W. H. Tandy, independent tobacco warehouse building, owned by J. H. Latham; B. M. Woolridge, association warehouse; Tandy & Fairleigh, buyers, warehouse.

"As soon as the 'night riders' left town, a posse of about fifteen, headed by Major Bassett, of the local militia, and Deputy Sheriff Cravens, entered buggies and followed the trail. As soon as the posse could get near enough they opened fire on the fleeing mob, which returned the shots. It is believed none of the 'night riders' was hit. The members of the posse escaped injury. They were soon outdistanced by the fleeing men, and after chasing the marauders past Gracey, the officers returned home.

"News was later received from all parts of town indicating the spread of the raid of the riders. There was hardly a house in the business section of the city which did not suffer.

"Just why no damage was done by the 'night riders' to the Imperial or the American Snuff Company warehouses is not known. They probably contained more stock than any other house.

"At the intercession of citizens who were being guarded on a street corner the invaders during the raid allowed the fire department to leave their building to save property adjacent to the burning buildings. Had it not been that no wind was blowing, and that the firemen and citizens worked so well, the entire city might have been destroyed.

"The girls in the telephone office were forced by fifteen men to leave their switchboards until the mob was ready to depart from town.

"Governor Beckham to-night, at the request of Mayor Meacham and County Judge Breathitt, ordered the local company of Kentucky State Guards to report to the sheriff for indefinite duty during the 'night-riders' trouble, under command of Maj. E. B. Bassett. The local officials believe they will be able to offer protection to secure witnesses who can positively identify members of the party."

When such bloody wickedness can be caused by tobacco in Kentucky, what may not have been born of race prejudice in Texas?

ACTION OF THE CAMERON COUNTY GRAND JURY.

In addition to the investigation made by the citizens' committee and by the officers of the Twenty-fifth Infantry, the whole case was presented to the grand jury for Cameron County, Tex., of which Brownsville is the county seat, at its September session, with the result that after three weeks of investigation (see report of General McCaskey, p. 107, Senate Doc. No. 155) they found there was no testimony on which to base an indictment of anybody.

The following is the official report of the action of the grand jury made by the presiding judge of that judicial district:

[Telegram.]

SAN ANTONIO, TEX., September 28, 1906.

MILITARY SECRETARY,

War Department, Washington, D. C.:

Following received:

BROWNSVILLE, TEX., September 27, 1906.

MILITARY SECRETARY, DEPARTMENT OF TEXAS,

San Antonio, Tex.:

Following letter received by me this date repeated for your information:

"DEAR ARCHER,

"First Lieutenant, Twenty-sixth United States Infantry,

"Commanding Fort Brown, Tex.:

"In compliance with my agreement with the United States military authorities I hereby promptly advise you that the grand jury of Cameron County, adjourned this day, have, after investigation, not indicted any of the following-named parties, held at Fort Sam Houston to await the action of the civil authorities, and they are therefore entitled to release: Sergt. W. A. Brawner, Company C, Twenty-fifth Infantry; Corp. David Powell, Company B, Twenty-fifth Infantry; Sergt. George Jackson, Company B, Twenty-fifth Infantry; Private J. H. Howard, Company D, Twenty-fifth Infantry; Private James W. Newton, Company C, Twenty-fifth Infantry; Private Oscar W. Reed, Company C, Twenty-fifth Infantry; Corporal Madison, Company C, Twenty-fifth Infantry; Private James C. Gill, Company D, Twenty-fifth Infantry; Sergeant Reid, Corp. Willie H. Miller, Private C. W. Askew, Company C, Twenty-fifth Infantry; Private John Holtman, Company B, Twenty-fifth Infantry.

"STANLEY WELCH,

"Judge Twenty-eighth Judicial District of Texas."

ARCHER, Commanding.

Request instructions as to disposition these men.

McCASKEY, Brigadier-General.

They made this finding, notwithstanding the fact that the men named had been, on the 23d of August, arrested and placed in confinement on the charge of murder on account of having participated in the shooting or having been accessories thereto. William Allison, who had been discharged from Company B, August 11, and who had started a saloon for the special accommodation of the men of the battalion, was also arrested.

Sergeant Jackson was, on the night of the shooting, in charge of Company B quarters; Sergeant Brawner was in charge of Company C quarters; and Corporal Powell was in charge of Company D quarters; Sergeant Reid was sergeant of the guard on duty at the time of the shooting; Corporal Miller, of Company C, was absent in the town on pass at the time of the shooting; Corporal Madison was corporal of the guard on the night of the shooting; Private Howard was the sentinel on post between the barracks and the reservation wall at the time when the firing commenced; Private Newton was the soldier who was assaulted by Mr. Tate, the customs officer; Private Reed was the soldier who was pushed off the plank into the water by Customs Officer Baker; and Private Askew was thought to be the owner of a soldier's cap found in the streets on the morning after the shooting; and Private Holimon, of C Company, was thought to be interested in some way in the Allison saloon.

It was thought by the authorities investigating the matter that these were clews that pointed toward these men. It was rightly assumed that it would have been impossible for a conspiracy to have been organized, the guns to have been secured from the gun racks, and the shooting party to have gone out into the town and to have returned without the noncommissioned officers in charge of the quarters having some knowledge of the affair, without the sergeant and corporals of the guard having some knowledge, without the sentinel on duty having some knowledge; and it was thought, in the absence of any other motive, that the shooting must have had relation to the offenses committed against Private Newton and Private Reed, and that consequently they would have some knowledge.

Undoubtedly most of these men would of necessity have known something of the facts if the shooting had been done by soldiers, because of the relation they were in to the transaction, but, as already indicated, the grand jury found the testimony wholly insufficient to hold anyone, and they were all discharged. Except only this testimony, mere deduction from acknowledged facts, there has never at any time been any testimony submitted even tending to identify any one of the soldiers as guilty of participation in the affray, and this testimony was pronounced by the grand jury to be utterly insufficient for that purpose. No one will pretend that in all the 3,000 pages of testimony there has been one iota of evidence added to strengthen the case against these men or against any other individuals.

MEN CHARGED WITH GUILT.

The officers of the battalion supposed at the time of the shooting that it was done by the citizens. It never occurred to them that anybody connected with the battalion was engaged in it until Doctor Combe, the mayor of Brownsville, visited the fort that night, after the firing was all over, and to Major Penrose made the charge that his men were the guilty parties. Major Penrose was unable to believe that his men were guilty, and remained of that opinion until the following morning, when Mayor Combe brought to him certain exploded shells and cartridges and clips that had been picked up at the places where the shoot-

ing had been done, which, upon examination, proved to be cartridges and shells and clips such as were in use by the men of the battalion and such, as it was claimed, were not in the possession of anybody else at Brownsville or in that vicinity.

OPINION OF OFFICERS.

In the face of this testimony Major Penrose and the other officers of the battalion concluded that some of their men must have done the firing. They remained of this opinion until the investigation by the Committee on Military Affairs of the Senate was in progress. During that investigation, on account of certain testimony that had been taken, Major Penrose and all his officers became convinced that the men of the battalion had nothing whatever to do with the shooting. All of them so testified.

CHANGE OF OPINION OF OFFICERS.

Major Penrose testified as follows (pp. 3024, 3025, and 3026) as to change of opinion about guilt of men:

"By Senator OVERMAN:

"Q. But, Major, you made up your mind that your soldiers had done the shooting without hearing any testimony of the eyewitnesses as to the soldiers being seen?—A. Yes, sir. Mayor Combe, Captain Kelly, and all of the gentlemen of that committee had told me that different people at Brownsville had reported seeing those men.

"Q. But didn't you make up your mind that your men had done it when you saw that those were Army shells, that they were freshly fired, and you found no bullets through the quarters? Taking that into consideration, didn't you make up your mind then that your soldiers had done it?—A. Yes, sir; I did.

"Q. When those gentlemen told you that those men had been seen on the streets, did you not at that time remember the darkness of the night as distinctly as you do to-day?—A. Yes, sir; exactly.

"Q. Why did you believe it then and discredit it to-day?—A. Because I thought there might have been some lights that they might have seen them by which I did not know of at that time.

"Q. Do you not still concede that there may have been?—A. There may have been in the Cowen house; that is the only thing I know about any lights being seen.

"Senator HEMENWAY. I was going to suggest that Senator Pettus has put a question, and that the witness should be allowed to answer it.

"Senator OVERMAN. I thought he was through.

"By Senator PETTUS:

"Q. Will you please finish your answer to my question.—A. Yes, sir.

"Q. I want to know fully what produced this change in your mind, in your opinion, as to who did that shooting?—A. I am trying to give it to you, Senator. There was another question or two asked of me, if you will remember.

"Q. I want you to explain it fully in your own way.—A. Yes, sir. Well, as I say, the darkness of this night and the finding of those shells—my opinion commenced to change at that time. Then there was the testimony that was produced before this committee as to the experiment that was made at the Frankford Arsenal, where they found that 11 shells were fired from one gun.

"Senator FORAKER. A Springfield?

"A. One Springfield rifle that had been locked up in the arms chest at Fort Niobrara and was not opened until the morning of the 14th of August. They claim that 11—I think it is 11—of those shells, or 11 shells, fired from that gun were found in the streets of Brownsville. Those shells were brought down from Fort Niobrara to Brownsville. They were open, on the back porch of B Company. They were open there several days, I don't remember how long. I can see no way in the world that those shells could have been fired in the streets of Brownsville. There is another thing: I think they were taken out there and put there. That is the reason that I have changed my opinion, sir.

"By Senator LONG:

"Q. You think those shells were put all over the town in order to give the idea that the soldiers did the shooting?—A. I think certainly those 11 shells were, sir.

"Q. Well, but it is in testimony and, I think, uncontradicted, that shells were picked up at a great many points?—A. Yes, sir; so I understand.

"Q. Your idea is that they must have been put there, at all those points?—A. That is my idea of it, sir.

"By Senator OVERMAN:

"Q. Do you think those freshly fired shells that were found there at the mouth of the alley were brought down from Niobrara?—A. I think so now.

"Q. And put there?—A. I believe they were, sir.

"Q. Yet you say they were freshly fired?—A. They had the appearance to me. They had only been fired a month before.

"By Senator TALIAFERRO:

"Q. Who do you think brought them from Niobrara?—A. B Company brought them down.

"Q. Who do you think distributed them in the streets?—A. I don't know, sir, unless some of the people of Brownsville.

"Q. How did they get out of the custody of B Company?—A. They were open on the back porch of B Company, and were left there for several days, Senator—this box was. I think the testimony so shows here.

"Q. They were at least more accessible to the members of B Company than they were to the public at large?—A. Yes, sir; that would be very possible that they were.

"Senator SCOTT. I should like to hear the answer to Senator Pettus's question, if I can get it.

"By the CHAIRMAN:

"Q. If you have anything further to say in answer to the question of the Senator from Alabama, you will, of course, proceed with it and make full answer.—A. I should state in connection with that that there was the behavior of the men before this shooting occurred. They had been an excellent lot of men. We had never had any trouble with them; they were well disciplined, well drilled, easy to handle. From the time that this shooting occurred none of them was permitted to leave Fort Brown at all. We took them up to Fort Reno, Okla., and there they were confined absolutely to the limits of the post—the post proper. They were not permitted to leave it under any circumstances. I gave them extra drills, extra guard, and had them working at fatigue whenever they were not drilling or on guard, the whole day long. Those men took all that without a murmur or a complaint of any kind. There were five of the men who disobeyed that order and went to town. They were each tried, dishonorably discharged, and sentenced to eighteen months' confinement at the military prison at Fort Leavenworth, Kans., and that was reduced by the

reviewing authority to six months. Those five exceptions were the only ones that disobeyed any of the orders that were issued at all. Finally the order came for their discharge. They were discharged at that post, a half a company at a time. They were paid off. They had anywhere from fifty or sixty dollars to, some of them, twelve or thirteen hundred dollars. They went to this little town, which was full of temptations, and, as I stated before, there was not a single man found drunk, nor was there a disturbance of any kind or character reported of these men, and I talked with the chief of police over the telephone frequently. Now, taking into consideration the conduct of these men both before and afterwards, and what I have before stated, leads me to believe that the men did not do that shooting."

Captain Macklin says as to change of opinion as to guilt of men (p. 3136):

"By Senator WARNER:

"Q. Did it not look to you as though some of the men had done the shooting?—A. Yes, sir; it seemed so naturally, on account of the shells.

"Q. And if you had not believed so at the time you would have said something to Major Penrose as to differing with him in his judgment, would you not?—A. Well, I do not believe I would, Senator, because Major Penrose was my commanding officer, and I was not called upon to make any remark to him, or any suggestion or anything.

"Q. But it did make the same impression on you?—A. Yes, sir; it seemed so. It looked very much so.

"Q. And you continued of that opinion, did you not, Captain?—A. Yes, sir.

"Q. Right along?—A. Yes, sir; I could not believe anything else.

"Q. Did you ever change your opinion?—A. Yes, sir.

"Q. When was that Captain?—A. Well, it was after the time that the men had stood the strain that they were under at Fort Reno, from the time they left Brownsville until their arrival at Reno, and the duty that they did at Fort Reno; and then seeing the discharge of those men."

Captain Macklin also said, at page 1788:

"Q. Now, Captain, you have investigated the subject a good deal. I understood you to say, so far as your men are concerned, you have taken steps to find out whether or not any of your men were guilty of this shooting.—A. By every means that I thought was possible; yes, sir.

"Q. That is, you have talked with them?—A. Yes, sir.

"Q. Talked with all of them?—A. Yes, sir.

"Q. Questioned them and had your noncommissioned officers try to find out?—A. Yes, sir.

"Q. As a result of that, can you tell us who did do that shooting?—A. Well, sir; I do not think the men did it.

"Q. You do not think the men did it?—A. No, sir.

"Q. You are satisfied of that, are you?—A. I am satisfied of that. I have studied this subject from every phase of it. I think I have read almost every bit of evidence and testimony that has been given, not only that taken by General Garlington and the other inspectors-general, but in Major Penrose's court-martial, and the longer it goes on, the more I feel satisfied that the men did not do the shooting. It is possible that there were a few shots fired from the barracks or some of those quarters by the men in their fright. Even when I joined the command that night the men were still under a heavy excitement and were much frightened.

"Q. But you have no knowledge whatever of anybody connected with the battalion firing a shot, have you?—A. No, sir; I have not.

"Q. And you have no knowledge of any fact, have you, that leads you to suspect any man in that battalion of having participated in that affair?—A. Not in the least; no, sir."

Lieutenant Grier says (p. 1726 et seq.):

"Q. As I understand, the next morning after the shooting you were convinced that men of the battalion were engaged in the shooting up of the town of Brownsville.—A. In a manner similar to that in which he was. In other words, the circumstantial evidence was such that no reasonable man could think, hardly, but what some soldiers had been implicated in it.

"Q. Yes.—A. Because civilians do not usually carry around bandoliers and Government ammunition.

"Q. No.—A. (Continuing.) For one thing—that is, ordinarily.

"Q. So that no reasonable man would come to any other conclusion?—A. At that time.

"Q. And after coming to that conclusion you remained of that opinion until the men were discharged without honor?—A. Yes, sir.

"Q. When was that?—A. That was some time late in November; I think from about the 20th to the 26th of the month it took to discharge those men.

"Q. And you were continually endeavoring to find out all you could regarding this shooting, were you not?—A. I was.

"By Senator SCOTT:

"Q. You say you tried to find out who did the shooting?—A. Yes, sir.

"Q. Were you trying to find out whether somebody else than the soldiers did it, or were you trying to fix the blame on the soldiers?—A. I was in a position, stationed at Fort Reno, where we could only get one side of the story. It would be impossible to get anything else. The soldiers never volunteered any information about the townspeople doing the shooting—never claimed so. They said they didn't know who did it, but they had not.

"Q. But you did not try to find out whether somebody else did it but the soldiers. You were trying to fasten it on the soldiers?—A. Yes, sir; I was trying to find out something from the soldiers.

"By Senator FORAKER:

"Q. The question was asked you, and I do not want it to remain in that way, whether you were trying to fasten it on the soldiers.—A. No, sir; I was not trying to fasten it on the soldiers, but I was trying to find out from some of the old men of the regiment who had been with the regiment before I was born, that I knew were good old men, and would tell the truth, something to clear them.

"Q. That is, it is a fact, is it not, Lieutenant, that instead of trying to fasten it on the soldiers, you were attached to your command, as any other officer would be?—A. Yes, sir.

"Q. And that you were trying to clear them?—A. Yes, sir; that was my idea, to clear them, and if it had been any of the soldiers to punish the four or five who did it. I wanted to get hold of those who did it, to save the rest of them.

"Q. To save the rest of the command?—A. Yes, sir.

"By Senator WARNER:

"Q. And so you remained of this opinion, that a bunch of the soldiers had done the shooting up of Brownsville from the 13th of August until what day was it?—A. About the 20th of November.

"Q. The 20th of November?—A. Up until the time General Garlington came to the post and delivered the ultimatum to the troops.

"Q. What was there about that ultimatum that changed your opinion? What fact was there that could possibly change your opinion, Lieutenant?—A. It was not the ultimatum itself, but it was the effect of it. When these men did not come up and give up anybody—the names of anybody implicated in that raid—when they knew if they did not there was not any joke about it, but they all go out of the service; and I knew old men like Sergeant Sanders, that I have seen personally handle the meanest kind of a soldier, and handle him mighty well, I began right then to think there was considerable doubt about it. You could not convince me that a bad crowd could keep them from telling what they knew.

"Q. Then you came to the conclusion that Sergeant Sanders did not know it?—A. Yes, sir.

"Q. Did that convince you that nobody in the command did it?—A. I say there were number of old soldiers.

"Q. How many old soldiers did you talk to?—A. I talked to 50 or 100 of them—almost everyone I met.

"Q. And none of them suggested that the citizens had done the shooting?—A. They never said so.

"Q. Not one of them?—A. They said they didn't know who did it, but that they had not.

"Q. Did Sergeant Sanders in any talk that you had with him ever give you any fact that would indicate that the shooting was done by the citizens?—A. No, sir; he did not."

(Pages 1726-1727):

"Q. They all were. Now, so that we will have it connected, what was it that occurred when General Garlington was there?—A. Well, he conducted an investigation, and had the men in to make sworn statements, and his investigation developed nothing new, so that the battalion was brought out where he could address it; and I think that was Friday of one week, and he told them if they did not deliver up the men that did the shooting on Monday he would recommend that every one of the soldiers that was present with the battalion in Brownsville be discharged without honor.

"Q. Was there anything about that changed your opinion as to the evidence and circumstances of the shooting up of Brownsville?—A. It was the effect that it produced on the men that impressed.

"Q. That is, instead of changing your opinion, you thought the effect produced on the men would prevent you getting information?—A. No, sir.

"Q. What, then? What effect did it produce on the men?—A. When that ultimatum was delivered, and the men knew that they had from Friday until Monday, the officers got busy with all the soldiers, especially the old noncommissioned officers, and put it right up to them, and told them what was in store for them; that there wasn't any bluff or joke about this proposition; that it was a sure thing—they would go out of the service if they did not tell. And we were not able to get anything out of them. And in addition to that was the behavior of those men when they were discharged. There was no need to have a battalion of another regiment up there at all. The post had never been in better condition, better order, better discipline, the whole time previous than right during the time those men were discharged.

"Q. Is that all there was that would have an effect upon you as to who it was did the shooting?—A. All at that time; but there have been things since.

"Q. What things since?—A. Evidence brought out in the Penrose court-martial.

"Q. What evidence do you refer to?—A. I refer to the discrepancies in the testimony, in the evidence of witnesses for the prosecution in regard to distances, and whether or not they could see men on such a night as that. Also the possibility of those people in Brownsville getting hold of Government ammunition, part of which has been brought up here.

"Q. Then you still remained of the opinion, did you, practically until the Penrose court-martial evidence?—A. Yes, sir; it impressed a doubt upon my mind. I thought it was awfully funny that those men who were almost ready for retirement allowed themselves to be discharged without honor from the service simply to hide a bunch of criminals, if they were among them.

"Q. What did you say about their getting Government ammunition at Brownsville—the citizens?—A. I say there is a possibility they could get it down there. It has been testified to.

"Q. What kind of ammunition; Springfield ammunition?—A. Yes, sir; any kind.

"Q. How could they? What was the possibility of their getting Springfield ammunition down there?—A. Well, there was ammunition left in the barracks down there. That has been testified to, I understand. Sergeant Osborn found some there when the Twenty-sixth Infantry left. Then it would have been a possibility to get those shells out of that box on the porch of B Company barracks.

"Q. That is a possibility?—A. Yes, sir.

"By Senator FORAKER:

"Q. I will ask you a question or two. I understood you to say that the conduct of the men, when the ultimatum was put to them by General Garlington, had an effect upon your mind as to whether they were guilty or not?—A. Yes, sir.

"Q. By that you mean to refer to the fact that they did not tell anything when they were informed by him and by the officers of the battalion that unless they did tell who the guilty parties were they would be discharged without honor and lose all the rights they acquired by their long service, but still they refused to tell anything, and still insisted that they did not know anything; and that had an effect on your mind, did it not?—A. Yes, sir.

"Q. That is, you could not understand why old soldiers like those to whom you have referred would suffer that kind of loss and disgrace for the sake of saving, if they knew of them, a few guilty culprits among their number?—A. That is the idea, exactly, sir.

"Q. Now, I will ask you if it was not assumed, from the very moment that these shells were exhibited to Major Penrose by the citizens of Brownsville, that soldiers were guilty, and if all efforts to find the guilty parties were not confined to finding them among the soldiers?—A. Yes, sir.

"Q. Was there any effort at all to find anybody but the soldiers guilty of the firing?

"Q. Senator WARNER. By whom?

"Q. (Continuing.) By anybody connected with the battalion, or by anybody else of whom you have knowledge?—A. No, sir; there was none that I know of.

"Q. I will ask you if that was not the assumption on which Major Blockson proceeded in all his investigation, and also the assumption upon which General Garlington proceeded in all his investigation?—A. Yes, sir.

"Q. And if that was not the assumption on which all the officers of the battalion proceeded in their investigations from that time on?—A. Yes, sir."

THE PURDY TESTIMONY.

When the testimony taken by the citizens' committee of Brownsville immediately after the firing was printed and submitted to the Senate it seemed insufficient to show that the men of the battalion had done the firing. This being pointed out, the President directed Major Blocksom to return to Brownsville, accompanied by Assistant Attorney-General Purdy, to take more formally and under oath all such testimony as might be available in regard to the shooting affray, with special reference to the question whether the soldiers had participated in it.

Acting under this order, Major Blocksom and Mr. Purdy took a great many affidavits of the citizens of Brownsville, detailing their personal experiences at the time of the shooting affray and narrating what they respectively witnessed.

This testimony so taken was submitted to the Secretary of War, who in turn submitted it to the President, with a report as to the nature of it, and thereupon the President sent the same to the Senate, where it was ordered printed, together with other literature bearing on the same general subject, as Document No. 155, part 2.

All this testimony—that taken by the citizens' committee and also that taken by Major Blocksom and Mr. Purdy—was ex parte, without any opportunity to the soldiers to be present or to be represented, to cross-examine, or put to the test in any way whatever the statements made by the various witnesses.

CONCLUSIONS OF THE PRESIDENT AND SECRETARY OF WAR.

Upon this testimony the Secretary of War and the President seemed to feel perfectly satisfied that it had been established beyond any reasonable doubt that certain soldiers of the battalion had done the shooting, and that in all probability many other members of the battalion had knowledge of the guilty parties. They reached this conclusion in the face of the fact that every soldier of the battalion had stated under oath that he had no participation whatever in the shooting and had no knowledge whatever as to who did the shooting, and in face of the further fact that, although the officers of the battalion and the officers of the Inspector-General's Department had made the most diligent inquiries and the most careful and persistent efforts to discover the guilty parties, not a clew had been found to indicate who in the battalion, if anyone, had participated in the shooting, and notwithstanding the further fact that all the officers had stated under oath that they found all their men present or accounted for when the companies were formed in response to the call to arms, which was sounded while the firing was still in progress; and notwithstanding the further fact that as soon as Major Penrose learned from Mayor Combe that his men were charged with the shooting he directed that his officers again verify their men, and verify their guns, and verify their ammunition, and that as soon as it was light enough to see they made a careful inspection of the guns to ascertain whether or not any of them had been fired that night, with the result that again the officers found every man present or accounted for, every gun free from any indication of having been fired, and every cartridge accounted for—not a single one missing.

ACTION OF THE PRESIDENT.

Upon the testimony so taken and the various reports made to him, the President found that the raiders were soldiers from the garrison and that, in view of the manifest impossibility of the raiders keeping all knowledge of their identity from their comrades, many if not most of the men of the battalion, knew who the guilty men were, and that inability to get any evidence or even clew to show who they were was due to a "conspiracy of silence," on account of which all had been properly discharged without honor under the following order:

THE WHITE HOUSE,
Washington, November 5, 1906.

The SECRETARY OF WAR:

I have read through General Garlington's report, dated October 22, submitted to me by you. I direct that the recommendations of General Garlington be complied with, and that at the same time the concluding portion of his report be published with our sanction as giving the reasons for the action.

THEODORE ROOSEVELT.

The following is the recommendation of General Garlington referred to in the above order:

"I recommend that orders be issued as soon as practicable discharging, without honor, every man in Companies B, C, and D of the Twenty-fifth Infantry, serving at Fort Brown, Tex., on the night of August 13, 1906, and forever debarring them from reenlisting in the Army or Navy of the United States, as well as from employment in any civil capacity under the Government. In making this recommendation I recognize the fact that a number of men who have no direct knowledge as to the identity of the men of the Twenty-fifth Infantry who actually fired the shots on the night of the 13th of August, 1906, will incur this extreme penalty."

Doubtless the reports of Major Blocksom and General Garlington as to what, in their opinion, the testimony established, had as much, if not more, to do than the testimony itself with creating in the mind of the President the belief upon which he acted. Running all through the reports of these officers there are evidences in their statements that they were from the first of the opinion that the men were guilty, and that proceeding upon such assumption everything in their favor was minimized and everything that indicated guilt was magnified.

Major Blocksom, in his report made a few days after he reached Brownsville, August 29, commenced with an unqualified statement that the trouble was caused by the soldiers of the Twenty-fifth Infantry; "that there was no doubt Mrs. Evans was seized by the hair and thrown violently to the ground by a tall negro soldier," a statement that has not, down to this moment, received the support of any sworn testimony; that he was sure the three shots that went through Mr. Yturria's house came from a point near the center of B Company's upper back porch; that Stark's house was shot into, "evidently mistaking it for Tate's house," which was adjoining; that "the raiders were soldiers of the Twenty-fifth Infantry can not be doubted"; that the call to arms was sounded by order of the sergeant of the guard "probably too early during the firing to be genuine," although he should have known, if he did not know, that it was sounded by order of Major Penrose; that "it must be confessed the colored soldier is much more aggressive in his attitude on the social equality question than he used to be."

When the evidence upon which these statements were made was carefully analyzed, it was found utterly insufficient to warrant such conclusions. Nevertheless he embodied in his report the following recommendation:

"If satisfactory evidence concerning the identity of the criminals does not come from members of the battalion before a certain date, to be fixed by the War Department, I recommend that all enlisted men of the three companies present on the night of August 13 be discharged the service and debarred from reenlisting in the Army, Navy, or Marine Corps."

Without stopping to review in detail General Garlington's report, it is sufficient to say that in his testimony before the committee he frankly admitted that he entered upon it assuming that the men were guilty, and that all he did was for the purpose of disclosing if he could who the guilty soldiers were. At no time did it occur to him that by any possibility anybody other than the soldiers could have done the shooting. The general character of his report and his general testimony on the subject may be inferred from the following:

Page 2746:

Brig. Gen. Ernest Garlington (Vol. III, p. 2746):

"Q. Just one other thing. You said a while ago that you would not believe these soldiers without corroboration—would not believe any of them who denied that he had participated in the shooting, or that he had knowledge of the shooting. I understand that, in effect, to be your statement.—A. That is substantially what I stated. I did not state that I would not believe any of them who denied participation, because I believe that there are a great many of those men who did not participate."

"Q. You would not believe any of them who denied having knowledge as to who did the shooting?—A. Not without corroboration; no, sir; now.

"Q. If anyone would come forward and tell you that he knew who did the shooting would you believe him?—A. Not unless he had corroboration.

"Q. Not without corroboration?—A. No, sir.

"Q. You would not believe him either way?—A. No, sir.

"Q. If any man would come forward and say that he shot up the town, or that he knew that this, that, or the other man did it, who was a member of the battalion, you would believe him then?—A. No; I would not accept any one man's information or statement as to another who did the shooting. In other words, I think that the condition now is that you can not get the truth from those people about the Brownsville incident. That is the general proposition that I make.

"Q. You said that was the case when you were there, too, didn't you?—A. After I talked to them a while.

"Q. Well, I say you came to that conclusion?—A. Yes, sir.

"Q. And yet that is the very thing you were trying to get out of them, and the very thing you recommended that they be dismissed for, because they would not tell you who it was that did it?—A. Yes, sir.

"Q. You stood ready, then, to believe any man who would come forward and say, "I did not do it, but somebody else did it?"—A. I stood ready to follow up any clew that any of those men gave me, and then to pass my opinion upon what I found.

"Q. But you would not have believed them without corroboration?—A. No, sir.

"Q. None of them? How long have you had such a disparaging opinion of the veracity of colored men?—A. I did not say that of colored men. I am talking about the Brownsville battalion.

"Q. Do you think colored people, generally, are truthful?—A. No, sir; I do not.

"Q. You do not?—A. No.

"Q. You would not believe their testimony ordinarily, even under oath, would you?—A. Where their own interest or some special interest was concerned. It depends entirely upon the circumstances.

"Q. You think a colored man might testify truthfully about the weather, but that he would not testify truthfully about a crime?—A. He might have some difficulty in testifying about the weather.

"Q. Just now he would, but if he were testifying about a crime that he was charged with, or that some of his comrades were charged with, you would not believe him?—A. Not without corroboration."

MOTIVE.

The motive for the crime was thought to be, although there was no such testimony, to visit revenge on the community indiscriminately for the hostile feeling of the citizens and their treatment of the soldiers as to saloons, in the Tate affair, and in the other less important altercations. It does not seem to have occurred to those making this claim that a lot of hoodlums such as usually engage in such affrays may have had as their motive a purpose to get rid of the negro soldiers. It is unnecessary to speculate beyond what may be involved in the question as to the guilt of the soldiers. If it were not, other suggestions might be made as to the possible motives of the raiders if they were not soldiers.

II. CHARACTER OF THE TESTIMONY.

The testimony against the soldiers may be divided into two classes: (1) That of so-called "eyewitnesses," and (2) that which was circumstantial and confirmatory.

THE EYEWITNESSES.

The "eyewitnesses" were citizens of Brownsville. It was natural for them to share the prejudices that had been aroused against the soldiers and to jump to the conclusion that they were doing the shooting. In this way can be accounted for the belief most of them expressed that the soldiers did the shooting and that they saw enough to satisfy them of that fact. But aside from all this their testimony is manifestly unreliable. In the first place because enough is shown as to most of them to make it clear that they were not able to see as claimed because of the darkness of the night and the general situation.

Major Blocksom said in his first report (S. Doc. No. 155, pt. 1, p. 63):

"None of the individual raiders was recognized. Streets are poorly lighted, and it was a dark night. Those who saw them were busy trying to keep out of sight themselves."

Without taking up the testimony of each witness in detail, it is enough to say that in a general way all testified that hearing the firing they rushed to the windows of their respective houses, looked out into an unusually dark night, and claimed to see men moving through the streets and alleys at the places of the firing, carrying guns like those used by the soldiers, and wearing soldiers' uniforms, and that in this way, while they could not identify any individuals, they did recognize

the firing party as soldiers. The distance at which these witnesses, respectively, saw what they related and recognized the raiders as soldiers vary all the way from 30 feet up to 150 feet and more, and in no instances, except those hereafter specifically mentioned, were any of these witnesses aided by any kind of artificial light.

The general question is, therefore, whether the darkness was of such character as to make it impossible for them to see with such distinctness as would enable them to testify as they have.

A DARK NIGHT.

The testimony establishes beyond question that while it was a starlit night, yet it was unusually dark. A number of instances are testified about to illustrate the character of night and the effect of the darkness upon the vision.

Captain Macklin says (p. 3127):

“By Senator FORAKER:

“Q. Now, can you recall any circumstances that will indicate the darkness of the night, any experience that you had, meeting men, or the difficulty you had in recognizing men?—A. Yes, sir; I had several personal experiences that night. After Major Penrose put my company on a chain of sentinels it was necessary for me to visit those sentinels, and at the upper end of the garrison, extending beyond the garrison wall, I had several posts, just how many I have forgotten now, and in one or two instances I could not find them, and had to call out to them to locate them; and in those cases I found the men within 10 or 15 feet of me.

“Q. How far away from you, according to your recollection, could you distinguish the kind of clothing the men were wearing, if you could see them, as to whether they wore uniforms or not?—A. Well, I should say 10 or 15 feet, Senator; not over that.

“Q. You would not think it possible to tell whether the men you might see were white men or negroes, at a distance of a hundred feet away in the dark?—A. I don't believe you could tell it at 15 feet; in fact, on those visits there that I went on I carried my revolver in my hand.

“Q. All the time?—A. Yes, sir.

“Q. And you could not tell whether they had on yellow uniforms or not?—A. You could not see at all. Everything was just a blank.”

(Page 3130):

“By Senator FORAKER:

“Q. Did you have anybody in your company who was so marked with freckles or spots of any kind on his face as to be noticeable?—A. No, sir; I did not. Nearly all the men of our battalion were pretty dark. There were a few light ones, but I don't remember any of them that had freckles.

“Q. Was it possible, remembering the darkness of that night, to see freckles or spots on the face of a man any distance away from you?—A. No, sir; I do not think so. I do not believe, in fact, I am very certain, that you could not have told a white man from a colored man 10 feet away.”

Captain Lyons says as to darkness of night (p. 3154):

“By Senator FORAKER:

“Q. Can you give us any illustration—can you relate any incidents that came within your personal experience that night, or under your observation, that will enable us to judge how dark it was; I mean any incident that would indicate whether you had difficulty or otherwise in distinguishing persons or objects?—A. I remember that after the company was formed Major Penrose called over to me and asked me if my company was formed. I said that it was. He came over from the direction of B Company barracks—my company—and he had to get very close to me, then, before I could see who it was. Also, in calling the roll I had to use a lantern when the men were behind that wall in order to distinguish who each man was.

“Q. Can you tell us how far away, without the aid of any artificial light, you could distinguish whether men were white men or colored men?—A. I should think about 10 feet would be the maximum.

“Q. At what distance could you distinguish whether they were clothed in uniforms or other kind of clothes?—A. Of course this is only my opinion.

“Q. Yes.—A. I should say about the same distance.

“Q. Do you think you could have told whether a man was a white man or a black man, or whether he was in uniform or in citizen's clothing, at a distance of 25 or 30 feet away?—A. I do not, sir.”

Lieutenant Lawrason says, as to darkness of night (p. 3146):

“By Senator FORAKER:

“Q. That is all on that point. Now, Lieutenant, can you recall any incident that happened the night of the 13th, after the firing commenced, that would enable you to give us, by relating it, an idea of how dark it was? What difficulty did you have, if any, in recognizing men or objects?—A. I recollect it was a dark, starlight night—that is, there was no moon; the only light was starlight—there was no clouds in the sky, though—and I came quite close to several men without recognizing them. I remember I passed a man who had been sent over to my quarters to awaken me, as I went out. I ran past him, and he recognized me, I suppose; I did not recognize him, and he called after me when I had passed, and I turned back and he gave me his message.

“Q. How close were you when you passed without recognition?—A. I believe we were inside of 6 feet, sir.

“Q. Six feet?—A. I believe about 4 or 5 feet away.

“Q. Do you recall any other instance similar to that that would show the difficulty you had in recognizing men or objects?—A. No particular instance, sir. I recollect that I had some difficulty in recognizing some of the men when posting them around, and some of the noncommissioned officers when posting reliefs.

“Q. It was so dark, in other words, if I understand you, that you had to be close to a man to recognize him?—A. Yes, sir; go by his voice and general appearance. I knew most of the men.”

Lieutenant Grier, as to character of night (p. 1735):

“Q. As to the character of this night; it was a dark night?—A. Yes, sir; a dark, starlit night.

“Q. So that when you met the sergeant, you could not tell who he was until he got within a very few feet of you?—A. About as close as I am to you.

“Q. So that it may be in the record—that is about how far?

A. About 5 or 6 feet.

“Senator SCOTT. It is nearer 9 feet.

“Senator WARNER. We are doing this.

“Senator BULKELEY. It is more than 6 feet.

“Senator SCOTT. Say 9 feet.

“By Senator BULKELEY:

“Q. When you met a man on the parade ground at that distance, could you tell whether he was a white man or a black man?—A. I could tell that he was a soldier, because he had khaki on; but I could not see his face until he got right up close to me.

“Q. At that distance you could not tell, on the parade ground, whether he was a white man or a black man?—A. No, sir; I could not tell, sir.”

Major Penrose says as to night being dark (pp. 3017, 3018, 3019, 3020, 3021, 3023):

“By Senator FORAKER:

“Q. Could you recall any incident, which you could relate to us, which would indicate how dark it was?—A. Yes, sir; I could not tell one of my own officers over 10 feet away.

“Q. You could not tell one of your own officers?—A. No, sir.

“Q. That you remember very distinctly?—A. Very distinctly.

“Q. It was as dark as that?—A. It was as dark as that. I remember in walking up and down the line where the men were all posted, and I recall it when Hairston came to my house.

“Q. Hairston?—A. Yes, sir.

“Q. He was the sentinel?—A. Yes, sir; No. 3 around the line of officers' quarters. He came around to my quarters, and I almost ran into him when I came out of the door, and I could not distinguish who the man was at all, and I did not know until the next morning at 9 o'clock, when I inquired.

“Q. You did not know who he was?—A. I say I ran into him, brushed against him, as I came out of the house. Of course I did not look particularly to see who it was. And in walking up and down the line I had to go very close to the officers to tell whether they were white men or colored men.

“Q. Now, I call your attention to the corner of Fourteenth and Washington streets. I am pointing to it [indicating on map]. State whether or not one standing at that corner and looking down Fourteenth street could see men crossing Fourteenth street on the Cowen alley, and see them distinctly enough to count them and tell what kind of clothing they were wearing, and whether they were white men or colored men, without any artificial light and aid. Could one do that?—A. I do not think it is possible, sir.

“Q. Yes.—A. I do not think it is possible.

“Q. Now, I will ask you whether or not, standing in the window in the second story of the Leahy House, and looking out across Fourteenth street and across the alley to the place to which I now point, namely, the side of the alley opposite the Cowen house, one could see that night distinctly enough without any artificial light to recognize men and determine whether they were white or colored and how they were dressed?—A. I do not think so, sir.

“Senator PETTUS. Say, by the flash of the guns.

“By Senator FORAKER:

“Q. Well, by the flash of the guns?—A. No, sir; you could not by the flash of the guns.

“Q. Now, tell us whether or not the flash of the guns would aid in that?—A. I do not think at all. It is so instantaneous, so slight, that I do not think you can distinguish anything by the flash of the gun.

“Q. Could one, looking out of the upper story of the telegraph building, at the corner of Elizabeth street and Garrison road, for instance, see people clambering over the wall up about the mouth of the Cowen alley?—A. No, indeed, sir. No, sir; they could not.

“Q. There are no lights in there in that locality at all, are there?—A. No, sir; there was a light at the gate.

“Q. What kind of a light was that?—A. An oil lamp.

“Q. An oil lamp?—A. Yes, sir; I couldn't tell you how many candle-power; I don't know.

“Q. At the gate. That is 130 feet from the mouth of the Cowen alley, is it not?—A. About that, I believe, sir. But I was going to say this, Senator: There is an oil house I intended to tell about in here [indicating on map].

“Q. Yes; where is that?—A. About between the figure '4' and the letter 'F' [indicating on map].

“Q. Right in there?—A. Yes, sir.

“Q. With reference to B barracks?—A. Yes, sir; it is shown in one of the pictures attached to Mr. Purdy's report. Now, it had been raining and was quite muddy.

“Q. It had been raining?—A. Yes, sir.

“Q. And it was quite muddy?—A. Yes, sir; and from the light here I could see there was a mud puddle about there [indicating on map].

“Q. How far is that point from the gate?—A. I presume that is 40 feet, maybe 30 or 40 feet. Now, I am guessing, gentlemen; I do not know absolutely.

“Q. There was a mud puddle there?—A. There was a mud puddle there I could see. When I went down the line, I went around this mud puddle, and went right in behind it to inspect these men along the fence, and I got in this mud puddle right around east of this oil house, that I didn't see at all. I got in water that came over the lacings of my shoes.

“Q. You got in it before you knew it was there?—A. Yes, sir; before I knew it was there.

“Q. And you were looking where you were going?—A. Yes, sir.

“Q. State whether or not you could see the men posted as sentinels there.—A. I could not until I got out beyond the oil house. I could not until I got close to them.

“Senator TALIAFERRO. Does the witness understand that a number of witnesses have testified that they did see these men under the conditions which you are describing?

“Senator FORAKER. I have not recited that to the witness, but I have no objection to doing it if it is desired, at the request of Senator TALIAFERRO.

“By Senator FORAKER:

“Q. At the suggestion of Senator TALIAFERRO, I will say to you that a number of witnesses have testified—Mr. and Mrs. Rendall have testified—that they saw people assembling up near or opposite the mouth of the alley; saw them going over the wall at about that point—I can not give the exact language from recollection—and Lieutenant Dominguez testified that he looked down from the corner of Washington and Fourteenth streets, along Fourteenth street, and saw two squads of soldiers of four men each cross Fourteenth street, in the alley, and recognized their uniforms, and that they were colored soldiers. Now, knowing that that has been testified to—

“Senator SCOTT. Mrs. Leahy testified that she saw sixteen.

“Senator FORAKER. I am going to speak of that.

“Q. (Continuing.) Knowing that these witnesses have testified to these things, does that change your belief?—A. No, sir; it does not.

“Q. Mrs. Leahy has testified, as nearly as I can recall her testimony, that she looked out of her second-story window and saw sixteen men come up the alley and cross Fourteenth street after doing a lot

of firing in that neighborhood, and she describes them with great accuracy, as to their clothing, and so forth. Would the fact that she so testified change the opinion that you have given, that they could not see them?—A. No, sir; I think they are mistaken.

“Q. Mr. McDonald testified that he stood at the corner of the alley, the mouth of the alley, and looked down Fifteenth street and saw men about the gate, about the telegraph office, I think, opposite the gate, and that they divided there, and some went up Elizabeth street, but some came up to the alley and turned down the alley, and after they turned down the alley he came to the corner and looked down and saw them firing into the Cowen house, and he said that he could recognize them and distinguish that they were soldiers. Do you think he could do that?—A. I do not, Senator.

“Q. Mrs. Leahy testified not only that she saw sixteen men, but that she saw two of the men so distinctly that she could describe them accurately, one as a very dark negro and the other as a mulatto, with spots all over his face.—A. At what distance, sir?

“Q. He was in the alley, somewhere about the alley and Fourteenth street, somewhere about that corner, and she was upstairs in her house.

“By Senator SCOTT:

“She testified, when I asked the question, 35 feet.

“Senator FORAKER. She said 35 feet, but it was evidently 60 feet [indicating on map].

“Senator WARNER. I submit that we should go by the evidence.

“By Senator FORAKER:

“She said that she should judge it was about 35 feet. Do you think she could?—A. I do not, gentlemen. My recollection of that night is very, very distinct.”

If these witnesses were correct in their description of the night and the effect of the darkness upon the vision, then it was impossible for any of the witnesses who testified about seeing the soldiers without the aid of artificial light to have seen them with any such distinctness as to make their testimony at all reliable. All such testimony may be dismissed without further comment.

TESTIMONY OF PRECIADO.

Paulino S. Preciado testified that he was at the Tillman saloon and that he saw the men who fired the volley that killed Frank Natus under the light of the lamps that were shining in the court, and that he could see distinctly how the men were armed and how they were uniformed, and that he recognized them positively as soldiers. His testimony is that they stepped through the open gateway leading from the alley and advanced into the courtyard the distance of “two or three paces,” where he could see them distinctly. If this statement were uncontradicted and unimpeached much might be claimed for it, but it is impeached and contradicted, in the first place by the testimony of Preciado himself given before the grand jury, where he stated:

(Page 2341.)

GRAND JURY ROOM, September 10, 1906.

Paulino Preciado, being duly sworn, deposes and says:

“I live in Brownsville, Tex. On the night of the shooting I was in the Ruby saloon, belonging to Mr. Tillman, near midnight. We—myself, Antonio Torres, Nicolas Sanchez Alanis, and Mr. Tillman—were sitting in the yard, when we heard some shots. Tillman got up at once and left us. We remained with the bartender, Frank Natus: the latter closed the doors toward the street; in the meantime the shooting became heavier. Then the bartender went to close the door towards the alley. He went about 20 feet towards the door, when a volley was fired. Natus exclaimed, ‘Ay Dios,’ and fell down: I saw him because I was looking in that direction when the shots were fired. I saw I was in danger and went to one side. I could not see anybody in the alley, as it was dark out there and I was in the light. I heard no word spoken. I hid in a corner where a brick wall protected me until the shooting was over, then I went to close the alley gate. While I was in the corner I received a slight flesh wound on the left hand, and another passed through my coat and vest, breaking my spectacles, which I carried in the left breast pocket of my coat, but did not hurt me. I think I received the shots at the time Frank Natus fell, but did not notice it at the time. When the shooting was over I went and opened the front door and asked the crowd of people who were there if there was an officer amongst them. Mr. Victoriano Fernandez came forward, and I told him what had happened.

“(Signed)

PAULINO S. PRECIADO.”

Sworn to any subscribed before me this 10th day of September, 1906.

WM. VOLZ,
Foreman Grand Jury.

The contradiction by this witness in his testimony as given before Mr. Purdy and as given before the grand jury so thoroughly discredited this witness that Secretary Taft addressed to the President the following letter:

“WAR DEPARTMENT,
Washington, January 14, 1907.

“MY DEAR MR. PRESIDENT: In my letter transmitting the additional evidence in the Brownsville case I had occasion to comment on the circumstances which impaired the weight to be given to the evidence of Paulino Preciado, in which he stated that he saw the four or five men who killed the barkeeper and recognized them as negro soldiers, admitting on examination that he had not made such a statement before, explaining it by saying that he was not asked. Since sending you the evidence and my letter of transmittal, I have come across what purports to be, and what I believe to be, a copy of a report of Preciado’s evidence before the grand jury, which expressly contradicts and impeaches his evidence upon this point. I ask that this be forwarded to the Senate with your message and the other papers.

“Very respectfully,

“WM. H. TAFT, Secretary of War.

“The PRESIDENT.”

EL PORVENIR.

It is further impeached and contradicted by his statement of the occurrences of that night published two days afterwards in his newspaper, *El Porvenir*. We quote as follows from that statement:

[Translation of an article written in the Spanish language and published in *El Porvenir*, issue of August 16, 1906, a newspaper published in Brownsville, Tex. Translated by J. M. Sheridan.]

“UNHARDED AND UNQUALIFIABLE ASSAULT MADE BY COLORED TROOPS ON SEVERAL HOUSES IN THIS CITY THE NIGHT OF THE 13TH AND 14TH OF AUGUST, 1906—ONE DEAD—WOUNDED.

“About 11:30 p. m. last Monday several shots were heard in this city in the direction of the barracks (cuartel).

“Some saloons (cantinas) on Elizabeth street closed their doors, and the shots continued to increase, creating a sensational alarm.

“The audaciousness of the troops was unheard of, savage, criminal. The number of soldiers who fired into buildings and homes is not known, although it is affirmed that there were 65.

“They scattered through the center of the city and kept up a steady fire.

“Señor Ignacio Dominguez, Lieutenant of police, in the performance of his duty repaired to the point where the firing commenced and received two shots in the right hand and had to have his arm amputated.

“He also lost the horse he was riding.

“Señor Macedonio Ramirez Prieto, employed in attending to the city lights, had his hat shot off.

“The editor (director) of *El Porvenir*, in company with Messrs. Nicolas Sanchez Alanis and Antonio Torres, had just arrived at Señor Tillman’s saloon (cantina) when the shooting commenced. The proprietor of the saloon immediately came out into the street, and a young man employed in the establishment, named Frank Natus, proceeded to close the doors opening on the street (calle).

“Immediately afterwards he started to close the side street entrance (zaguan del callejón), but he hadn’t taken more than five steps when a volley of six or seven shots was fired through the entrance (zaguan), one of which, piercing his heart, caused him to fall, whereupon he cried out ‘Oh, God,’ and died instantly, his body lying close to the curbstone of the well (brocal del algibe).

“The writer was slightly grazed by a bullet on the left hand, and another commenced by destroying some receipts in his breast pocket, broke a pair of eyeglasses, and penetrated his coat and vest, but did not wound him in the chest or elsewhere.

“These three gentlemen sought cover in different parts of the house, and after observing profound silence for a few minutes Preciado sought his companions, Señor Torres being first to respond. The former said he was wounded, as he was bleeding, and an examination was made to see if he had received any other wounds. No other injury having been discovered, he went to close the side entrance (zaguan), whereupon Sanchez Alanis warned him not to expose himself. However, as no confusion or noise was heard in the side street Sanchez Alanis (este) assisted him in closing the door.

“The three then assembled in the saloon (cantina), commenting upon the case and awaiting the proprietor; but as he was slow in coming, Preciado opened one of the street doors (una puerta de la calle) and called to a group of people standing in front of the saloon (cantina) known as ‘La International,’ telling an employee to make known what had happened to the young man, Frank Natus.

“The people composing the group came over to look at the corpse, which was left lying on the ground until a justice of the peace could be sent for.

“Employees of the city and of the county and private persons gathered and about 2 o’clock in the morning we (the writer?) started to our house, people being everywhere on the lookout.

“The American element is indignant over the conduct of the colored troops, for those troops of the United States, paid and maintained by the nation, and armed to serve as a guaranty and inspire respect, have committed an offense which must be rigidly curbed, as it was a criminal act.

“The majesty of the law, the dignity of our citizens, and the peace of our families demand that steps be taken without loss of time to punish this outrage and later ask that the troops be relieved, to the end that we have in Brownsville the guarantees that are now wanting.

“Through an act of Providence we (the writer) are still alive, and we avail ourselves of this occasion to thank all who so kindly inquired after our health, for the first report was to the effect that our wound was serious.”

PRECIADO’S CLAIM FOR DAMAGES.

His statement is further discredited by the fact that at the time when he testified he was asserting a claim against the United States for damages for personal injuries he had sustained on the ground that they had been inflicted by the wrongful conduct of the soldiers of the United States. It was absolutely necessary to his damage case when he testified, as well as in the prosecution of his claim, that he should establish as a fact and beyond any question that it was the soldiers who did the shooting.

BULLET FOUND IN CRISELL POST.

But finally he is contradicted conclusively by the fact established beyond any question whatever that one of the shots that was fired through the gateway leading from Tillman’s premises into the alley at the time when Natus was killed passed on through the open door into the front room and then through the window of the front room and across the street, where it lodged in a post in front of Crixell’s saloon, from which subsequently it was bored out by Lieutenant Leckie and found to be a bullet without any steel jacket and of a different composition from that of any of the bullets used by the soldiers; in other words, a bullet such as the soldiers could not have fired from their rifles.

An analysis by Doctor Hillebrand shows that it was composed of—

Lead	96.36
Tin	2.05
Antimony	1.29

This composition does not correspond to that of the guard cartridge. The composition of that bullet is—

Lead	90.00
Tin	8.50
Antimony	1.50

The tin and antimony of the guard cartridge bullet combined is in proportion to the lead as 1 to 9, while the analysis shows that the composition of the bullet bored out of the Crixell post is tin and antimony combined, 3.34, lead 96.36, or almost exactly 1 part of tin and antimony combined to 29 parts of lead; or, in other words, the tin and antimony combined in the guard cartridge bullet amount to practically three times the quantity of tin and antimony combined in the bullet that was cut out of the Crixell post.

Neither does it correspond to the composition of the bullets made by the Union Metallic Cartridge Company in which antimony was used, for in those bullets the proportion of antimony was 2 per cent.

While in weighing the result of an analysis there must always be an allowance for slight variations, there is no ground for the allowance of any such gross variation as must be assumed to justify the claim that this was either a guard cartridge bullet or a U. M. C. bullet of the antimony variety.

But that this was not a guard cartridge bullet, the testimony is absolutely conclusive. Each company had issued to it only 650 rounds of

this kind of ammunition. The testimony shows that each of the companies had every round of this ammunition, not only after the firing, but also when they were finally discharged, and all their ammunition was turned in at Fort Reno in November, 1906, except 5 rounds, belonging to Company D, which were fully accounted for by Captain Lyon.

At pages 273, 274, and 275, Volume I of the record, will be found the ordnance returns for Company C. At page 273 is found the report made at Fort Niobrara, Nebr., June 30, 1906, which shows that the company received May 14, 1906, 650 ball cartridges, reduced range (or guard cartridges), and that at the time of the report there were remaining on hand of these cartridges 650.

On page 274 is found the return for this company, dated at Fort Reno, Okla., January 1, 1907, which shows with respect to guard cartridges as follows:

On hand from last return 650
Remaining on hand to be accounted for on next return 650

Accompanying the first of these reports is the following certificate: "I certify that the foregoing return exhibits a correct statement of the public property in my charge during the half year ended June 30, 1906, and that the maximum strength of the company during the half year was sixty-five enlisted men.

"Station, Fort Niobrara, Nebr., June 30, 1906.

"(Signed) EDGAR A. MACKLIN,
Captain, Twenty-fifth Infantry, Commanding Company."

The second report is certified to as follows:

"I certify that the foregoing return exhibits a correct statement of the public property in my charge during the half year ended December 31, 1906, and that the maximum strength of the company during the half year was 65 enlisted men.

"Station, Fort Reno, Okla., January 1, 1907.

"(Signed) EDGAR A. MACKLIN,
Captain, Twenty-fifth Infantry, Commanding Company."

In his testimony at page 1771, Captain Macklin was interrogated as to these reports and testified as follows:

"Q. I was going to call your attention to your report, so far as the ammunition is concerned. I have put into the record here at page 273 your ordnance returns, in so far as they relate to small arms and ammunition taken from the War Department. I find at the foot of this report the following certificate:

"I certify that the foregoing return exhibits a correct statement of the public property in my charge during the half year ended June 30, 1906, and that the maximum strength of the company during the half year was sixty-five enlisted men."

"That certificate was truthful and accurate, was it?—A. Yes, sir.

"Q. State whether or not the amount of ammunition shown to be in your company, and for which you were responsible, was accurately given in that return.—A. It was, sir.

"Q. As the result of actual counting?—A. Yes, sir.

"Q. And inspection?—A. Yes, sir.

"Q. I see another report by you, which is printed on page 274 of our record, dated January 1, 1907, with a similar certificate. Will you look at that report and state whether that is also accurate?—A. (After examination.) That report, Senator, is accurate as counted by my second lieutenant. I was sick in the hospital at the time that was made, and he made it and verified it and I made the return.

"Q. I call your attention to the 5,700 ball cartridges which according to that report remained on hand—the 1,100 blank cartridges, the 130 dummy cartridges, and the 650 ball cartridges, reduced range.—A. Yes, sir; that is correct.

"Q. That is correct, is it?—A. Yes, sir; that I have verified since that date.

"Q. You have verified that since that date?—A. Yes, sir.

"Q. You still have that amount on hand?—A. Yes, sir.

"Q. And you had that amount of ammunition in your company the night of August 13, 1906, did you?—A. Yes, sir.

"Q. Captain, can you tell us what kind of ammunition your company was supplied with on the night of August 13, 1906?—A. Yes, sir; with the cartridge known as the 'guard' cartridge.

"Q. The one I last called your attention to on the return?—A. Yes, sir.

"Q. That is the reduced range cartridge?—A. Yes, sir.

"Q. How many of those did you have in the company?—A. I had 650 rounds.

"Q. When did you get those 650 rounds?—A. I got them a year ago this last March.

"Q. You got them at Fort Niobrara, along with the other ammunition?—A. Yes, sir.

"Q. You never had but 650 of those cartridges, did you?—A. That is all; yes, sir.

"Q. And your men had these cartridges in their possession on the night of August 13?—A. Yes, sir. That is the only cartridge they had.

"Q. Tell us, now, how it came that they had that kind of cartridge and no other kind of cartridge at that time, if you know?—A. That cartridge was issued by the Ordnance Department of the Army for guard duty only, and in the garrison duty it was the only cartridge that the men were supposed to carry. All other ammunition was turned in, and each soldier of my company had 10 rounds of that ammunition.

"Q. Where was this issued to your company?—A. It was issued at Brownsville.

"Q. Will your property book show that issue? The book is right before you; will it show it?—A. I think it will, sir. I can not say positively.

"Q. The property book is kept by—A. The quartermaster-sergeant.

"Senator FORAKER. I will have to recall Sergeant McMurray for that.

"The WITNESS (after examination of book). Yes, sir; here it is.

"By Senator FORAKER:

"Q. I will ask you if the property book of the company does not show that each man had issued to him guard cartridges, 10?—A. Yes, sir.

"Q. That runs the same all the way through?—A. It should run the same all the way through.

"Q. When you went from Fort Niobrara to Fort Brown, what kind of ammunition did you have?—A. We carried 20 rounds of ball ammunition.

"Q. And then when you got to Fort Brown you had that turned in and issued what?—A. In two or three days after arrival at Fort Brown the ball ammunition of my company was turned in.

"Q. Yes.—A. And I notified the men that I would make frequent inspection of lockers to see that all the ammunition was turned in, and I was satisfied within a few days afterwards that all my ammunition had been turned in.

"Q. The 20 rounds they were charged with and any surplus that might have been accumulated, of any kind, also?—A. Yes, sir.

"Q. You made that examination at Fort Brown?—A. Yes, sir; I made several inspections of it.

"Q. So that you are able to state that the night of this firing your men had no ammunition whatever in their possession except only this guard ammunition?—A. I am perfectly satisfied in my own mind; yes, sir.

"Q. This guard ammunition has, as we understand it, only about 15 grains of powder in the cartridge?—A. I don't know exactly how much, but the cartridge itself has a distinctive mark.

"Q. And it has a lead bullet, without any steel jacket?—A. Yes, sir; and it has a distinctive mark around the top part of the cartridge.

"Q. Did you or not make any examination after the firing to see whether or not your men had all this ammunition?—A. Yes, sir.

"Q. And it was all there?—A. All accounted for; yes sir.

The ordnance reports of Company B, made by Lieutenant Lawrason, at Fort Niobrara, June 30, 1906, and found at page 269, shows that 650 rounds of guard cartridges were issued to that company at Fort Niobrara May 7, 1906, and that no other ammunition of that kind was issued to it, and that it had exactly that number of these cartridges on hand at the time when the report was made, which report is certified to in the usual form.

Lieutenant Lawrason, who was in command of Company B the night of the shooting, turned over the command of that company to First Lieutenant J. A. Higgins, September 17, 1906, and on that day made a report, found at page 271 of our record, which shows that he had on hand from last return 650 guard cartridges, and that on that date he transferred to Lieutenant Higgins, with other company property, exactly 650 of these cartridges. Lieutenant Lawrason certifies to this report as follows:

"I certify that I have made a careful inventory of the various quantities of small-arms ammunition for which I am accountable, and have taken up on my return all surplus ammunition on hand, and that said return shows the actual quantities of small-arms ammunition on hand at the end of the period for which it is rendered.

"(Signed) GEO. C. LAWRAZON,
Second Lieutenant, Twenty-fifth Infantry."

He also further certifies:

"I certify that the foregoing return exhibits a correct statement of the public property in my charge during the half year ended September 17, 1906, and that the maximum strength of the company during the half year was 63 enlisted men.

"Station, Fort Reno, Okla., September 17, 1906.

"(Signed) GEO. C. LAWRAZON,
*Second Lieutenant, Twenty-fifth Infantry,
Commanding Company.*"

This report is also certified to by J. A. Higgins, first lieutenant, Twenty-fifth Infantry, commanding Company B:

"I certify that all the ordnance and ordnance stores enumerated on this return as transferred to First Lieutenant J. A. Higgins, Twenty-fifth Infantry, were this 17th day of September, 1906, received by me from Second Lieutenant George C. Lawrason, Twenty-fifth Infantry.

"Post-office address, Fort Reno, Okla.

"(Signed) J. A. HIGGINS,
*First Lieutenant, Twenty-fifth Infantry,
Commanding Company B.*"

Lieutenant Lawrason testifies to the accuracy of these reports and the certificates attached. At page 1593 he testifies specifically with respect to guard cartridges, as follows:

"Q. You had 650 of those cartridges. If you will turn to page 273 following there, you will see that Capt. Edgar A. Macklin certified that Company C had 650 reduced-range cartridges?—A. Yes, sir; I believe that is all that was issued to any company of the Twenty-fifth at Fort Niobrara.

"Q. Captain Lyon, as you will see by reference to page 278, also had 650 of these cartridges. That is correct, then, is it?—A. Yes, sir.

"Q. I have called your attention to this with particularity because you stated you thought you had only a thousand rounds of these cartridges. In fact, you had exactly 650 rounds, did you not?—A. Yes, sir.

"Q. And you did not use any of it at all—that is, you did not expend any of it while you were in command of the company?—A. No, sir; none of that was expended."

He further testified, at page 1593, that the next day after the firing he took up the ball ammunition and issued the guard cartridges to his men, 20 rounds to each man as far as it would go. Having only 650 rounds, there was not enough to supply each of his men. Those who did not receive ammunition of this character he supplied with ball ammunition. His testimony on this point is as follows:

"Q. On the morning of the 15th, when your company came off duty, you say you took up this ball cartridge to some extent and issued guard cartridges in place of the ball cartridges. That is what I understood you to say?—A. Yes, sir.

"Senator WARNER. He took up all the ball cartridges.

"Senator FORAKER. No; he said he took up a part.

"Senator WARNER. How was that, Lieutenant?

"The WITNESS. I do not believe I had enough guard ammunition to go around. I had 20 rounds of ammunition to a man.

"By Senator FORAKER:

"Q. That is the way I understood it. You took up your 20 rounds of ball cartridges and then issued the guard cartridges, 20 rounds to each man, as far as it would go?—A. Yes, sir.

"Q. And then placed out to the others, who did not receive the guard ammunition, with the ball cartridges?—A. Yes, sir.

"Q. And you continued to have only that kind of ammunition until you got ready to leave there?—A. Yes, sir.

"Q. Please state, Lieutenant—we are not interested beyond that—whether, when this exchange of ammunition was made on the morning of the 15th, you examined the ammunition to see whether each man had all of his cartridges or not; whether or not each man's ammunition was checked up and found to be intact?—A. Yes, sir; it is my recollection that when the ammunition that was issued the night before—that is, on the night of the 13th—was turned in each man's ammunition was checked up, and it was seen that he retained in his possession only 20 rounds.

"Q. That was done, then, on the morning of the 14th?—A. I do not recollect for certain the date, but I remember—

"Q. But you do remember distinctly that each man's ammunition was checked up, do you not?—A. Yes, sir.

"Q. And it was found to be accurate, to a cartridge, was it not?"

A. Yes, sir."

The ordinance returns for Company D made by Captain Lyon, found at pages 276 and 278, show that 650 guard cartridges were issued to his company May 7; that no others were ever issued to it, and that he had all of them on hand when he made his return at Fort Niobrara, June 30, 1906, and that he had remaining on hand 645 when he made his return December 31, 1906, and that the five missing cartridges were expended long after the date of the affray, as set forth in statement made by him on muster and pay roll, to the accuracy of which he certifies in the usual form.

No extra ammunition of this kind was at any time accessible to either of these companies, so they had no opportunity to secure additional ammunition of this kind. Had any of it been used, even a single cartridge, that fact would have been developed when the ammunition was verified after the firing, as well as at the time when it was returned to the Government when the soldiers were discharged at Fort Reno.

Aside from this positive proof by which every such cartridge was accounted for, there is, in favor of the soldiers, the utter improbability that if they shot up the town they would have used on such an occasion guard cartridges with only 15 grains of powder, not designed for offensive operations, instead of their regular ball cartridges with 40 grains of powder, with which Companies B and D were already supplied, and from which companies, if there was a conspiracy as claimed, a supply might have been obtained for any men of Company C who might have participated.

The testimony shows that one trouble in promptly forming Company C and placing it in position that night was due to the fact that the men were unwilling to go to their position behind the wall for the defense of the reservation, which they supposed was being attacked, until they could be given ball ammunition.

At page 692 Lieutenant Grier, who was in command of Company C at the time of the firing, testified that while his company was forming he found Quartermaster-Sergeant McMurray and Artificer Rood "right by the company storeroom, where the ammunition was kept."

"Q. What were they doing there?"—A. Rood was in an argument with McMurray. He wanted to get into the storeroom and get some ammunition. He said he refused to go out there and be fired at without having anything to fire back, and the old sergeant said he would not open that door until I told him to.

"Q. The sergeant was standing guard over the door?"—A. Yes, sir.

"Q. What did you do?"—A. After I checked the company and satisfied myself that with the men in line and with the men on guard, and the sick and the men on detached service, that the company was satisfactorily accounted for, then I ordered them to open up a brand-new box of ammunition and issued the ammunition to the company.

"Q. They went into the storeroom?"—A. Yes, sir.

"Q. And brought out a case?"—A. It was opened right in the room.

* * * * *

"Q. Why was it Artificer Rood was saying they had no ammunition, and he did not want to go out unless they had some ammunition?"—A. As I remember it, C Company was the only company in the post that carried the guard ammunition. They issued ten rounds per man. I believe they had 650 rounds; I don't remember.

"Q. That was the reduced range ammunition?"—A. Yes, sir.

"Q. We have been calling it here—used only for guard purposes?"—A. Yes, sir.

"Q. That is a cartridge, as we understand it, that has only about fifteen grains of powder in the shell, as against forty-two or forty-three?"—A. Yes; and with a lead bullet.

"Q. And what kind of a bullet has it?"—A. A lead bullet.

"Q. No steel jacket on it?"—A. No, sir.

"Q. How far can they shoot that?"—A. They are supposed to be effective 75 or 100 yards.

"Q. And the men were not satisfied to go out, or Mr. Rood was not, at any rate, with that kind of ammunition?"—A. Yes, sir.

"Q. And what he wanted was the regular ball ammunition?"—A. Yes, sir.

"Q. That is what you directed the quartermaster-sergeant to issue?"—A. Yes, sir."

This testimony is quoted to show that men planning to go out and shoot up a hostile town for purposes of revenge would not be likely to supply themselves for such an occasion with an ammunition that they had no confidence in, even for purposes of defense such as they had in contemplation at the time when the occurrence happened about which Lieutenant Grier testified.

TESTIMONY OF LITTLEFIELD.

The testimony of Ambrose Littlefield is that from the mouth of the Cowen alley at Thirteenth street he looked up Thirteenth street 120 feet to the corner of Thirteenth and Washington streets and saw a party of raiders turning to the right from Thirteenth street on to Washington street, and that as they turned into Washington street they passed near a street lamp, and that as they were passing the street lamp one of the raiders turned and looked in the direction of the witness, and that the witness by the aid of the lamp at that distance from him could see that it was the face of a negro soldier. The testimony of this witness might be analyzed to show that it is unworthy of credit, but that is not necessary in view of the fact that he is completely contradicted by Mr. George Thomas Porter, who lived at the corner of Thirteenth and Washington streets and who testified that he was at his front window looking out at the very time mentioned by Littlefield, and that no men of any kind turned out of Thirteenth street into Washington street in the way described or were anywhere near the lamp under which Littlefield claims to have seen the soldier whom he pretends to have identified.

TESTIMONY OF DOMINGUEZ.

Lieutenant Dominguez, who was wounded, testified that from the corner of Washington and Fourteenth streets he looked down Fourteenth street to the Cowen alley and saw the raiders cross Fourteenth street, going northwardly in the alley toward the Miller House, and that he saw 8 of the raiders four abreast. The fact that he could not have any artificial light to aid him and does not pretend to have had any such help, is enough to discredit this statement. But Officer Padron testifies that he was at the corner of Washington and Fourteenth streets at the time when the raiders were firing on the Cowen house, and that he went from that point northwardly on Washington street to Thirteenth street, and that when about midway of the square he met Lieutenant Dominguez, and that Dominguez there alighted, tightened his saddle girth, remounted, and then went with Padron north

on Washington street to Thirteenth, and that he was never nearer Fourteenth street than the point where he met him, which was, as stated, about the middle of the square.

The only other time when Dominguez claims to have seen the soldiers was when he was passing the mouth of the alley on Thirteenth street at the Miller Hotel. He testified that he passed the mouth of the alley in a fast trot, and that as he did pass the mouth of the alley he looked down it toward the garrison and saw at the distance of 25 or 30 feet soldiers coming up the alley toward Thirteenth street; that there were about 15 or 20 of them, and that they were about equally divided into two squads and that they were marching in single file and that these squads were on opposite sides of the alley. This alley was 20 feet in width. On one side at the line of the alley rose a two-story frame building and on the opposite side at the line of the alley rose a three-story brick building, the Miller Hotel. It was, therefore, impossible for Dominguez to look into the alley until he came opposite to it. At that time he was going in a fast trot. It would not take him more than a second, going at that rate of speed, to entirely pass the mouth of the alley. He testified that he not only saw the soldiers and made the careful observations he minutely states, but that he saw a lady in the window of one of the upper stories of the hotel and warned some parties who appeared to be at the window, as well as others, of the danger that was coming. There was no light whatever in the alley, either at the point 30 feet from the mouth of it, where Dominguez claims to have seen soldiers, or at any other point. On that dark night looking down that alley between the houses that fronted on it in the way described there was nothing whatever to aid the vision. It was not only a dark night, but probably there was not a darker place in all Brownsville at that particular time than was that particular spot.

A fair consideration of these facts, about which there can be no serious dispute, compels the conclusion that it was impossible for Dominguez to have seen and noted with accuracy what he states.

EXPERT TESTIMONY AS TO EFFECT OF DARKNESS ON THE VISION.

On this point of inability to distinguish in the dark, attention is called to the following testimony as to the results of experiments made by certain officers of the Twenty-fifth Infantry, none of them, however, belonging to either of the companies stationed at Brownsville:

(Page 1989):

Testimony of Second Lieut. James Blyth, U. S. Army.

Second Lieut. James Blyth, U. S. Army, being first duly sworn, testified as follows:

"By Senator FORAKER:

"Q. Give us your name in full, Lieutenant.—A. James Blyth.

"Q. You are an officer in the Twenty-fifth United States Infantry?"—A. Yes, sir; second lieutenant.

"Q. And have been how long?"—A. Three years and four months.

"Q. Of what company?"—A. Battalion quartermaster and commissary, third battalion.

"Q. Have you at any time been connected with any company?"—A. Yes, sir; with K Company.

"Q. What rank have you in the Army?"—A. Second lieutenant.

"Q. How long have you been in the Army altogether?"—A. Eight years and seven months.

"Q. Are you a graduate of West Point?"—A. No, sir.

"Q. You were appointed from civil life?"—A. From the ranks.

"Q. Were you present at Fort McIntosh in February and March of this year, when certain experiments were made?"—A. Yes, sir.

"Q. As I understand, experiments of two kinds were made, some with respect to the power of vision at night and some with respect to the course of bullets?"—A. Yes, sir.

"Q. As to their deflection, and so forth?"—A. Yes, sir.

"Q. Tell us first about the experiments made in February concerning the powers of vision at night. Were you present at those experiments?"—A. Yes, sir.

"Q. Tell us who else were present?"—A. Major O'Neil, Lieutenant Harbold, Lieutenant Elser, and a civilian by the name of Colonel Stucke.

"Q. You were the observers?"—A. We were the observers; yes, sir.

"Q. Now, tell us who made the experiments, who conducted them?"—A. Lieutenant Wiegenstein.

"Q. Is he an officer of the Twenty-fifth Infantry?"—A. Yes, sir.

"Q. Now, go ahead and describe what that experiment was."—A. He arranged to have the men go down there at night. We did not know how he was going to conduct it at all. After everything was ready we went out at about half past 8 in the evening and stood on the edge of an arroyo. The men were down underneath. When the first volley was fired Major O'Neil shouted to him and asked him which way the men were facing. We could not tell. Lieutenant Wiegenstein laughed and said that was a part of the test, that he did not care to say. He wanted us to find out for ourselves.

"Then we moved down about 50 feet further, I should say, along the edge of the arroyo. Two more volleys were fired, and some fired at will, but all we could see was the flash of the rifle. We could not see the rifle that fired it.

"Q. Have you any memorandum that shows the distance at which you were making the observation?"—A. Yes, sir.

"Q. Please produce the memorandum, and tell us how far the squad was away from you when the first firing which you have mentioned was done."—A. The first firing on the horizontal was 50 feet and 4 inches, and the vertical height was 21 feet and 2 inches.

"Q. That was which firing, the second or the first?"—A. It was the first.

"Q. You were that far distant?"—A. Yes, sir.

"Q. And at that distance could you distinguish the men?"—A. No, sir.

"Q. Could you tell whether they were white men or negroes or Mexicans?"—A. The light was not sufficient for us to tell which way they were facing even.

"Q. You could not even tell that?"—A. No, sir.

"Q. Could you tell anything about the different articles of clothing they wore?"—A. No, sir.

"Q. Was there a further firing?"—A. Yes, sir.

"Q. Where did that take place? How far were you from them?"—A. That was 24 feet on the horizontal and 20 feet and 7 inches above them. The results were the same.

"Q. Then was there another trial?"—A. Yes, sir; we moved down then.

"Q. You moved down or they moved down?"—A. We moved down to another place. That was 69 feet 2 inches away and 20 feet 5 inches above them; and looking almost into their faces, when the volleys were fired, all we could see was the flash, that was all.

"Q. You moved down or they moved down?—A. We moved down. We could see nothing but the flash.

"Q. And you could tell nothing about their clothes?—A. No, sir; we could not even see the rifles that were fired.

"Q. You could not even see the rifles?—A. No, sir.

"Q. Could not tell whether they were Krugs or Springfields or Winchesters or what?—A. No, sir.

"Q. Was there any other firing, still another test?—A. Yes, sir; after that they marched down one arroyo and came up another almost directly underneath us in single file, but we failed to distinguish anyone, could not tell who they were at all. They were halted, then, underneath us, at that time 20 feet and 5 inches below and 18 feet and 7 inches from us. Then the flash of the rifles would come, and the eye would involuntarily close. The closer it got, the more the noise of the report and the flash of the rifle attracted your eye. Before you could take your eye away to look for anything else the light would disappear, so it was impossible to see anything.

"Q. Did you make any further tests?—A. Yes, sir; we brought the men up.

"By Senator WARNER:

"Q. In order to save time, because I do not care to cross-examine, I will ask this question: They were 22 feet below you?—A. Yes, sir.

"Q. And 18 feet from you?—A. Twenty feet 5 inches below us.

"Q. And how many feet from you?—A. Eighteen feet 7 inches.

"Q. From you?—A. Yes, sir; on a horizontal, and vertically 20 feet and 5 inches.

"By Senator OVERMAN:

"Q. From the bank to where they were?—A. We were standing on the bank and that was the distance measuring down.

"Q. The base of the triangle was 18 feet?—A. Yes, sir.

"Q. And you did not measure the hypotenuse?—A. We did not measure that.

"By Senator SCOTT:

"Q. You were standing up here, as I understand it, and then over here [indicating]?—A. Yes, sir.

"Q. The height here was 20 feet and 5 inches?—A. Yes, sir.

"Q. And the horizontal distance from here to here was how much?—A. Eighteen feet and 7 inches.

"By Senator WARNER:

"Q. You did not get the hypotenuse?—A. We did not get that.

"By Senator PETTUS:

"Q. Do you mean the diagonal distance, or what do you mean?—A. We measured the two sides of the triangle. We did not measure the hypotenuse. We did not figure that out.

"Q. You measured it with a tapeline?—A. Yes, sir.

"Q. Not with a common rule?—A. Oh, no.

"Q. A tapeline, or something of that kind?—A. A steel tapeline, and also with a clinometer.

"Q. You did not measure the hypotenuse?—A. No, sir.

"By Senator FORAKER:

"Q. After these firings in the arroyo, what happened next?—A. We brought the men up on the bank—took them up on the road. The road was about 8 feet wide. We divided ourselves into two parties, one party on each side of the road. The moon was shining, and it was a clear, starlight night, so there was a good light. The men were marched past, in single file, between us, and we wanted to see if we could distinguish the features of the men. After they all passed by I asked Major O'Neil to have a number of white officers march past, so I could get the exact distance to us from them, to see if I would get the same impression that I did from the soldiers going by. Lieutenant Wiegenstein came back and laughed and said: 'Then you don't know that there are white men in the line?' I said: 'No; I did not know that.' So the detail was halted and I went up and scanned each man's face. We were about 2 feet from them at that time. I peered right into their faces, and I myself picked out one man who was a little lighter colored than the remainder, and he turned out to be a Mexican. The other men I did not distinguish at all. After we had passed he told me that there was a white man in the center of the line, and also a man who, I believe, was an Italian.

"Q. Did you have any further experiments?—A. That night, after the moon went down, we went out and had the same experiments.

"Q. With the same results?—A. And with the same results. The only difference was that after the moon went down, and at a greater distance—we were 69 feet and 2 inches away—when the rifles were fired by volley, what I saw was just a long line of legs with dark material. It seemed to be long trousers that the men had on, but after the experiment was over and they were brought up on the bank I found that they had on khaki breeches and leggings. So I received a false impression.

"Q. And you observed as closely as you could?—A. Yes, sir; we cautioned one another to watch. Not only that, but after the first volley was fired we cautioned one another to watch where the faces should be.

"Q. What interest had Colonel Stucke, if any, in that investigation?—A. None whatever; no interest at all. He was there as a guest of Major O'Neil to dinner and went out with us after dinner.

"Q. He is not connected in any way with the command?—A. No, sir.

"Q. Were you all of one mind as to the result of the investigation?—A. As far as it went. It was impossible to distinguish features by the flash of a rifle, or to distinguish color or complexion.

"Q. After nightfall, when the firing was in the dark?—A. Yes, sir.

"Q. Did you have any further experiments?—A. We had another one on the 11th of March at night. At that time Captain Lewis and Lieutenant Harbold and myself were the observers.

"Q. Was that of this same general nature?—A. Of the same nature as in the arroyo. After the firing in the arroyo we came up and went into my house, and went upstairs and looked out of two windows, 3 feet away, down, and the men were marched past underneath the windows, and we failed to recognize any features or any complexion. We could distinguish from the light shining out from my window on the first floor that they had on shirts made of dark material of some kind, and lighter trousers, but what they were we could not tell.

"Q. Yes.—A. Then they were moved around in front of the house and marched across the parade ground, and in rear of a light, and when they got about 60 feet away we were unable to see them. They disappeared entirely from view. They were brought back and marched between a street lamp and my porch—we were all sitting there—the distance being about 20 paces. We afterwards measured that. We did not recognize anyone. Then they were brought around, and right along on the sidewalk in front of the house, which is only 5 paces away, and at that distance we failed to recognize Lieutenant Wiegenstein, who was in the center. We did not know he was there. He was the only white man in the lot.

"Q. What was the character of the night? Was it an unusually dark night?—A. The stars were shining, and there was no moon.

"Q. The stars were shining, and no moon?—A. Yes, sir; with a street lamp only 20 paces away.

"Q. Now, if anyone were to say that looking out of a window of a dark night he or she saw a gun fired, and recognized by the flash of that gun, it being a high-power rifle such as you have in use, the face of a man as that a negro, and was able to detect that he had freckles on his face, what would you think of that kind of a statement, from your observation and experience?—A. I would not believe it.

"Q. You would not believe it?—A. No, sir.

"Q. And what would you believe of a statement of similar character, to the effect that by the flashes of rifles it could be determined whether the hats worn by the men shooting the rifles were black hats or gray hats, or whether they had cords around them or not?—A. With our rifles the experiments showed that the flash of a rifle was not sufficient to show you anything.

"Q. You could not tell what kind of a rifle it was, even?—A. No, sir; you could not even see the rifle that fired the shots.

"Q. So that if anyone who was looking out could see such things as I have indicated it was because they had better powers of observation than you had, or else they were mistaken in what they saw or observed?—A. Yes, sir; that is it."

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Testimony of Maj. Joseph Patrick O'Neil, United States Army.

Maj. Joseph Patrick O'Neil, United States Army, being first duly sworn, testified as follows:

"By Senator FORAKER:

"Q. Please give your name in full.—A. Joseph Patrick O'Neil.
"Q. You are in the military service of the United States, are you?—A. I am, sir.

"Q. What is your rank?—A. Major, Thirtieth Infantry.

"Q. You are now a major of the Thirtieth United States Infantry?—A. Yes, sir.

"Q. Where are you stationed?—A. Fort Logan H. Roots.

"Q. Were you formerly connected with the Twenty-fifth United States Infantry?—A. From the summer of 1891 until the 1st of February, 1907, I was an officer of the Twenty-fifth Infantry.

"Q. Sixteen years, about?—A. About sixteen years; yes, sir.

"Q. That is a pretty long service with one regiment. When were you transferred to the Thirtieth—when were you promoted to be major?—A. Yes, sir; when I was promoted to be a major; the vacancy was in the Thirtieth Infantry, and I went to that vacancy.

"Q. When was that?—A. The vacancy occurred on the 31st of January. I did not leave the Twenty-fifth Infantry until the 8th of March.

"Q. Of this year?—A. Of this year.

"Q. Until the 8th of March of this year, then, you had been with the Twenty-fifth Infantry ever since 1891?—A. Ever since 1891.

"Q. You were with the Twenty-fifth at Fort Niobrara?—A. Yes, sir.

"Q. And then what company were you connected with at that time?—A. At Fort Niobrara?

"Q. Yes.—A. Company M. I was commanding Company M, and the Third Battalion of the regiment.

"Q. Where did you go when your regiment left Fort Niobrara in July of last year?—A. We went to Fort McIntosh, Laredo, Tex.

"Q. You went there with Company M?—A. And the Third Battalion.

"Q. What other companies constituted that Third Battalion?—A. I, K, L, and M.

"Q. You were captain of M Company then?—A. I was captain of M Company.

"Q. And went with it to Fort McIntosh. You were not at Fort Brown at all?—A. No, sir.

"Q. Fort McIntosh is how far from Fort Brown?—A. I would simply have to make a guess, Senator.

"Q. Is it 40 or 50 miles?—A. It is between 150 and 200.

"Q. It is up at Laredo?—A. It is up at Laredo.

"Q. Fort Ringgold is between the two posts?—A. Between the two posts.

"Q. You were on the Rio Grande River at Fort McIntosh?—A. Yes, sir.

"Q. Now, Major, did you have anything to do with any experiments that were made at Fort McIntosh in February or March of this year with a view to ascertaining what the powers of vision were at night in identifying people and determining who they were?—A. Yes, sir; I ordered some experiments to be made, and the one about recognizing people I personally superintended.

"Q. Tell us when that experiment was made and by whom it was made, and what was the nature of it as nearly as you can?—A. It was near the last of February. I do not remember the exact date.

"Q. During the month of February. That will answer the present purposes. There is no controversy about the date. We will agree upon that. Where was this experiment made?—A. At Fort McIntosh.

"Q. Did you make more than one experiment?—A. Well, we made three altogether. I personally superintended only one.

"Q. And that was an experiment to determine what?—A. That was an experiment to determine how far you could recognize men at night, and what was the effect of the flash of our present rifle as to light up a man's face or prominent parts, so that you could distinguish him.

"Q. Did you participate in that experiment or did you simply play the part of an observer?—A. Well, I had the experiment conducted before me. I was observing the experiment.

"Q. Who conducted that experiment?—A. Well, Lieutenant Wiegenstein was present with the men; Lieutenant Blyth, I think Lieutenant Harbold—I do not remember now for sure—Lieutenant Elser, and Colonel Stucke, an electrical engineer.

"Q. With the exception of Colonel Stucke, an electrical engineer, the others whom you name were all officers of your battalion, were they not?—A. Yes, sir.

"Q. I understood you to say Lieutenant Wiegenstein conducted the experiment?—A. Yes, sir.

"Q. I wish you would tell us just what it was; the nature of it.—A. I directed Lieutenant Wiegenstein to have a number of men, more than ten. I told him I wanted Mexicans and white men and negroes mixed up. I told him the reason I wanted it was that I saw an account of where a person had testified that he could recognize these people 70 or 80 feet away.

"Q. That was in the Penrose court-martial.

"Q. And that is what prompted you to have this experiment made, was it?—A. That was what prompted me to have this experiment made.

“Q. Now go on.—A. Well, he selected the men. I told him one or two men that I wanted put in, just mentioned casually that I thought they would be good men to put in. He went down into an arroyo—

“Q. Explain what an arroyo is. That is a new word with us.—A. An arroyo is a ravine. Generally its sides are perpendicular. That is the difference that we make between an arroyo and a ravine, although arroyo is the word usually used in all Mexican descriptions.

“Q. Just proceed.—A. He brought those men down into an arroyo, where we could get an approximate idea of distance—that is, the height of a man in a second story window, and the approximate distance, by standing on top of this arroyo and looking down, the approximate distance as testified.

“Q. Was this at night?—A. This was at night.

“Q. At about what hour?—A. The one that I attended was between 8 and 10 o'clock at night. It took us some time.

“Q. What kind of a night was it?—A. Well, the moon would have set about 12 o'clock. The night was so bright that one of the officers took a newspaper from his pocket and said, ‘Why, I can almost read this print.’ I did not stay around close enough to ask him any further questions about it, but it was a particularly bright, clear night.

“Q. There was moonlight; was there also starlight?—A. Moonlight and bright starlight. I think there were about eleven men. They were lined up, and they wore khaki leggings, khaki trousers, and blue shirts. The first experiment—the distances I marked at the time. I do not remember what they were. If you would like the distances, I still have the notes that I made at the time.

“Q. Yes; you can look at your notes and give us the distances.—A. The distance in the first position—the distance of the squad from the officers—was 50 feet and 4 inches horizontally.

“Q. The officers who were observing?—A. Who were observing. That is the horizontal distance. The officers who were observing were 24 feet above the squad—that is, we were on top of the arroyo and the squad was down in the bottom of the arroyo. We were 24 feet above and 50 feet and 4 inches away from them. At the first experiment the men's backs were turned toward us. We did not know anything about what was going to be done. Lieutenant Wiegenstein did that entirely.

“Q. You knew the men were coming into the arroyo before you could see them?—A. We knew the men were coming into the arroyo. We were told that they were coming in and we were watching for them.

“Q. But you did not know which way they would front?—A. We did not know which way they would front, or anything about it. Well, at the first firing the men had their backs to us, and they fired 20 or 30 shots. They fired by file and they fired by volley. The only way that I could distinguish that their backs were toward us was by the flashes of the rifles going away from us. Then I asked a question. I said: ‘Mr. Wiegenstein, haven't you got them faced the wrong way?’ That I understood afterwards was a part of the experiment, but I recognized from the flash of the rifles. I expected the flash of the rifle to come toward me, and instead of that it went away from me. The next position the distance was 68 feet and 7 inches. The men's faces were toward us. We could not distinguish anything in their faces any more than we could before.

“Q. In the first case could you tell anything more than that the men were there at the place where the firing was? Could you tell how they were dressed or who they were?—A. No, sir. I felt that they had on khaki trousers and leggings. I was not exactly sure of the kind of coat they had on. The only reason that I remember this is that I asked Mr. Wiegenstein, ‘What kind of coats have they on?’ He said, ‘They have blue shirts.’ I ordered him to go back and change and get into khaki coats, but the light did not show distinctly enough to tell whether they had their khaki coats on or blue shirts. Further than that, Mr. Wiegenstein was in olive-drab uniform. He had on a standing white collar, which came up about an inch above the collar of his coat. He had on his saber. I recognized him distinctly when he was under me, or some distance away while he was marching, walking up toward me or talking to me. When he got down into the squad I looked particularly to find him, and I could not distinguish him in the squad.

“Q. Although he had on a white collar and a saber?—A. Although he had on a white collar and a saber.

“Q. Did you look for him at the time when the guns were flashing?—A. I did not look for him particularly at that time. It was after the first firing that I thought I would look to see whether I could distinguish him. At first my attention was entirely given up to trying to distinguish particularly the individual men in the squad.

“Q. Could you distinguish any of the individual men?—A. No, sir. There was in the squad a man who had worked for me and worked in my house for six months or more, brushed my shoes, and coming to the door and looking after me. I knew him as well, if not better, than any man in the command. I tried particularly to see if I could distinguish him, but I could not distinguish anyone. There were three of those experiments, but in the last one we moved up until we were 24 feet above them.

“Q. Before you get away from the first one, you said you had white men and Mexicans and negroes. Could you distinguish the Mexicans from the others?—A. No; I could not distinguish.

“Q. Could you distinguish the white men from the others?—A. No; I could not distinguish any of them.

“Q. You could not distinguish mulattoes or negroes?—A. You could not tell who they were down there. They might have been anything in color. It was absolutely impossible to distinguish them.

“Q. What kind of hats or caps did your men wear?—A. They wore the campaign hat.

“Q. Could you tell what kind of hat they had on?—A. I don't remember whether it was—no, sir; we could not distinguish. We did not distinguish the hats until they passed in review.

“Q. Now go to the second experiment. The one I have been asking you about, the first one, was where they had their backs to you, when you had expected them to front toward you, as I understand?—A. Yes, sir.

“Q. How far away were they?—A. At that time they were 68 feet 7 inches.

“Q. What was the result of that—similar to the others?—A. Exactly the same. We could not distinguish anything about them at all.

“Q. Now, what was the third experiment?—A. After those two experiments, then I spoke to Mr. Wiegenstein about the coats—that I wanted the khaki coat worn. So he marched the men out of the arroyo and called out this particular man, that I would have known almost any place, told him to go up and get a khaki coat, and I changed the order and told him to have all of them in their khaki coats. Then they came back and went through their third experiment. At that time we were at about the same height, 24 feet above, and the horizontal distance was 18 feet 7 inches.

“Q. They were that close to you?—A. They were that close.

“Q. If they had been on a level?—A. If they had been on a level they would have been 18 feet 7 inches away. They were in khaki. They had campaign hats on. That we knew. I saw them marching out of the arroyo to go up and get their khaki coats. They went through the same experiment. I think in that experiment they fired a great many more shots that they had in either one of the two, probably more than they did in the first two together. That was the particular point where I tried to recognize Lieutenant Wiegenstein and I could not. That was at a horizontal distance of 18 feet 7 inches.

“Q. You measured these distances afterwards, did you?—A. Yes, sir. These distances were measured with a steel tape—an engineer's tape.

“Q. Could you tell the white men from the Mexicans or Mexicans from the negroes?—A. No, sir; you could not tell the white men from Mexicans. You could not tell anything about them at all.

“Q. Could you tell how they were uniformed, how they were dressed?—A. The test was hardly fair for me, then, because I thought that I recognized khaki trousers and khaki leggings. The upper part I could not recognize anything about at all. I could not tell whether they had on a khaki coat or not, but I thought that I recognized khaki leggings and khaki trousers. I knew that they had the khaki trousers and khaki leggings, and I was looking particularly to find it out.

“Q. What about their faces when the guns were fired? Did the flash light up their faces so you could distinguish them?—A. At the flash of the rifle you could not distinguish anything. This rifle has such a vivid flash that the eye does not take in anything except the flash. At times your eye might run to the shoulder or to the arm. It might take in that much, but when the flash of the rifle goes off all that you see is the flash. It is nothing like the black powder and nothing like the shotgun flash.

“Q. These were Springfield rifles and smokeless powder?—A. Springfield rifles and smokeless powder.

“Q. Your regular ball ammunition?—A. Regular ball ammunition.

“Q. Then you could not tell whether a man in the line there had freckles on his face or not?—A. No, sir.

“Q. Could you tell what kind of a gun he had in his hand?—A. No, sir.

“Q. Could you tell whether it had a blue barrel or whether the barrel was covered with wood?—A. That, I believe, was absolutely impossible.

“Q. I ask you these questions only because of these things having been testified about. You were there for the express purpose of making observations?—A. Yes, sir.

“Q. You were looking to see what you could in the way of detecting these things?—A. Yes, sir.

“Q. And that was not a dark night?—A. No, sir; that was a very bright moonlight night.

“Q. What did the men do after that?—A. After they finished the shooting I directed Lieutenant Wiegenstein to march them up the road, and the spectators or the witnesses stood about 5 feet away. The men marched by us and they would have gotten by us if I had not known—if I was just taking a cursory glance I would not then have noticed any difference in the men; but when they had passed I said, ‘Halt that squad, Mr. Wiegenstein. I thought I told you to put in some Mexicans and white men,’ and he said, ‘I did, sir.’ Then we went and walked down the line. There were two men that I thought might have been white men. Then I walked down the line to examine it, and the only man that I picked out was an Italian who had been working in the blacksmith shop, out of the sun. He had a sort of waxy, yellowish complexion; nothing like a mulatto. The white man was in the center of the squad, and he passed me, and I knew he was there. I had specially ordered him out, and I did not recognize him until I halted the line and went up and looked into each individual's face.

“Q. And you were only 5 feet away from them as they marched by?—A. It could not have been more than 6 feet.

“Q. May have been less than 6?—A. It possibly was less.

“Q. It was close, they were marched right by you, and you knew that they had white men and black men and Mexicans in that company, and you were looking to detect the white men?—A. Yes, sir.

“Q. And the Mexicans?—A. Yes, sir.

“By Senator OVERMAN:

“Q. How was the moon at that time?—A. The moon would have set at 12 o'clock that night. The moon was not full, but was very large and very bright; a very clear night. Of course these men were marching through the chaparral. The chaparral brush down there—the mesquite brush—would probably grow 2 feet above the men's heads, but they were marching on a road that was as wide as from here to the wall. They were in the wagon track. That is, they were marched through a cutting in the clearing. It was not used very much as a road. There was an old cart used to go down there, I think, at times, but they were in the wagon track, right in the moonlight. The chaparral may have cast some shadow, but not enough.

“By Senator FORAKER:

“Q. Where did you stand—in the chaparral at the side of the road?—A. I stood in the chaparral at the side of the road.

“Q. And they were on a level with you as they passed by?—A. They were on a level with us.

“Q. And there was no chaparral on the road where they marched?—A. The chaparral was on either side of the road.

“Q. And the road was as wide as over to the wall?—A. That was the main road where they were marching.

“Q. Twelve or 15 feet wide?—A. I may have overestimated the distance. It could not have been over 10 feet wide.

“Q. All right, 10 feet wide.—A. It would not be more than 10 feet wide.

“Q. And the chaparral, you think, might have been as much as 2 feet higher than the heads of the men?—A. As much at 2 feet higher than the heads of the men.

“Q. Was the moon high or low?—A. The moon was high.

“Q. It would not cast much of a shadow over the heads of the men, would it?—A. It cast no shadow. In thinking over the experiment, the men were between the moon and me. Now, if the men had had their hats off I do not believe there would have been any difficulty in distinguishing them at all. I think that they were under the shadow of their hats, and they were marched by at what we call “quick time.” They were going 120 steps to the minute and 30 inches to the step.

“Q. When they were halted and you went along the line, then you could pick out these different men?—A. Then we picked out the different men.

“Q. How many observers were there in your company who had the same experience?—A. I don't remember whether Lieutenant Harbold was there or not. I do remember Lieutenant Blythe and Lieutenant Elser and Colonel Stucke.

"Q. Colonel Stucke was not in the Army?—A. Not in the Army. I was anxious to have him out there because he is an electrical engineer, and I asked him some pertinent questions at the time.

"Q. Then did you experiment further that night or did that close the experiment?—A. Well, as the moon was so bright and the night was so bright that it did not correspond to the conditions at Brownsville, I ordered them to have the experiment after 12 o'clock, or after the moon went down. I know they had the experiment after that, but I did not attend it."

(Page 1963):

Testimony of Second Lieut. Robert Pattison Harbold, United States Army.

Second Lieut. Robert Pattison Harbold, United States Army, being first duly sworn, testified as follows:

"By Senator FORAKER:

(Page 1964):

"Q. Lieutenant, tell us whether or not you ever witnessed any experiments recently made at Fort McIntosh with a view to determining the powers of vision in the nighttime as to detecting men who were firing such arms as you were equipped with?—A. Yes, sir; on the night of February 18-19 of this year we made our first experiment at Fort McIntosh to get visual tests, and on the night of March 11 we made another experiment.

"Q. Now, go back and tell us about the first experiments, taking them up in their chronological order.—A. In the first experiment we began the experiment about half past 9 in the evening.

"Q. What kind of a night was it?—A. It was a bright moonlight night, the moon being about two hours high—that is, about two hours from down. The light was sufficient so that I could take a type-written letter and study out the words and make out the letter. The experiment consisted in having a squad of men, of about 10, I think, placed in an arroyo, so that they would be about 22 feet below us, and at different points ranging from 200 feet as the maximum to 15 feet as the minimum on the horizontal from us. The composition of this squad was unknown to me at the time, as Lieutenant Wiegenstein, of the Twenty-fifth Infantry, arranged the squad and the details of the firing.

"At the first firing we were in rear of the men and above them at about 200 feet, I should say, in rear. At this distance the men could not be distinguished. The only thing that we could see would be a line, indicating that the men were there. It was impossible to tell in which direction the men were facing, and only when they fired could we determine this, as by the flash we could tell that the men were behind the flash, and then there would be firing away from us by them. The light of the flash was not sufficient to determine anything at all. The flash was instantaneous. Although we were trying to concentrate our eyes on the men and looked for features, the flash would draw the eye away involuntarily, and as it was instantaneous, nothing whatever could be seen; nothing of the rifle could be seen, and the articles of dress could not be distinguished. As far as complexion was concerned, why nothing could be seen. Even the face could not be made out.

"Q. Could you tell what kinds of hats they had on?—A. Not at that distance.

"Q. Whether black or gray?—A. No, sir; we could not.

"Q. Could you tell whether they had hat cords around their hats?—A. No, sir; we could not. I would not have been able to tell whether the men had hats on or not at that distance.

"Q. That is 200 feet away?—A. Yes, sir; approximately 200 feet, as far as I know, although the distance was actually measured, and Lieutenant Wiegenstein has the actual measurements of the positions.

"Q. Let me ask you there, Lieutenant Wiegenstein is still ill, is he?—A. Yes, sir.

"Q. Is he here in this city?—A. Yes, sir; he is in the general hospital.

"Q. Do you think we can expect him to be able to testify to-morrow?—A. I think so, sir.

"Q. Proceed then. That was the first firing, about 200 feet away from you?—A. Yes, sir.

"Q. And 22 or 23 feet below you?—A. Yes, sir.

"Q. Where did they fire again, if at all?—A. Then we changed our position and went around the head of the arroyo, so that we got directly opposite and on the flank of the squad. They were then, I should say, about 50 feet from us—that is, we were 50 feet on their flank. The results there were the same, although the line of men could be made out a little better than previously, but features and articles of dress could not be recognized or distinguished. The complexion it was absolutely impossible to tell, whether the men were white or black, although we presumed that all the men were negro soldiers.

"Q. How many men were present with you observing this experiment as you were?—A. At this time Major O'Neil, of the Thirtieth Infantry, was there; Lieutenant Blyth, of the Twenty-fifth Infantry, was there, and a civilian by the name of Stucke, a civil engineer up at Laredo, Tex.

"Q. Was Lieutenant Elser there?—A. Lieutenant Elser was not at the first experiment.

"Q. Very well, I only want to get how many.—A. Yes, sir.

"Q. You have told us what your experience was as to making observations. Do you know whether or not all the others who were present with you as observers had the same experience?—A. From what they said, they did; they all had identically the same experience.

"Q. Did anyone claim to be able to recognize any individual—to tell whether he was white or black or Mexican?—A. No, sir; not at this time; we could not tell anything about them.

"Q. Did anyone claim to be able to recognize what kind of hats they had on, and whether they had hat cords on?—A. No, sir; not in this position; but I should like to state that from this position the men were then fired over through a hogback in the arroyo and got directly underneath us, so that the man on the left flank, which was toward us, was not more than 5 feet away from us on the horizontal, although we were about 22 feet above him. In this position we could distinguish light from dark clothing, and hats could be distinguished; that is, we could tell that the men had some head gear on, although whether it was a campaign hat, a sombrero, or any of the soft hats that are common in that community, we could not tell. There was an officer with the command. We could distinguish him by the flash of his saber, and I presumed that it was Lieutenant Wiegenstein, because he had arranged the battalion and had taken his squad out. When the men were firing the results were practically the same. The flash of the rifle was not sufficient and of not long enough duration to obtain any view of the men.

"Q. Is your vision normal?—A. My vision is normal, and I think it is rather acute.

"Q. Well, now, was there any further firing or any further opportunity to observe on that experiment?—A. Well, this firing began at half past 9, and as the moon was up we wished to test it with no moon.

"Q. Let me ask you before I forget about it. Was there any attempt to count the shots that were fired?—A. Well, we tried to estimate, as the firing was first by volley and then at will, and we estimated the number of shots. I estimated that about 40 shots had been fired. Later on Lieutenant Wiegenstein, who had actual count of the cartridges, told me, I think, that there were eighty-some shots fired.

"Now, another part of the test that we made at this first experiment, the men were then marched out of the arroyo and came up and above and alongside by us. I stationed myself on one side of them and Lieutenant Blyth on the other, and the moon was shining directly on the men, over my shoulder, and when they went by I was about 5 feet from the men. I studied them carefully, looked at them intently, and there were two men who I thought were men of my company, who were, I presumed, mulattoes, but I thought they were men of my company and called them by name. All the others I thought were negro soldiers, and when the men went by Lieutenant Blyth said that he would like to have some white men go by, so as to get the difference or the distinction in the complexions in that light. Major O'Neil then said that there were some white men in the detachment. The men were then halted when they got by and faced outward, and we walked along the line and studied the men carefully; looked at them intently; got face to face. The man at the rear of the company, who I thought was a mulatto, I found was an Italian, an assistant blacksmith at the post. He is rather pale, and does not have the bronzed, ruddy complexion of the white people in that community. The man at the head of the company that I thought was another mulatto in my company, I found to be a Mexican, whom I picked out when I got right up on him; recognized him by the mustache that he had. He was a driver in the quartermaster's department, and I was in contact with him daily and knew him very well by sight. I missed, in the middle of the detachment, the white man that was there. This white man is an ex-soldier of the Twenty-sixth Infantry, a man by the name of Bradbury, employed by the quartermaster's department as a driver. He is a very good specimen of the white men in that community, bronzed and ruddy, and undoubtedly he would not be mistaken for a mulatto or a Mexican. I walked by him and did not find him until one of the officers told me that there was a white man there, and then I went back and looked at each man as closely as possible, and then I found this man and called him by name. I said, 'This is Bradbury.'

"Q. And that was a moonlight night?—A. Yes, sir; that was a moonlight night.

"Q. Did that end the experiment for that night?—A. That ended it for that time. Then we waited until the moon had gone down, and about 1 o'clock in the morning we made some experiments without the moon. We then found that flash of the rifles was a little greater, than they lighted up better, but the duration was not long enough to obtain any view of the features or complexion. All that I could get by the flash of the rifles at this time was that I could see the hips of the men—the legs. I could not see above that; saw nothing of the rifle whatever, and I could not see below the knees."

The testimony of these officers should not need any corroboration, but it is easy for anyone to experiment for himself any night by simply making an effort to recognize individuals or their clothing, and to determine whether the individuals are white or black, or how, with any degree of accuracy, they may be dressed. Anyone who makes this effort will be astonished to find how impossible it is to see with distinctness unless aided by artificial light. No matter what the character of the night may be he will be thoroughly satisfied that reliable recognitions at the distance of 30 to 100 feet are simply impossible.

COURSE OF BULLETS.

Much prominence has been given to the testimony of Major Blockson and others that the course of certain bullets after they struck the houses into which they were shot that night indicated that they were fired from the upper porch of B barracks.

Lieut. H. G. Leckie, of the Twenty-sixth Infantry, who had no interest whatever in this controversy, was sent by General McCaskey to Brownsville to make an examination and report as to various matters upon which specific and reliable information was desired in the Penrose court-martial, says that he examined the courses of these same bullets, with the result that he does not agree with Major Blockson that they show that they were fired from B barracks or from any other point within the reservation. His statement on this point is that the bullets could not have been fired from B barracks unless they changed their course while in the air, which could not have occurred. His exact language is as follows:

(Page 3222, Senate Hearings):

"By Senator WARNER:

"Q. Now, you were asked the question by Senator FORAKER in your direct examination whether or not those bullets that entered the Yturria House could have been fired from barracks B?—A. Yes, sir.

"Q. You thought they could not?—A. I do not think they could. The reason that I say that they were not fired from B barracks is that they would have had to turn an angle of 90 degrees in the air, without anything to deflect them in any way; and I do not know of any laws of motion for a bullet doing that."

In other words, as he sighted along the courses of the bullets his eye did not go to the upper porch of B barracks or to any other point of the barracks. The result of this testimony is a flat contradiction to what the courses of the bullets actually indicate; but aside from this contradiction this testimony is even less reliable, if that be possible, than the testimony of the so-called "eyewitnesses" who saw in the dark.

There is much testimony to support this proposition. It is enough to cite only one witness.

Lieut. R. P. Harbold testified, at page 1870 et seq., as follows:

"Q. Tell what other experiments, if any, you made or saw made.—A. I made experiments with the Krag-Jorgensen rifle, the Springfield rifle, and the Winchester .30-40 rifle, to get the penetration and the deflection of the different bullets from those rifles.

"Q. Let me ask you what you mean by a .30-40 Winchester?—A. The Winchester .30-40 is .30 caliber, and the 40 refers to the chamber, meaning that the chamber is longer than the .30-30. The .30-40 is the Winchester rifle that will shoot the Krag-Jorgensen ammunition. The .30-30 will not shoot it.

"Q. Does that refer to the number of grains of powder in the cartridge?—A. Not that one. The Winchester .30-220, which shoots our Springfield ammunition, means a Winchester with thirty one-hundredths of an inch caliber and 220 grains of powder.

"Q. A 220-grain bullet, you mean?—A. No, sir; powder of 220 grains.

"Q. The official instructions issued by the War Department show that the bullet of the Springfield and the bullet of the Krag weigh 220 grains, and that the powder is 42 or 43 grains. I call your attention to that.—A. Yes, sir; I recall that. That is right.

"Q. It has reference, then, to the bullet?—A. Yes, sir; it has reference to the bullet; it is called .30-220. That means that the bullet is thirty one-hundredths of an inch in diameter and that it weighs 220 grains.

"Q. When was it and where was it you made this experiment, and how came you to make this experiment?—A. The dates of these experiments were on the boxes which had the exhibits before the court-martial. Those exhibits have been taken from me, and I do not have them, but I made the experiments at Fort McIntosh. I also went out to a small place near there, about 5 miles from there, a place called Nye, where I could get longer ranges. I made my experiments there at about 200 yards.

"Q. What did these experiments consist of? First, who participated with you in making them?—A. At the post Lieutenant Blyth and Lieutenant Wiegenstein assisted me. My experiments at Nye were conducted by myself.

"Q. Proceed and tell us about them.—A. At Fort McIntosh our experiments were made by arranging targets first and firing into those targets, beginning at 200 yards and coming down to 40 feet; at 200 and 100 and 50 yards, and then at 80 feet and 40 feet. In these experiments we found that it was a general rule that all bullets were deflected after passing through the first material. The rule of deflection could not be determined. It was irregular, as one time it would be deflected to the right, another time would be deflected to the left, and then one would be deflected upward, and another deflected downward. We could not get a general rule as to the direction of deflection; but the only general rule we could get was that the bullets would be deflected. We could not obtain the penetration of the bullets in wood, as at no time could we capture a bullet in our wooden targets. We could put a box of sand behind the target and get the bullets, but we had an actual penetration of 18 inches of wood, and the bullet passed on through. This was at 40 feet. This wood consisted of 4 inches of ordinary red pine, and then we had back of this as a back stop a 2-inch hemlock plank, and the interior targets were 1 inch of white pine, about 8 inches apart; but the deflection was always so great in those cases that it was very seldom we could get our bullets to travel through the entire length of the target.

"Q. What was the area of that target?—A. About 12 inches in width, and they were placed in line, and the firer of course was in direct line.

"Q. How high were they?—A. They were about 5½ feet high, and we fired low, so that we would have a very good target in the vertical, although in the horizontal it was only about 10 inches.

"Q. I do not know whether I understand that exactly. Assuming that this target is 5½ feet high, that is what you mean?—A. We would fire low into the target. That is, we would not fire up at the top. We would make our bull's-eye down low. We would have to change it, but we got it low.

"Q. How high from the ground?—A. We put it from 8 inches up to about 3½ feet.

"Q. You experimented at all those different points?—A. Yes, sir.

"Q. What was the result of the deflection? How much was the deflection? First, let me ask you, assuming that this is the first target, do I understand that there was another target right behind it?—A. Yes, sir; there was another target right behind it, and so on.

"Q. And so on back?—A. Yes, sir.

"Q. How many did you have there?—A. We were changing them constantly, and at one time we had 18 inches of actual wood to be penetrated.

"Q. That would be quite a number of those different targets.—A. Yes, sir. I would like to state that we made another target alongside of that. The first target I am describing now was of oil boxes, such as we have at the post, and our second target consisted of 1-inch red pine. Two pieces were taken, about 8 inches apart. Then 12 feet in rear of that we put two more pieces 8 inches apart, and then 12 feet in rear of that two more pieces 8 inches apart. This was to give us, as nearly as we could get at it, the walls of a house with two rooms, and the deflections in the red pine were just the same as in the white-pine oil boxes.

"Q. Describe the deflections. Give us the extent to which they occurred.—A. Well, taking the second target of red pine, two boards placed there 12 feet in the rear, and then two more, one illustration was a triangle. The shots were fired so that the three bullet holes on the first board were about an inch apart—that is, they formed the two legs of a triangle in that way, about an inch apart. On the second board, or the second partition, which would be the wall of the second room, they had changed very much and had gone from 8 to 6 inches apart. Then on the third one of the bullets had left the target entirely, and the other two were about 12 inches apart. Notes were taken of all these things, I should like to state, and the triangles were measured, and Lieutenant Blyth has those notes in his possession. Then there was another experiment made there in which the deflection was about 8 feet to the left in a distance of 30 feet on the ground, and this was actually measured and taken with a steel tape and notes recorded.

"Q. Do you mean that the bullet struck the ground?—A. I mean that it struck the target and was deflected to the left, and it struck the ground over there, and the point where it struck the ground was marked. Then, of course, we plotted the triangle and got the deflection to the left and the distance to the ground.

"Q. Was it fired squarely at the target?—A. All the shots were fired squarely at the target.

"Q. And if it was not deflected it ought to have gone straight through?—A. Yes, sir; if it had not been deflected it should have gone straight through.

"Q. But it was deflected so much that at a distance of 30 feet?—A. At a distance of 40 feet. We fired at a distance of 40 feet from the first target, but within 30 feet it had gone to the left about 8 or 9 feet.

"Q. I mean 30 feet from where it struck the target it deflected 8 or 9 feet?—A. Yes, sir.

"Q. And struck the ground?—A. Yes, sir.

"Q. I will ask you whether or not all your experiments show practically the same kind of results as to deflection?—A. Yes, sir; every experiment did.

"Q. How about going downward, when they would strike, or upward?—A. We had a number of illustrations where the bullets would go up or down in the trajectory.

"Q. The same bullet?—A. Yes, sir; the same bullet. I would like to describe to you one illustration that we had. Some of the bullets were fired between two oil boxes, so that we could hit the cracks between them, and it struck between and then went down in the board underneath. Instead of going through that board it just burrowed and kept right along the board for about 6 inches. Then it came up and entered the board of the top oil box, kept along that board for about 6 inches; then it went down again, and just described that wavy motion right along between the oil boxes.

"Q. Up and down?—A. Up and down; just a wavy motion, striking first one and then the other.

"Q. Plowing a furrow first in one box and then in the other?—A. There was no furrow. It would go in and keep in that inch board for about 6 inches, and then go into the other inch board and keep in that. Then we had another one where that same course was described, and then on one oil box it went along the wood and made an arc of about 90° to the left and left a complete furrow that looked like a quadrant right on the box.

"Q. How big was that arc?—A. It was a quadrant, 90°, approximately.

"Q. State whether or not in any of these experiments you found a bullet to have turned around when it struck into the partitions or boards.—A. Yes, sir; there was.

"Q. Butt end uppermost?—A. There was one bullet that we extracted in which the base was stuck in the box, and the point of the bullet was pointed toward the firing point, but this bullet had gone through several thicknesses of wood—that is, through several oil boxes—and then struck the sand in rear and turned completely round, and the base buried itself in the far side of the box.

"Q. But you did find it sticking into the wood?—A. Yes, sir; sticking into the wood.

"Q. So that the bullet in its flight had gone through all these partitions or boxes, whatever they were, all these obstructions?—A. Yes, sir.

"Q. And had turned clear around?—A. Yes, sir. And I should like to state that in following the trajectory through our different targets, oftentimes the first target would show a complete penetration. Then the bullet would turn, it would tumble, and the bullet would probably go lengthwise through the second target.

"Q. That is, go sideways?—A. Yes, sir; it would turn and go sideways, so that we would have a complete vertical diagram of the bullet there. Then on the next target it would take another direction; probably it would turn facing the other way, showing that the bullet was rotating and tumbling throughout the entire trajectory.

"Q. Now, tell us whether or not, as a result of your observations and experiments, it would be possible to get an accurate alignment of different holes made by bullets in different walls, so as to sight along and see at what point that bullet had been fired.—A. From my experiments it would not be possible to take one hole. For instance, it would be absolutely impossible to determine the firing point. It would be the same as trying to fire a gun by using only the front sight. It would be impossible to get any results. In taking two holes, where the deflection we proved was always very irregular and the third point, the firing point, could not be accurately located by means of the two holes. Taking the groove, it would be absolutely impossible to sight along the groove and determine the firing point. We found, taking the grooves which were made on the different boxes, taking the bullet holes, the eye could not with accuracy look along there and locate a definite point. At one time we sighted through a groove to locate the firing point. We would go away and go back and look along the groove, and we would locate another point; and within a horizontal distance of about 300 yards this variation in both the horizontal and the vertical would reach as much as a hundred yards.

"Q. The variation would reach a hundred yards?—A. Yes, sir. Now, we determined this by looking through this groove about 300 yards at a building and a high water tower, and taking different sights through this groove we could locate the top of the water tower or we could locate the roof of the building or we could locate a point on the ground.

"Q. And they were approximately a hundred yards apart?—A. Approximately a hundred yards apart; yes, sir.

"Q. You could locate the top of the tower or strike the ground with the eye?—A. Strike point on the ground with the eye.

"Q. Or you could strike point?—A. To the right or left of that.

"Q. Varying a hundred yards?—A. Yes, sir.

"Q. In a distance of 300?—A. In a distance of about 300 yards; yes, sir.

"Q. Have you completed your story of these experiments which you made, or is there anything else connected with it?—A. My other experiments were merely to determine what ammunition the various rifles would fire.

"Q. I want to examine you about that, but first I will ask you what, according to your experience and observation, is the cause of the deflection of one of these high-power bullets?—A. The first thickness of the material in the target from which the deflections were made was 1 inch of white pine, and from my experiments I would say that any material would cause a deflection, no matter what thickness it would be, although if it were very thin the deflection would not be so great.

"Q. The deflection depends upon just the direction in which the point or nose of the bullet happens to be turned when it strikes the obstruction?—A. Yes, sir; and I also think it depends upon the material. If the material is very nearly homogeneous the deflection will not be great, and I think that the bullet will always follow the line of least resistance, pick it out and follow it, and that causes the deflection.

"Q. Your testimony amounts to this, as I understand it, that when a bullet strikes a house, for instance, it may go to the right or go to the left, or go up or go down?—A. Yes, sir."

A prominent law writer sends the following as a quotation from the opinion of Judge Lumpkin in *Hart v. Powell* (18 Ga., p. 635-42):

"It is related by Doctor Hennen as having occurred to a friend of his in the Mediterranean, that a ball which struck about the pomum adami, traveled completely round the neck and was found lying in the very orifice at which it had entered. The same author states that in one instance which occurred to a soldier, who having his arm extended in the act of endeavoring to climb up a scaling ladder, had the center of his shoulder pierced by a ball, which immediately passed along the limb and over the posterior part of the thorax, crossed along the abdominal muscles, dipped deep through the hypogastric artery, and presented itself in the forepart of the opposite thigh, about midway down.

"Now, we have often heard of an individual being 'shot all to pieces,' but never before by one ball. Who would have doubted—what adept in the science would not have testified—that this poor fellow had been shot a half dozen times?

"In another case, a ball which struck the breast of a man standing erect in the ranks lodged in the scrotum. The gallant and ever to be lamented Colonel Craig was shot in the back at Cerro Gordo; the ball pursued a circuitous route around his body, on the outside of the skin, to the breast.

"But we forbear to multiply examples. We are sustained by the highest medical authority in asserting that balls take very unusual courses, 'not at all to be accounted for by any preconceived theories drawn from the doctrine of projectiles, not to be explained by any diagrams formed upon mathematical rules.' (Med. Jour. by J. H. Paris, Fellow of the Royal College of Physicians, and Q. S. M. Fonblanche, esq., Barrister at Law, 2 vol. 126.) 'These considerations,' continue the learned authors, 'ought to render the surgeon very cautious how he delivers his opinion as to the direction the shot was fired.'

THE SHELLS, CLIPS, ETC.

A lot of exploded cartridge shells, some clips and cartridges, and a bandoleer were picked up in the alleys and streets of Brownsville the next morning after the shooting.

Until these were brought to the fort and shown to Major Penrose and the other officers of the battalion they would not, any of them, believe it possible that any of the men of the battalion had been engaged in the shooting, but when these were exhibited to them, and they were told that they were picked up at the points where the shooting occurred, they changed their minds and concluded that in view of such evidence their men must have done the shooting. From that moment they put their men under the strictest scrutiny and surveillance and made every effort possible to ascertain who the guilty men were, but all such efforts failed.

In the meanwhile the court-martial of Major Penrose was held at San Antonio and the investigation before the Senate committee commenced. The testimony so taken satisfied the officers, as we have already pointed out, that their men were not guilty, and they have so testified.

They testify that they were influenced to change their opinions and reach the conclusion that their men were not guilty by a number of facts developed, including, among others, the results of a microscopic examination that was made of the exploded shells that were picked up in the streets of Brownsville. In other words, the testimony by which they had been first led to believe that their men were guilty turned out, as a result of this investigation, to be conclusive proof to their minds that their men were not guilty. The part this testimony has thus played shows that it is sufficiently important to receive special consideration.

NUMBER OF SHELLS FOUND.

1. According to the weight of the testimony there were from 150 to 300 shots fired that night in Brownsville by the raiders, whoever they may have been. There should have been found, therefore, that many exploded shells. The testimony shows that careful search was made to find the shells and every other species of evidence that might tend to show that the soldiers were guilty, but with the result that, all told, only about 40 of these exploded shells were found. In other words, there were from 100 to 200 or 300 exploded shells, according to the theory of those who claim that the soldiers did the firing, scattered somewhere as a result of that firing in the alleys and the streets of Brownsville which have never been found. Nobody pretends that there was any difficulty on account of the nature of the ground or for any other reason about finding any exploded shells there may have been, or ought to have been, in the streets where the firing occurred. Seven of these empty shells were found at the mouth of the Cowen alley near the fort by Captain Macklin. Others were found in the alley and in Washington street at the point where the firing is said to have occurred. These shells so found, except those found by Captain Macklin, were turned over to the authorities and subsequently forwarded to the Senate for use as evidence. There were only 33 of them in all. There may possibly have been a few others picked up that were not turned over, but we have no account of them and the testimony is of such character as to warrant the conclusion that there could have been but very few, if any, picked up in addition to the 33 mentioned. It is reasonable to conclude that the other shells that must have been exploded, if there were as many shots fired as the witnesses state, were not found to be such shells as the soldiers used, or there must have been some other good reason for not submitting them as evidence. Whatever the explanation may be, the fact remains, and it is a fact, that in and of itself discredits the deductions drawn to the prejudice of the soldiers from the finding of the shells that have been submitted.

SHELLS AND CLIPS FOUND BY CAPTAIN MACKLIN.

It is testified by Captain Macklin, who was the officer of the day, that just at the break of dawn he made a careful search for any evidence that would show who had done the firing. In this behalf he searched, both inside the reservation wall and outside, to find shells and clips or other evidence that the soldiers had done the firing as the citizens were at that time charging. He found *no shell, no clip, no evidence of any kind inside the reservation wall, but outside the wall, across the street, in front of the garrison and at the mouth of Cowen alley, where according to the testimony of the guard and the scavenger and other witnesses the first shots were heard, he found 7 shells and 6 clips in a circular area not more than 10 inches in diameter.* The testimony is conclusive that if these shells had fallen from Springfield rifles as they were fired they would have been scattered over an area perhaps 10 feet in diameter. It is the opinion of all the witnesses who testified on that point that the shells found by Captain Macklin could not have fallen in the position in which he found them if they had fallen as they were fired. This fact coupled with the further fact that with these 7 shells there were found 6 clips, enough to hold 30 cartridges, further discredits the finding of the shells in the alleys and streets as evidence of the guilt of the soldiers.

MICROSCOPIC INVESTIGATION.

But while the investigation was in progress the War Department on its own motion caused all the rifles that were in the hands of the three companies at Brownsville that night to be forwarded to the Springfield Armory, and detailed two officers, who, under instructions from the War Department, caused to be fired out of each of these rifles two cartridges. The indentations on the heads of the exploded shells so fired were put under the microscope and compared with the indentations found on the heads of the 33 exploded shells picked up in the streets of Brownsville, which indentations were similarly magnified. The 33 exploded shells were otherwise subjected to the most careful inspection by these experts. The result of this investigation was submitted to the committee in the form of an official report made by these officers to the Secretary of War. It is found at pages 1309-1325 of the record. Without being unduly tedious, the results were:

1. That there was such an exact identity between the indentations found on the heads of the thirty-three exploded shells picked up in the streets of Brownsville and the indentations found upon the exploded shells fired from four certain guns belonging to Company B of the Twenty-fifth Infantry that the officers reported that beyond a reasonable doubt the shells picked up in the streets of Brownsville had been fired out of those four guns.

2. The experts further reported that they found that three of the shells picked up in the streets of Brownsville had a double indentation, as though a first attempt to fire them had failed and they had then been put a second time in the piece and struck second time with the hammer or firing pin before they were exploded.

3. They further officially reported that certain of the shells picked up in the streets of Brownsville, nine in number, bore marks indicating that they had been twice or oftener inserted in a rifle as though to be fired.

DOUBLE INDENTATIONS.

The officers of the Twenty-fifth Infantry and all the men who were examined on the point testified that when they first received their rifles, about the last of April, 1906, at Fort Niobrara, they were found to be so heavily oiled with cosmoline that the spring which shot the bolt forward with the firing pin to strike the head of the cartridge and explode it was impeded to such an extent that it was a matter of frequent occurrence that cartridges failed to explode at the first stroke, but that after, by the use of coal oil and in other ways, this cosmoline had been entirely removed so that the spring worked freely such a thing as failure to explode practically never happened; and all testified that long before these troops left Fort Niobrara, where they used their rifles in target practice, they ceased to have any such difficulty and that during all the time they were in Brownsville no such difficulty could have been experienced if they had had occasion to use their rifles.

THE DOUBLE INSERTION.

As to the double insertion of cartridges the officers and men all testified that while they were engaged in target practice at Fort Niobrara the call to cease firing very frequently was sounded after a cartridge had been inserted but before it was fired; that this was a matter of practically daily occurrence; that always the soldier was required when the call to cease firing was sounded to at once remove from his gun any cartridge that might have been inserted but not yet fired, and that this cartridge so withdrawn was reinserted and fired when firing was resumed, and that in this way shells would show marks indicating that they had been inserted more than once in the firing piece. The officers and men all testified that except only on the target range at Fort Niobrara there was never in the history of these arms any such double insertion of cartridges or any occasion for such double insertion. It was the opinion of all the officers and men who testified on the subject that these double insertions never could have occurred except only on the target range at Fort Niobrara.

What these officers say shows how improbable it is that such a double insertion could have occurred in connection with the shooting affray at Brownsville, when it is remembered that when an attempt is made to fire a cartridge and the attempt fails the bolt must be drawn backward, with the result that the ejector throws the cartridge out of the chamber and to the distance of anywhere from 3 to 10 feet away from the gun. The idea that a raider would undertake in the darkness of such a night, and under such circumstances, to recover an ejected cartridge that had failed to explode in order that it might be reinserted in the piece, is utterly untenable. The same is equally true as to those cartridges showing double indentations. There could not be any double indentation without pulling back the bolt after the first indentation, with the consequent expulsion of the cartridge from the chamber out into the darkness and to the distance of 3 to 10 feet away from the gun, then recovering and reinserting the cartridge. To suppose that on such an occasion, under such circumstances, any such thing would or could occur is an extreme improbability, if not an actual impossibility.

THE FOUR GUNS.

The four guns out of which the experts found that the shells picked up in Brownsville must have been fired were identified by their numbers. The testimony shows that on the night of the shooting three of these guns were assigned respectively to Thomas Taylor, Joseph L. Wilson, and Ernest English, privates of Company B. These men appeared and testified that they were in their quarters asleep when the firing commenced, that they heard the call to arms, rushed with their comrades to the gun racks, each getting some gun which he carried for that night and which he returned after the company was dismissed for the night to the gun racks, where they were locked up and kept until morning; that the following morning each one found his gun in the rack and that when submitted for inspection it was found to be perfectly clean and bright, showing no evidence whatever of having been fired during the night. All testify that in the excitement and confusion each soldier grabbed the first gun he could get, but that all guns were found in the racks, where they were verified after the firing was over. These witnesses were clear, straightforward, and unqualified in all their statements, and their testimony should be sufficient, in the absence of specific contradiction, to establish the fact that no one of their guns was used in the shooting affray.

They are confirmed by the testimony of their company commander, Lieutenant Lawrason, who testified, at pages 1579 and 1580, as follows:

"Q. Did you learn before your company was dismissed that night that it had been charged by Mayor Combe that the soldiers of the garrison had fired on the town?—A. Yes, sir. I was near the main gate into town when Mayor Combe came up, and I heard part of the conversation with Major Penrose, in which Mayor Combe accused the soldiers of having done the shooting.

"Q. Until that time had you any thought of that kind with respect to the matter?—A. No, sir; I did not; I did not believe for an instant that the men had done it.

"Q. That was the first intimation you had that anybody made any such claim?—A. Yes, sir; it was.

"Q. And then it was after that that Major Penrose dismissed you and told you to make these examinations, was it?—A. Yes, sir.

"Q. You took your company back, as I understand you, to the barracks and dismissed the company. Then what did you do in execution of the major's orders?—A. I saw the arms locked in the racks and later—

"Q. I will ask you, before you left the racks, whether or not you counted the guns after they were put into the racks?—A. Yes, sir; I counted them.

"Q. How many were there, or were they all there?—A. I don't remember the exact number, but I remember adding to the exact number

the number of men on guard and the number of rifles that should be in the storehouse, and the first sergeant's rifle, and adding up seventy. "Q. That is to say, you accounted for seventy rifles, did you?—A. Yes, sir.

"Q. Was that the full number that had been issued to that company?—A. That was all that we had—all the Springfield rifles we had.

"Q. And you remember, do you, positively that at that time you knew that you had in the gun racks the full number of rifles that should be there after deducting the other rifles that you accounted for as being elsewhere?—A. Yes, sir.

"Q. If there had been three rifles missing from the racks, would you not have detected it?—A. If there had been what?

"Q. If there had been three rifles missing, would you have detected it?—A. I believe I would have detected one short.

"Q. You would have detected one short. Now, do you remember Thomas Taylor of your company?—A. Yes, sir.

"Q. Do you remember seeing him that night?—A. I know that he was present that night, though I don't remember seeing his face in the ranks.

"Q. How do you know that he was present—I mean present with your company, and I suppose you mean that?—A. Yes, sir; because I know that he was carried on the rolls of the company at this time, and I checked up the whereabouts of every man in the company that night.

"Q. And you know that he answered to his name at the roll call, do you?—A. Yes, sir.

"Q. Or if not that, that you found him elsewhere?—A. Yes, sir; I know he was accounted for at that roll call.

"Q. You have told us of all who were absent from the ranks when the roll was called and he was not one of them; so therefore it follows that he was in ranks, does it not?—A. Yes, sir.

"Q. Now, is that true also of Joseph L. Wilson?—A. Yes, sir; that is true of Joseph L. Wilson also.

"Q. Do you remember seeing him in ranks that night?—A. No, sir; I do not. He is on one end of the company, and I believe in the rear rank, or at any rate not directly in front of me in the company. He is smaller than most of the men in the company.

"Q. But if he had been absent when his name was called, you would have detected his absence, you would have observed it?—A. Yes, sir.

"Q. You were paying particular attention, were you not, to the roll call?—A. Yes, sir; I was, because I believed that the barracks had been fired into, and I wanted to see if any man had possibly been wounded and left upstairs.

"Q. And you also stated that you knew the voice of every man so you could distinguish it and recognize it when he answered to his name?—A. Yes, sir; I believe I am familiar with every voice in the company.

"Q. Now, is what you have stated as to Thomas Taylor and Joseph L. Wilson also true as to Ernest English?—A. Yes, sir; I believe English was also present.

"Q. Do you remember seeing him that night?—A. No, sir; I can not positively state that I saw the face of any man in the ranks that night.

"Q. But you do remember distinctly that every man was in ranks answering to his name, except those whom you have given us the names of, who were away on the several duties you have mentioned?—A. Yes, sir."

THE FOURTH GUN.

But however it may be as to the testimony of these three men being sufficient to show that these three guns were not fired that night, the testimony is absolutely conclusive as to the fourth gun that it was not fired that night. This fourth gun, being 45683, was originally issued at Fort Niobrara to Sergeant Blaney. Shortly before the battalion left Fort Niobrara for Brownsville his term of enlistment expired, and he reenlisted and took the usual furlough of three months, to which he was entitled. Before starting on his furlough he turned in his gun to the quartermaster-sergeant, Walker McCurdy, who placed his name on a piece of paper and put it in the bore of the gun next to the chamber, and then placed it in the arm chest and locked it up. Sergeant Blaney did not return to the company until after it left Fort Brown. On the night of the shooting his gun, with others, was still in this arm chest. They were all placed there when the battalion left Fort Niobrara. On arrival at Fort Brown this arm chest was put in the storeroom, and for want of room other baggage was piled on top of the chest. On the night of the firing, and immediately after the company was dismissed for the night, Lieutenant Lawrason, the company commander, under orders from Major Penrose, proceeded to verify his rifles. He carefully counted the rifles in the gun racks and found there the exact number that belonged in the racks. He then went to the storeroom, taking with him the quartermaster-sergeant, who unlocked the room, that he might enter. After entering the room he told the quartermaster-sergeant that he wanted to verify the guns in his custody—those in the arm chest. The quartermaster-sergeant thereupon removed the baggage that had been piled on top of the arm chests, unscrewed the lids, opened up the guns, and Lieutenant Lawrason counted them, finding that every gun was there—not one missing. In this way he established that Blaney's gun was at the time of the firing in the arm chest, with the lid screwed down and baggage on top of the chest, and the door of the storeroom fastened under lock and key. In other words, it is conclusively shown that as to this one gun at least it was utterly impossible for it to have been fired in Brownsville or that it ever had been fired, except only on the target range at Fort Niobrara before the battalion left there.

Lieutenant Lawrason's testimony on this point is as follows:

"Q. That night, when the guns were put back in the racks, did you count them?—A. Yes, sir; I counted them as they were placed in the racks.

"Q. Were the rifles locked up?—A. They were, sir.

"Q. By whom?—A. By the noncommissioned officer in charge of quarters.

"Q. Who was that?—A. Sergt. George W. Jackson.

"Q. Is he a reliable man, or not?—A. I believe him to be a reliable man, sir.

"Q. And a truthful man?—A. I think so, sir.

"Q. He had been a sergeant in that company for a long time, had he not?—A. He had, for several years, I believe, sir. He was in the company when I joined it.

"Q. And a man of good record in every sense?—A. I believe he was, sir.

"Q. Now, you saw the gun racks locked by him; then what did you do next after you had put the rifles away and locked them up in that manner?—A. I then went down and inspected the rifles in the storehouse.

"Q. Who was in charge of the storehouse, or storeroom, whichever you call it?—A. Quartermaster-Sergeant Walker McCurdy.

"Q. Was he, also, an old sergeant?—A. Yes, sir; he was an old sergeant of Company B.

"Q. Was he or not a reliable and truthful man?—A. I always believed him to be such, sir.

"Q. He had been in the service many years, had he not?—A. Yes, sir; he had.

"Q. And had everybody's confidence as a good soldier and a faithful noncommissioned officer?—A. Yes, sir.

"Q. He was the quartermaster-sergeant. As quartermaster-sergeant, what was his duty with respect to the surplus rifles and surplus ammunition? I mean surplus in the sense that it was not in the hands of the men?—A. He was accountable for it, and it was his business to keep it locked up.

"Q. You went to the storeroom after you locked up the rifles; who went with you to the storeroom?—A. The quartermaster-sergeant.

"Q. Sergeant McCurdy?—A. Yes, sir.

"Q. What did you do and what did you tell him, and in what condition did you find the room; was it locked or unlocked when you went to it?—A. It was locked and he opened it. He took out a bunch of keys, as I recollect it, and fumbled around and got the right key and unlocked the door. The storeroom was very small, and we could not put all of our quartermaster property in there, and there was some confusion in the way in which the stuff was piled. We had to remove a lot of company property.

"Q. I will come to that in a minute. What did you tell Sergeant McCurdy you wanted in the storeroom when you went there; did you tell him or not what you wanted to do until you got into the storeroom?—A. No, sir; when I got into the storeroom I told him that I wanted to see the rifles that he had in the storeroom.

"Q. That is, rifles that he had in his possession?—A. Yes, sir.

"Q. Did you know how many rifles he had in his possession at the time?—A. I did, by referring to the company property book which was kept there.

"Q. We will speak about that presently. Now, go on and state what you did and what he did when you told him.—A. He told me that the rifles were locked up in the arm chests. I told him to open them, and he opened one full arm chest that contained ten rifles, and also opened another that, I believe, contained two or three rifles and several old company shotguns.

"Q. Now, before you opened the arm chests, let me ask you whether or not they were easy to get at, or whether there was anything on top of them?—A. No, sir; they were not easy to get at. As I recollect, we removed considerable property before we got the arm chests out and got room to unscrew the lids.

"Q. What kind of property was this?—A. Iron quartermaster bunks and, I believe, some iron uprights to hold mosquito bars—T-shaped things.

"Q. They had been piled on top of these arm chests, had they?—A. Yes, sir; and were standing against the wall, between us and the arm chests.

"Q. When had you last before that seen these arm chests, and where?—A. I had seen them at Fort Niobrara, Nebr., before shipment, and when they were unloaded from the wagons and placed in the storehouse at Fort Brown.

"Q. Where were these extra guns placed in these arm chests, whether at Fort Niobrara or Fort Brown, or where?—A. They were placed in the arm chests at Fort Niobrara.

"Q. Do you remember seeing the guns—rifles—put in the arm chests and the arm chests closed up for shipment at Fort Niobrara?—A. I do not believe I was present when the property was boxed up. It was boxed up some time before our departure, and Captain Shattuck was in command of the company at that time.

"Q. You have told us in what condition you found the chests as to other property being piled on top; this property was removed, was it, from the tops of the chests?—A. Yes, sir.

"Q. And then were the chests opened, or not?—A. They were opened under my supervision and the arms counted.

"Q. State in what condition you found the inside of those chests, as to the arms.—A. The arms were placed in the proper grooves for them, and they were battened down, or held down by cleats that fit in the boxes, to prevent their rattling around during shipment.

"Q. They had been fixed that way before they had left Niobrara?—A. Yes, sir.

"Q. And were they in that same condition when you opened them that night?—A. They were in the same condition, sir.

"Q. Did you count the rifles when they were opened up?—A. Yes, sir; I counted them.

"Q. I will ask you another question—whether or not, before these rifles were shipped from Fort Niobrara, they were coated with cosmoline oil or any other kind of oil?—A. I believe they were coated with cosmoline oil at the time I looked at them at Fort Brown.

"Q. When you looked at them was there any indication that they had been disturbed in any way whatever since they had been boxed up at Fort Niobrara?—A. No, sir; there was not; I did not take out all the rifles; I could count them without taking them out of the boxes; I picked up one or two from the top.

"Q. And you did count the rifles in both boxes?—A. Yes, sir.

"Q. And you remember that the requisite number of rifles were there, added to the other rifles that you found in the racks, and that you counted as away from there, to make up the number of 70?—A. Yes, sir.

"Q. There was not a rifle missing, was there?—A. No, sir.

On this point Quartermaster-Sergeant Walker McCurdy testified (p. 1658) as follows:

"Q. What book is that in front of you there? See if you recognize it.—A. This is the company's property book, sir.

"Q. The company property book of Company B?—A. Yes, sir.

"Q. Will you turn to that and see what gun Sergeant Blaney had assigned to him, according to that book, when these new Springfield rifles were issued?—A. (Examining book.) I think it was 45683.

"Q. 45683?—A. Yes, sir.

"Q. Now, it has been testified to, I believe, that Sergeant Blaney was absent on furlough. When did he go away on furlough?—A. It was about the same time I was made quartermaster-sergeant—about the 9th or 10th of June.

"Q. That is, you succeeded him when he went away on furlough?—A. Yes, sir.

"Q. Had he returned while you were yet at Brownsville? When did he return?—A. He returned at El Reno.

"Q. He was not with you at Fort Brown at all?—A. No, sir.

"Q. What was done with his gun when he left to go on furlough the 9th of June, or whatever date it was?—A. He took it up and packed it away.

"Q. He turned it in?—A. No, sir; he turned in his own rifle. He will tell you himself that when he returned there was a slip of paper put in the chamber to show whose rifle it was, to keep me from issuing it to anyone else.

"Q. Who put that in there?—A. I put it in there myself.

"Q. What was on that slip of paper?—A. 'William Blaney.'

"Q. Now, when he returned, were you still with the company?—A. Yes, sir.

"Q. At El Reno?—A. Yes, sir.

"Q. And you were still quartermaster-sergeant?—A. Yes, sir.

"Q. And did you continue as quartermaster-sergeant?—A. Until I was discharged, sir.

"Q. Until you were discharged?—A. Yes, sir.

"Q. Now, what was done in the matter of providing Sergeant Blaney with a gun?—A. I gave him his same rifle back.

"Q. You gave him back that same rifle?—A. Yes, sir.

"Q. What does the company book show there as to what ultimately became of it?—A. The company property book only shows here that it was checked off. At least it is struck out now, because it was checked off.

"Q. Look at the number of the gun and see whether there are same initials placed over the number?—A. No, sir; only 'O. K.' here, when it was turned in.

"Q. What is that written over the number [indicating on book]?—A. That is the captain's check mark.

"Q. That is 'C. C. K.'?—A. It is 'O. K.'

"Q. No; 'C. C. K.'—A. That is the captain's check mark, of Captain Kinney. He could tell you. He did that himself.

"Q. The gun was turned in. You were quartermaster-sergeant when the gun was turned in?—A. Yes, sir.

"Q. State whether or not when the guns were turned in Captain Kinney was captain of the company?—A. Yes, sir.

"Q. And his name is C. C. Kinney?—A. Yes, sir.

"Q. State whether or not he checked up every number?—A. He had that book and he checked it up.

"Q. Can you tell us where that gun, No. 45683—is that the number?—A. 45683, I think it is, sir. [Examining book.] There is a check over it, but I think that is what it is, No. 45683.

"Senator WARNER. That is the number you gave?

"Senator FORAKER. Yes.

"By Senator FORAKER:
"Q. Well, it is the number that is there. State where that gun was on the night of the 13th of August, 1906.—A. It was in the arm chest, sir, in the company.

"Q. In the arm chest?—A. Yes, sir.

"Q. Was the arm chest open or closed?—A. It was closed, sir.

"Q. Where was the arm chest?—A. It was in the storeroom.

"Q. How long had it been in that arm chest, and who had placed it there?—A. I placed it there at Fort Niobrara.

"Q. At Niobrara?—A. Yes, sir.

"Q. It was one of the guns that were in your charge? It was one of a number in your charge at that time, was it?—A. Yes sir.

"Q. You have already testified that you packed up in arm chests all the guns you had charged to you?—A. All the surplus guns that were not in the hands of the men, sir.

"Q. You have a clear, positive, distinct recollection of that fact, have you?—A. Yes, sir.

"Q. You can not be mistaken about it?—A. No, sir.

"Q. It was No. 45683? That was the number?—A. Yes, sir."

If this gun was not fired that night in Brownsville, as the testimony conclusively shows it was not, then it follows that if the shells picked up in the streets of Brownsville were fired out of this gun they must have been fired at Fort Niobrara. The testimony shows this was both possible and probable.

Before this microscopic inspection was made or any such question was foreseen it was established by uncontradicted testimony that Company B took with it to Brownsville as a part of its baggage a box containing from 1,600 to 2,000 exploded shells with a proportionate number of clips, and that after arrival at Brownsville this box, opened, stood on the back porch of B barracks, where anyone passing might have access to it and remove shells and clips from it. The microscopic report says that the shells picked in the streets of Brownsville and put in evidence were, beyond a reasonable doubt, fired out of these four guns belonging to B Company. If so, then it also follows that they were fired, not in Brownsville, but at Fort Niobrara, and that they were found in the streets, not because they fell there when fired, but because they had been placed there by persons unknown, who had secured them from this box of shells standing on the back porch and easily accessible to anyone disposed to remove them therefrom. In other words, the microscopic inspection shows conclusively, not that the soldiers were guilty of the firing, but that the soldiers were free from such guilt.

That this microscopic inspection did not establish anything more than that the shells found were fired from the four guns mentioned and did not show the time or place when they were fired or the parties by whom fired was evidently the conclusion reached by General Crozier, Chief of Ordnance, who concludes his review of this testimony, made in his last annual report (p. 36), as follows:

"The bearing of these facts upon the identity of the persons doing the firing and upon the time when the cases and bullets were fired in the guns is not a concern of this Department."

THE BANDOLEER.

A bandoleer, such as the soldiers use, was picked up in the Cowen alley the next morning after the firing, and that has been put in evidence against the soldiers. Each of the quartermaster-sergeants of the three companies has testified that before they left Fort Niobrara every bandoleer was taken up and returned to the arsenal, and that consequently the bandoleer that was found could not have belonged to any of the soldiers of the Twenty-fifth Infantry. The testimony further shows that when the Twenty-sixth Infantry left Fort Brown, a few days before the arrival of the Twenty-fifth Infantry, they left some bandoleers in the barracks, and that they were gathered up and carried away by scavengers and citizens of Brownsville, along with articles of discarded clothing and other articles left behind. In addition, there would be no reason why the soldiers, if they planned the raid, as is claimed, should carry a bandoleer and throw it away in the streets when they could carry many times more cartridges than they had any need for in their regular belts.

THE BULLETS.

Seven bullets and parts of the steel jackets of two other bullets which were cut from houses into which it is claimed they were fired that night have been put in evidence. These bullets bear the marks of four lands, such as would be made by a Springfield rifle, such as the soldiers had, or a Krag rifle, or a Krag carbine, or a Mauser rifle. It is insisted that they must have been fired from the Springfield rifle, because the exploded shells that were picked up at the points where the firing occurred were Springfield rifle shells, indicating that the bullets belonged to Springfield rifle cartridges; and it is claimed that these cartridges are too long to be fired out of the Krag rifle or carbine. To this claim it may be answered that disconnecting the bullets that were cut out of the houses and put in evidence from the exploded shells that were picked up at the points where the firing occurred, it is impossible to tell whether the bullets were fired out of a Springfield rifle or from a Krag rifle or Krag carbine. The Springfield and Krag bullets are of the same weight and of the same general appearance. The witnesses all testified that it was impossible, looking at the bullets alone as they were put in evidence, to tell whether they had been fired from the one kind of rifle or the other.

Neither does it follow that if the bullets were fired out of the shells that were picked up at the points where the firing was done that they were fired from Springfield rifles, for the testimony shows that by slightly reaming out the bore of the Krag rifle the Springfield cartridge could be inserted in it and fired from it.

See General Crozier (page 2862):

"Q. Now, let me ask you if there is any difficulty about boring that barrel so as to accommodate this cartridge?—A. I take it to be easily done." * * *

"By Senator OVERMAN:

"Q. Do I understand you to say that if the bore was enlarged that the cartridge could be fired from that gun?—A. I do not see any reason why it should not be fired from the gun, sir; but I should suspect that the extractor would not work very well with it, and that it would not be a very workmanlike piece of mechanism when you get through."

The testimony shows that at least four Krag rifles were disposed of to citizens of Brownsville by the quartermaster-sergeant of Company K of the Twenty-sixth Infantry shortly before the arrival at Brownsville of the battalion of the Twenty-fifth Infantry.

There is evidence to the effect that there were other Krag rifles in the possession of the citizens of Brownsville. Mayor Combe testified that the Texas Rangers were formerly armed with the Krag carbine, out of which Springfield cartridges could have been fired if the bores were reamed, as they might have been.

ANALYSIS OF BULLETS.

A number of the bullets taken from the houses of Brownsville, into which they had been fired the night of August 13, 1906, were found by chemical analysis to correspond in composition to a special lot of bullets manufactured and supplied to the Government by the Union Metallic Cartridge Company under a contract dated June 29, 1905.

It is further shown that this composition does not correspond to the composition of any other Army bullet of which we have been given any account.

The testimony shows that the negro troops were supplied in part with cartridges from this lot, but the testimony does not show that the cartridges with which the negro troops were supplied out of this special lot were manufactured in December, 1905, the date stamped on the Union Metallic shells picked up in the streets of Brownsville the morning after the affray.

The testimony further shows that the companies of the Twenty-sixth Infantry stationed at Fort Brown, which were relieved by the Twenty-fifth Infantry, were supplied with precisely the same kind of ammunition and that when they left Fort Brown a few days before the arrival of the negro troops, they left many of these cartridges carelessly scattered about the barracks, and that citizens and children were allowed to and did visit the barracks and carry them away at pleasure. (See testimony of Quartermaster Sergt. Rowland Osborn and others.)

Conceding, therefore, that the bullets cut out of the houses of Brownsville were the same in composition as those with which the negro troops were supplied, it must also be conceded that they were the same as those with which the companies of the Twenty-sixth were supplied.

The testimony also shows conclusively that it was possible for the citizens to have acquired these cartridges from those left behind by the Twenty-sixth, while there is no testimony to show that any of them came from those issued to the Twenty-fifth. On the contrary, the testimony shows, as has been pointed out, that the different companies of the Twenty-fifth accounted for all their ammunition practically to a cartridge.

RECAPITULATION.

To recapitulate, the testimony of the eyewitnesses against the soldiers is not reliable, because of the darkness of the night, which made it impossible to see with any distinctness, and because of the many contradictions of the testimony of the various witnesses, especially that of Preciado, Littlefield, and Dominguez.

2. In the second place, the confirmatory or circumstantial evidence of the exploded shells that were picked up in the streets of Brownsville and put in evidence is shown by the microscopic inspection to be conclusive testimony in favor of the innocence of the soldiers.

3. The clips, the bandoleer, and the bullets are not of themselves evidence of the guilt of the men, because in view of the testimony not inconsistent with their innocence.

The testimony in favor of the soldiers is—

1. Their good record as both men and soldiers, both before August 13, 1906, and since.

2. Their own testimony as to their innocence. Every man in the battalion who has had an opportunity to testify has stated in the most unequivocal language that he had no part whatever in the shooting and that he has no knowledge whatever as to who did the shooting. In all their testimony they testified as to facts within their personal knowledge, for every man knew whether he had any part in the affray or knowledge thereof. To refuse to believe them is to assert that as fine a body of soldiers and as truthful, according to all their officers, as can be found in the entire Army are conspirators, murderers, and perjurers, and all this upon the uncertain, unreliable, and contradictory statements of witnesses who did not pretend to give personal knowledge, but only conclusions based on what was necessarily uncertain observation.

3. The soldiers are confirmed in the claim that they are innocent by the fact that immediately after the firing their ammunition was veri-

fied and not a cartridge was missing, and the next morning as soon as it was light enough their guns were rigidly inspected and not one was found to show any evidence whatever of having been fired the night before. There is much testimony in the record in regard to the length of time required to properly clean a gun after it has been fired so that it would pass such an inspection as these guns were subjected to the following morning. The overwhelming weight of this testimony is that it would require from fifteen to thirty minutes to clean these guns so that they would pass such an inspection as that to which they were subjected, and that it would be impossible to so clean them in the dark or by artificial light, and that the men had no opportunity to clean them that night.

This testimony was given not alone by the colored soldiers of the Twenty-fifth Infantry, but also by a large number of white soldiers from the Twenty-sixth Infantry.

4. So far as Company C is concerned, the testimony shows they had only guard ammunition, lead bullets without steel jackets, and only 650 rounds of that, and that after the firing they were found to have every cartridge. No one pretends that any bullets of this character were found, or that there is a particle of evidence to show that any such ammunition was used. And yet this is the company against which, until it was shown that they had only guard cartridges, all suspicion was directed, due to the fact that all the men who had any trouble at Brownsville—Newton, Reed, and Adair—belonged to this company; and upon account of delay in opening the gun racks the men broke them open to get their guns and respond to the call to arms, a circumstance that was urged as an evidence of guilt until it was shown it was done by the orders of Major Penrose.

5. As to the other two companies, the calling of the roll in Company B while the firing was yet in progress, and the personal inspection and verification of Company D by Captain Lyon also while the firing was still in progress, coupled with the fact that every man of the company was present or accounted for, with not a missing cartridge or a dirty gun, would seem in any ordinary case to be enough to exonerate them, to say nothing of the unqualified, straightforward testimony that clears all of them. To find these men guilty upon such a state of evidence is to disregard, violate, and reverse every recognized rule for the weighing of testimony, and can be explained only upon the theory that no matter what may be shown in behalf of the soldiers it is to be ignored or held to be unworthy of credence, notwithstanding their good character and reputation for truth and veracity and general reliability and trustworthiness, as testified to by their officers, who knew them better in these respects than it was possible for anybody else to know them. So to ignore and disregard their testimony is to hold that not only are all the men who have testified conspirators, murderers, and perjurers, but also that Major Penrose and all his officers, than whom no officers in all the Army are more honorable and upright and reliable men, together with General Burt, were not entitled to credence when they testified that they believe their men have told the truth and that they are entirely innocent. There is no ground whatever on which to justify such monstrous conclusions.

6. The testimony further shows that the first five or six shots fired were pistol or revolver shots. Major Penrose and his officers and also Mayor Combe, all experts, testified positively that the first shots were pistol shots. They are confirmed in this by a number of other witnesses. The testimony is conclusive that the men of the battalion had no pistols or revolvers in their possession. The only revolvers that had been issued to these companies were still in the boxes in which they had come from the arsenal. If, therefore, the first shots were pistol shots, they could not have been fired by the soldiers. Immediately after these first five or six pistol shots all testify that there was firing from high-power guns, but whether they were Springfield rifles or Krag rifles or Krag carbines or Winchester rifles or Mauser rifles no one could tell from the sound. So far, therefore, as the *reports or sounds* of the firing were concerned, they might have been made by the firing of Krag guns or Winchester guns or Mauser guns.

7. But assuming that because of the marks of the four lands on the bullets they were fired from either a Springfield or a Krag rifle or a Krag carbine, the testimony shows that a number of Krag rifles—four at least—with the numbers effaced had been sold to citizens of Brownsville by the quartermaster-sergeant of one of the companies of the Twenty-sixth Infantry only a short time before the negro soldiers arrived there. In addition, Mayor Combe testified that the Texas Rangers were, until recently, armed with Krag carbines.

8. The bullets taken from houses and put in evidence, as already pointed out, may have been fired either from Krag carbines or Krag rifles, or they might have been fired from Mauser rifles.

9. The location of the six shells and five clips found by Captain Macklin on a circular area not more than 10 inches in diameter indicates that they must have been placed where he found them, and no one has suggested any purpose the soldiers could have had in placing them there.

10. The bullet cut from the post in front of Crixell's was not a soldier's bullet and could not have been fired from any gun the soldiers had.

11. The microscopic inspection and report. All these several points are absolutely inconsistent with the theory that the soldiers did the shooting; but in addition to what such evidence proves, there is the improbability of soldiers with such a record as these soldiers had forming and executing any such conspiracy, and especially in the way claimed.

In the first place, the formation and execution of such a conspiracy would require a higher order of ability than any of the men of the battalion possessed; but it is not possible that men capable of planning such a raid and so managing its execution as to defy detection would be absurdly stupid as to commence their operations by firing from their own quarters and grounds, and then, after they had thus aroused the town and fixed their identity as soldiers, and not until then, jump over the wall and start on their errand of outrage and murder.

NO MOTIVE.

In the second place, there was no sufficient motive. To begin with, the only motive suggested is one of revenge—revenge by indiscriminate murder of men, women, and children—because some of the saloons would not sell to the soldiers except at separate bars, and because one of the soldiers, Private Newton, was hit over the head with a revolver by Customs Officer Tate and knocked down and badly injured without any adequate excuse therefor, and because one or two others of the soldiers had been unfortunate enough to have some petty difficulty. As to this provocation, the testimony is conclusive that the soldiers made no complaint because they were denied the equal privileges of the saloons, and it is further shown that Newton showed no special resentment and took no steps beyond reporting his trouble to his commanding officer, who promised to have it investigated, with which Newton expressed

himself as entirely satisfied. The testimony shows, moreover, that Newton is a quiet, inoffensive, peaceable-minded man, who was on guard duty that night, but off post and asleep in the guardhouse when the firing commenced. His character was such that he would be most unlikely to conceive the idea of organizing a conspiracy, or induce men to join one, to shoot up the town in the way alleged, especially one to avenge his wrongs, but of which he was not an active participant.

STARCK'S HOUSE NOT MISTAKEN FOR TATE'S HOUSE.

It has been said, as evidence that the motive of the soldiers was to revenge Newton's wrongs, that the raiders fired into Starck's house, adjoining the house in which Customs Officer Tate lived, evidently mistaking it for Tate's house. This is thought to be a strong point to indicate that it was the soldiers who did the shooting and that they were seeking to revenge Newton's wrongs by shooting up the house of the man who had wronged him. The testimony shows that some months prior to the shooting Starck, whose house was shot into, and who was also a customs officer, had undertaken to arrest a smuggler by the name of Avillo, who lived in Brownsville and who had worked for Starck and was perfectly familiar with Starck's house and its location, and that Avillo resisted arrest and Starck felled him to the ground with his revolver almost in the identical way that Tate had felled the soldier Newton. The testimony further shows that this smuggler, who was thus knocked down by Starck, was put under bond to appear at court, and that he had forfeited his bond and was at the time of this shooting an outlaw and fugitive from justice. It would seem far more likely that Avillo, the outlaw and fugitive from justice, remembering his injuries, had something to do with the shooting up of Starck's house than that Newton, who appeared as a witness, and who showed that he was on guard duty that night, was out with a lot of raiders, or that a lot of raiders were out, on his account, without him accompanying them, trying to shoot up Tate's house, of the location of which there was no evidence to show they had any knowledge whatever, and that they fired into Starck's house by mistake. The probabilities are that the men who shot into Mr. Starck's house knew whose house they were shooting into and knew why they were shooting into it. Mr. Starck's testimony was to the effect that he had arrested during the term of his service as a customs officer more than 600 smugglers at Brownsville.

And if a motive be demanded for the shooting of Dominguez it would seem more likely that he received his injuries at the hands of some of the numerous criminals he had arrested and enforced the law against during his long term of service as a municipal officer than that he was singled out by the soldiers to be shot by them, with whom he had had no trouble whatever of any kind. But however all this may be, we are of the opinion that—

1. The testimony wholly fails to identify the particular individuals, or any of them, who participated in the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

2. The testimony wholly fails to show that the discharged soldiers of the Twenty-fifth United States Infantry, or any of them, entered into any agreement or so-called "conspiracy of silence," or that they had among themselves any understanding of any nature to withhold any information of which they, or any of them, might be possessed concerning the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

3. The testimony is so contradictory, and much of it so unreliable, that it is not sufficient to sustain the charge that soldiers of the Twenty-fifth United States Infantry, or any of them, participated in the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

4. The weight of the testimony shows that none of the soldiers of the Twenty-fifth United States Infantry participated in the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906.

5. Whereas the testimony shows that the discharged men had a good record as soldiers, and that many of them had by their long and faithful service acquired valuable rights of which they are deprived by a discharge without honor; and

Whereas the testimony shows beyond a reasonable doubt that whatever may be the fact as to who did the shooting, many of the men so discharged were innocent of any offense in connection therewith: Therefore it is, in our opinion, the duty of Congress to provide by appropriate legislation for the correction of their record and for their re-enlistment and reinstatement in the Army, and for the restoration to them of all the rights of which they have been deprived, and we so recommend.

J. B. FORAKER.

M. G. BULKELEY.

As indicating the character of legislation that should be enacted, as above recommended, we attach hereto Senate bill 5729, of which the following is a copy, and recommend its passage:

"A bill to correct the records and authorize the reenlistment of certain noncommissioned officers and enlisted men belonging to Companies B, C, and D, of the Twenty-fifth United States Infantry, who were discharged without honor under Special Orders, No. 266, War Department, November 9, 1906, and the restoration to them of all rights of which they have been deprived on account thereof.

"Be it enacted, etc., That any noncommissioned officer or enlisted man belonging to Company B, C, or D, of the Twenty-fifth United States Infantry, discharged without honor under Special Orders, No. 266, War Department, dated November 9, 1906, on account of the shooting affray that occurred at Brownsville, Tex., on the night of August 13-14, 1906, who shall make oath before any duly authorized enlisting officer of the United States Army or Navy that he did not participate in said affray, and that he does not know of any soldier belonging to any of said companies who did participate in the same, and that he has not at any time heretofore and does not now withhold any knowledge with respect to that occurrence which, if made public, would or might lead to the identification of any participant in said shooting affray or any accessory thereto, either before or after the fact, and that he has answered fully to the best of his knowledge and ability all questions that have been lawfully put to him by his officers or others in connection therewith, shall be, and hereby is, made eligible to reenlist in the military or naval forces of the United States on his application therefor at any time within three months from and after the passage of this act, any statute or provision of law or order or regulation to the contrary notwithstanding; and that upon such re-enlistment he shall be allowed full pay, according to the rank he held and the pay he was receiving at the date of discharge until his re-enlistment: Provided, That all the rights and privileges to which the soldiers reenlisting under the provisions of this act were entitled, respectively, at the time of their discharge shall be, and hereby are, fully restored to them, and the record showing their discharge without honor

shall be, and hereby is, annulled, set aside, and held for naught, and the time elapsing since their discharge without honor until the date of such reenlistment shall be computed in determining all rights to which they may be respectively entitled on account of continuous service as though they had been in the service without interruption, and they shall not suffer any forfeiture of any right or privilege by reason of such discharge: *Provided further*, That in any case where the regular term of enlistment which the soldier was serving at the time when discharged without honor has in the meanwhile expired, his record shall be, and hereby is, corrected so as to show an honorable discharge at the time of the expiration of such enlistment, and he shall be allowed full pay and all rights and privileges until that time; and in the event of the reenlistment of such soldier under the provisions of this act his term of reenlistment shall be deemed to have commenced as of the time when his previous enlistment expired, and his service under such reenlistment shall be without prejudice of any kind by reason of his former discharge without honor: *And provided further*, That in case any of the noncommissioned officers or enlisted men belonging to said companies and discharged without honor shall have died since they were so discharged and before the passage of this act, but who shall have testified under oath or made affidavit before their death that they did not participate in said shooting affray or have any knowledge with reference thereto, their respective records shall be, and hereby are, corrected in accordance with the provisions of this act and their legal representatives shall be entitled to all pay that would have become due to them from the time of their discharge until the time of their decease.

"SEC. 2. That nothing in this act contained shall be construed to prohibit the prosecution and punishment of any soldier reenlisting under the provisions hereof as to whom it may at any time hereafter appear that he did participate in said shooting affray or have knowledge thereof which he has withheld.

"SEC. 3. That all reenlistments under the provisions hereof of soldiers who at the time of their discharge without honor were serving terms of enlistment which have not yet expired shall be held to be for only the remaining portion of said unexpired terms, respectively."

Mr. FORAKER. I should like to inquire of the Senator from Wyoming, the chairman of the committee, who makes the majority report, whether we are to understand that the bill which accompanies that report has now been introduced?

Mr. WARREN. Mr. President, the bill has not been introduced. The report contains the form of a bill, but there has been no bill introduced and none yet reported from the committee.

Mr. BAILEY. Mr. President, might I ask—

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

Mr. FORAKER. Certainly.

Mr. BAILEY. Might I ask the chairman of the committee if the committee have under consideration a bill such as the President has recommended?

Mr. WARREN. I will say to the Senator from Texas that I have not yet read the message of the President, as it has been read at the desk; but, as I heard it read, his ideas and those expressed by the four members of the committee would seem to be near enough together so that there may be a bill prepared and introduced in the Senate in the usual way. There is at present no bill before the committee, prepared either according to the President's message or according to the report made by four members of the majority of the committee.

Mr. BAILEY. I am sure, Mr. President, the Senator from Wyoming has not read the President's message. I am equally sure that the President has not read the committee's report; but all of this seems like a race of diligence as to who can do the most to placate the dissatisfied negroes before the Republican convention and then before the general election.

Mr. WARREN. The Senator from Texas, of course, is giving his views of the Republican party from a Democratic standpoint; and we accept them as such.

Mr. BAILEY. That is the only standpoint from which a man can see the whole of it. Nobody ever sees himself. It is only others who see him. The Senator from Wyoming, of course, is doing his duty as a Senator in this matter, and I am quite content to sit here and see the Senator from Wyoming and the Senator from Ohio fight this out between themselves. The truth of it is, Mr. President, the Senator from Ohio needs none of my assistance and needs none of my sympathy, but as between a multitude and one man, I must sympathize with the one man, even if he is wrong. [Laughter].

Mr. FORAKER. Mr. President, referring to my colloquy with the Senator from Wyoming, the chairman of the Committee on Military Affairs, he will recall that I have good reason to make the inquiry as to whether or not we are to consider the making of this bill a part of the report as an introduction of the bill. It was my understanding that the bill would be introduced this morning. No one having formally introduced it, I make the inquiry in order that I may know what the status of that suggested legislation may be.

I want to say, in answer to the Senator from Texas [Mr. BAILEY], that there has been no race of diligence on my part that I am aware of. A week or more ago I introduced a bill, and had it referred to the Committee on Military Affairs, where it will shortly be considered and reported on, I hope, which will give authority for the reinstatement of the men who are innocent.

Mr. BAILEY. Mr. President—

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

Mr. FORAKER. Certainly.

Mr. BAILEY. I do not want the Senator from Ohio to rest under the impression that I meant to impute that to him. I want to say that the Senator from Ohio has been entirely and steadfastly consistent. He may be right or he may be wrong. The other side is certain to have been wrong at one time or another, because they have been on both sides of this question.

Mr. FORAKER. I recognize, Mr. President, that we are making progress; for it is now admitted that some of these men are innocent, and it is further admitted that, as to at least one matter, the President does not have any power, and that he will have to wait on Congress to confer it upon him, in order that right and truth and justice may prevail with respect to the men who are innocent.

But what I want to inquire about is simply whether or not this bill is introduced or is to be introduced, if I may ask the question—and I would not venture to ask it if it were not that I thought it was to be introduced this morning?

Mr. WARREN. There are thirteen men upon the Committee on Military Affairs. Four of those have signed a portion of this report recommending a form of bill. Such a bill, in my opinion, will be introduced, probably, by some one of those four. I submit, however, that the time for the introduction of that bill would naturally fall to those who have favored it, rather than to those who refrained from joining in that recommendation. It is my intention that there shall be a bill introduced very soon, but it is necessary to make a little further investigation as to the part of that proposed bill which refers to the restoration of the rights of the discharged soldiers, and to the pay, whether it includes pay from the time of the reenlistment, if the men may be reenlisted, or whether from some other date. But there will be no unnecessary delay, in my opinion, in the introduction of that bill; and when it is before the committee the Senator from Ohio, myself, and others, of course, will enter into its consideration and report to the Senate whatever may be the conclusion of the committee.

Mr. FORAKER. May I ask the Senator one other question; and that is whether or not he construes the bill, which he has made a part of his report, as a bill restoring to the men who may be found to be innocent full pay and all their rights?

Mr. WARREN. I do not think so. As it reads I think it restores all of their rights; but as to their pay it simply provides that pay shall commence at the time of their reenlistment. That is my opinion of the suggested bill in its present form.

Mr. FORAKER. I agree with the Senator as to that, and I am glad to have his interpretation and construction of his own bill. I am not finding any fault with the Senator for not introducing it this morning. I was only exercising the right, which I suppose I have, of making an inquiry in order that I might know whether we are to expect it to be introduced, and, if so, when.

Mr. WARREN. Assuredly there is no blame. This Brownsville affray investigation has now been conducted in the Military Committee for more than a year, and I will say to the Senate that there has been no misunderstanding between the Senator from Ohio [Mr. FORAKER] and me, or between the Senator and other members of the committee, and there can be none now over this matter of when a bill shall be introduced or what may be its fate.

Mr. FORAKER. I will ask the Senator one further question now, in view of the disposition he manifests, and that is, May we expect it to be introduced at an early day? I will say to the Senator that I am not asking this in any frivolous way, but only because I have some notions of my own as to what I want to do.

Mr. WARREN. I think that it will be introduced at an early day.

Mr. TILLMAN. Mr. President, before we pass from this matter, I should like to suggest, with the permission of the chairman of the Committee on Military Affairs, that the document which we have just ordered to be printed have upon its title-page, as the text for what shall follow, the President's order dismissing these men. The Senator from Ohio tells us that he has incorporated it in his report, but I would not like to have to look about in the middle of the book for the reason for the book having to be printed. I should like to get it as a preface or on the title-page, right at the start. There never would have been any of this disturbance but for the President's arbitrary action. I should like for this document which relates to it, with this seemingly happy adjustment which is in sight, to give us the cause for this transaction by having the President's order put at the beginning. I hope the Senator will agree to that.

Mr. FORAKER. Mr. President—

THE VICE-PRESIDENT. Does the Senator from South Carolina yield to the Senator from Ohio?

Mr. TILLMAN. Certainly.

Mr. FORAKER. I will explain to the Senator from South Carolina a difficulty about printing the order as a separate document. I have before me my report, and I read from page 33 of it.

Mr. TILLMAN. I know it is there; the Senator told us he had incorporated it; but I want it to be put at the beginning.

Mr. FORAKER. I understand, and I want to show to the Senator what he will have to include in his request in addition to what he has mentioned.

Mr. TILLMAN. All right. If the Senator has something additional which will throw light on this matter, let it come.

Mr. FORAKER. I will read the order made by the President. It is as follows:

THE WHITE HOUSE,
Washington, November 5, 1906.

THE SECRETARY OF WAR:

I have read through General Garlington's report, dated October 22, submitted to me by you. I direct that the recommendations of General Garlington be complied with, and that at the same time the concluding portion of his report be published with our sanction as giving the reasons for the action.

THEODORE ROOSEVELT.

It is by reference to General Garlington's report, therefore, that we get what the President's order was; that is to say, General Garlington had made a report in which he recommended that the President discharge without honor, as the President did. So I think we ought to have printed the order of the President and this report of General Garlington.

Mr. TILLMAN. As the preface or opening pages of this proposed document.

Mr. FORAKER. Yes; at least so much of the report as may be necessary to show the terms of the order.

Mr. TILLMAN. That is what I wish to get, Mr. President.

Mr. WARREN. The Senator from South Carolina refers to the title page. I suppose he wishes to show by the title page what the volume contains. If it is the desire of the Senate, the committee will prepare this matter by assembling it and arranging an index, and will of course incorporate the original order of the President and the qualifying order in the message which followed it. As to the Garlington report, which is contained in one of the other of the volumes, I will ask the Senator from Ohio if he has it there before him, in order to know what the length of the report is.

Mr. FORAKER. No; I can not tell.

Mr. TILLMAN. The committee could incorporate General Garlington's recommendations—

Mr. FORAKER. Yes.

Mr. TILLMAN. As part of the President's order.

Mr. FORAKER. That is what I did in my report, thinking that was all that was necessary.

Mr. WARREN. If the Senate desires it, the committee will incorporate at least as much of it as the Senator has quoted, but in this connection it must be remembered that the entire report of the committee, the testimony and all, will be printed.

Mr. FORAKER. Certainly.

Mr. WARREN. And of course will be accessible.

Mr. TILLMAN. But not in connection with this matter that was brought up this morning. Let that be volume 2, 3, 4, 5, or 40, but let us have this little volume with the essentials in a handy shape.

Mr. WARREN. In order that there may be no misunderstanding, as I understand the order for printing, it is, first, that there shall be printed the reports of the committee, the majority and minority reports, which will include all the evidence, and all that material contained in the Garlington report, and in fact everything pertaining to it, except the President's message—this in one order. Now, there will also be printed as a public document the President's message, some portion of the Garlington report, and all three of the papers read this morning.

Mr. FORAKER. Mr. President—

THE VICE-PRESIDENT. Does the Senator from Wyoming yield to the Senator from Ohio?

Mr. WARREN. I do.

Mr. FORAKER. Before the Senator takes his seat I will state that it will be remembered that the President on a former occasion revoked part of his original order. I think that order of revocation should also be printed.

Mr. WARREN. Certainly; that is a part of it.

Mr. TILLMAN. That marks his progress toward giving these negroes justice.

THE VICE-PRESIDENT. Will the Senator from Wyoming please state his request?

Mr. WARREN. The request is, first, that the report of the committee and the views of the minority be printed in the usual way, with all of the papers that accompany the reports.

THE VICE-PRESIDENT. The Senator from Wyoming asks unanimous consent that the report of the committee, with the accompanying testimony and the minority report, be printed in the usual manner, together with the other documents accompanying the report. Is there objection? The Chair hears none, and it is so ordered.

Mr. WARREN. I now ask that there may be printed also the President's message read at the desk this morning, the President's original order, with the additions presented thereafter, with so much of the Garlington report as the committee may believe to be pertinent to the subject, and all three of the reports read at the desk, but excluding the several volumes of testimony.

Mr. TILLMAN. Including the President's supplemental order, will you not?

Mr. WARREN. Yes.

Mr. TILLMAN. All right.

THE VICE-PRESIDENT. Is there objection to the request of the Senator from Wyoming? The Chair hears none, and it is so ordered.

RAILWAY MAIL EMPLOYEES.

Mr. CARTER, from the Committee on Post-Offices and Post-Roads, reported the following order, which was considered by unanimous consent and agreed to:

Ordered, That 2,000 additional copies each of the amendments intended to be proposed by Mr. PENROSE to the bill (H. R. 18347) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1909, and for other purposes, as follows:

1. "For actual and necessary expenses, division superintendents, assistant division superintendents, and chief clerks, Railway Mail Service, and railway postal clerks, while actually traveling on business of the Post-Office Department and away from their several designated headquarters, \$2,000,000;" and,

2. "That railway mail clerks be allowed thirty days' leave with pay each year, without additional expense to the Department, and that in case of sickness such leave may be extended to sixty days," be printed for the use of the Committee on Post-Offices and Post-Roads.

LEAVES OF ABSENCE TO CERTAIN POSTAL EMPLOYEES.

Mr. CARTER, from the Committee on Post-Offices and Post-Roads, reported the following order, which was considered by unanimous consent and agreed to:

Ordered, That 5,000 additional copies of the amendment intended to be proposed by Mr. PENROSE to the bill (H. R. 18347) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1909, and for other purposes, as follows: "That after June 30, 1908, employees in first and second class post-offices and in other post-offices having city delivery service may be granted leave of absence with full pay for not exceeding thirty days in a fiscal year," be printed for the use of the Committee on Post-Offices and Post-Roads.

INFLUENCE OF AMERICAN BATTLE-SHIP FLEET ON PACIFIC COMMERCE.

Mr. GALLINGER. Mr. President, I have a brief paper from the Sunset Magazine of the present month, by Naval Constructor Evans, the title of which is "The important influence of the American battle-ship fleet on the commerce of the Pacific." It is a valuable paper in view of certain discussions that are going on in the Senate. I ask that it be printed as a document.

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

AMENDMENT OF NATIONAL BANKING LAWS.

Mr. BORAH. By request, I desire to give notice that the Senator from Wisconsin [Mr. LA FOLLETTE], who is absent from the Chamber on account of illness, will next Monday, the 16th, after the morning business, address the Senate on the unfinished business.

GRANT OF LAND TO VALENTINE, NEBR.

THE VICE-PRESIDENT laid before the Senate the amendments of the House of Representatives to the bill (S. 1931) to grant certain land, part of the Fort Niobrara Military Reservation, Nebr., to the village of Valentine for a site for a reservoir or tank to hold water to supply the public of said village, which were, on page 1, line 5, after "Nebraska," to insert "an easement in, on, and over;" on page 1, line 10, after "United States," to insert: "for the purpose of supplying to said village and its inhabitants water from a stream thereon, with the privilege to erect, construct, and maintain a dam, reservoir, and other facilities proper and convenient to the enjoyment of such easement," and on page 2, line 3, to strike out all after "That" down to and including "United States," line 6, and insert "this privilege shall not interfere with any existing vested right."

Mr. BURKETT. I move that the Senate concur in the amendments of the House of Representatives.

The motion was agreed to.

DAM ACROSS MULBERRY FORK, BLACK WARRIOR RIVER.

Mr. BANKHEAD. I ask unanimous consent for the present consideration of the bill (H. R. 16746) to authorize T. H. Friel or assigns to construct a dam across Mulberry Fork of the Black Warrior River.

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

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

AMENDMENT OF NATIONAL BANKING LAWS.

Mr. CLARKE of Arkansas. I ask the Chair to lay before the Senate the unfinished business.

The VICE-PRESIDENT. The Chair lays before the Senate the bill indicated by the Senator from Arkansas.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 3023) to amend the national banking laws.

Mr. CLARKE of Arkansas. Mr. President, I gave notice a few days since that I would to-day address the Senate on the so-called "Aldrich bill," and incidentally the substitute reported by the minority of the Committee on Finance. I am quite indisposed this morning, and I shall content myself to-day by occupying, I trust, not to exceed ten minutes in stating the reasons why I think no legislation of this kind should now be enacted.

Mr. President, I believe that when we consider the magnitude and the consequences of the recent panic and the remedy now proposed, so revolutionary as that which the pending bill or the substitute seek to introduce into our financial system, there should be the most perfect knowledge of the entire situation that diligence and authority can obtain. I do not believe we are in possession of such information as will enable us at this time to proceed intelligently. I believe that the proposed legislation is premature. I do not believe it necessary, and think it may become dangerous. Because I find my mind in that condition I am not disposed to tolerate the idea of supporting the committee bill nor the substitute proposed by the minority of the committee. I understand by "minority" the Democratic members of the committee, and my respect for the eminent Senators who constitute that minority requires me to state in a few words why I shall not be able to vote for the substitute.

In the first place, I believe that the character, extent, and cause of the panic are perfectly well known to those who have exercised the diligence and who have devoted the time to ascertaining these things. There was nothing the matter with the general prosperity, industry, or temper of the people at the time the panic occurred. It came as a great surprise. It found the people busy. It found the transportation companies with an excess of business upon their hands. It found a hopeful, prosperous people. With the suddenness of the onslaught of a robber band news came out from the stock exchange in New York that business had to be suspended until the victories of one faction of predatory manipulators over another could be adjusted and the loot divided among those entitled under the rough code of the conflict to receive it. I say I think that can be established with that degree of certainty which legislators ordinarily require as the foundation of their official action. I believe it can be demonstrated beyond ground for rational controversy that the panic had its origin within the confines and zone of influence of the New York Stock Exchange, and that whatever remedy is found necessary should not precede the definite ascertaining of its true cause.

I repeat that this legislation is premature, if not dangerous. It is plain that the predatory element of the national banking organizations will take advantage of the distress and demoralization in the commercial affairs of the country that has followed in the wake of that panic to demand further concessions to them, to be ultimately again directed against the commercial peace of this country.

I believe there is now in use in this country a sufficient volume of money to conduct its legitimate business. Every test by which such a state of facts can be demonstrated points to that conclusion. But I shall not undertake to deal with that phase of it to-day, as I have promised to occupy only a few minutes to indicate why I think I ought not to support the substitute of the Democratic minority of the Finance Committee. There are many features of that substitute that constitute improvements over the bill of the majority of the committee. There are many features of the bill which, compared with provisions in the other bill intended to subserve similar purposes, are far inferior.

In the first place, the committee bill proposes to disburse this money—to filter it out to the people—to allow them to enjoy such incidental benefits as may come to them through such national banks as have circulation outstanding in an amount

equal to 50 per cent of their capital stock under existing law, and, in addition, having a surplus of 20 per cent. That permits every national bank to qualify itself to participate in the benefits of the act by voluntary action without the exercise of any discretion in its behalf by any public officer.

The minority bill limits the right to enjoy the benefits of this extra use of currency to such national banks as have been or may be designated for that purpose as depositaries of public money. If the Secretary of the Treasury shall not be more liberal in designating depositaries hereafter than in the past, the enjoyment of the privileges or benefits of the substitute will be limited to fourteen hundred only of the seven thousand national banks.

I see no reason why that restriction should exist. If it is to be an emergency currency, the benefit of the supply should be extended to all who stand in need—whose legitimate business demands require that they shall be relieved by this unusual interposition of the bounty of the Government, and who are able and willing to furnish the required security. I do not believe it should be limited to banks which have been previously designated or which might thereafter be designated for the purpose by the Secretary of the Treasury as depositaries of public money.

Mr. BAILEY. Will the Senator from Arkansas permit me?

Mr. CLARKE of Arkansas. Certainly.

Mr. BAILEY. The Senator does not quote the substitute exactly. It says "which may be for that purpose," and it was not intended that they be necessarily depositaries generally, either active or inactive, but the Secretary of the Treasury, if he wanted to deposit the money anywhere, could designate national banks, or I do not limit it to national banks, so far as that is concerned. For that particular purpose, and that purpose being served, as a matter of course that would end it.

Mr. CLARKE of Arkansas. I agree with the Senator about that. He has exercised the privilege authorizing the naming of banks for the exclusive purpose of receiving deposits authorized by the substitute. The great majority of the designated depositaries are of that character now. They are not depositaries of public money generally; only the surplus revenues. I did not then misunderstand the purpose of the Senator, but I did not quite understand then, nor do I now, that it was his intention, in the language he used, to permit the designation of State banks as depositaries of public money. I do not intend to differ with the Senator about what he personally intended to provide, but I make no doubt in my own mind that the language employed, read in connection with the power now existing to authorize any officer to designate banks as depositaries of public money, will confine the Secretary of the Treasury to the designation of national banks only.

Mr. President, I have had a little experience during the present panic in attempting to have three well-known, reputable, solvent, and well-managed national banks in the State of Arkansas, in neighborhoods remote from one another, in communities whose business required the temporary use of capital, designated as depositaries of public money. They were turned down without the slightest hesitation, on the ground that there was no money available; at least that was the reason assigned by the Assistant Secretary of the Treasury. If I were in favor of an emergency-currency bill at all, I would be in favor of extending its benefits to everybody who can deposit the necessary security. The very nature of the relief itself indicates that that is the proper basis of distribution. It is because people can not get money out of the banks that they need it. The Government provides the bounty for them in order to promote business, thus overcoming the congestion that results by reason of the fact that there is no medium through which current and necessary exchanges can be promptly effected, the crops moved, and the various forms of business that go to make up the volume of the commerce of the country properly conducted.

I would extend it and make it a matter of right to all, the only restraint being a matter of security. Of course I would not expect that it would be dealt with upon such a small scale that a man could go to the Treasury, or some one of the sub-treasuries, and borrow \$5, but in amounts that would adjust themselves to business of that magnitude that usually finds its way into the transactions of the banking institutions of the country.

I believe the provision that deposits shall be made upon the basis of the population of the several States is a very excellent one, but I think it ought to be made a little more elastic than in this substitute. I think if a State does not desire its quota, or if for any reason its banks are not willing or able to avail themselves of it, there ought to be a provision that, after reasonable time allowed in which to exercise the option, the amount allotted should be transferred to some other State

where the necessity demanded relief and where the ability to avail themselves of it existed in adequate degree.

The effect of this substitute, especially in the cotton-growing States of the South, with the exception of the magnificent State of Texas and the State of Virginia, is that they can not avail themselves of it to the extent nominally permitted to them. Texas never showed up better in her history than she does in connection with her national banking facilities. To my amazement I find that that State has about the same national-bank capital and surplus as Indiana and Iowa put together; about as much as Missouri and Nebraska put together. Texas and the State of Virginia are the only two States in the cotton-growing region of the South that could, by reason of the limited national banking facilities, avail themselves of the full allotment assigned to them on population basis under the substitute.

I think, therefore, that both bills, as emergency measures, are too narrow to meet the exigencies of the situation that their passage, or either of them, contemplates.

But my chief objection is common to both, and that is the time has not come and sufficient information is not now before Congress to warrant it in saying that such defects have been developed in the operation of our financial system as to require that something shall be done not conceived of in the infancy of this Government, when it was experimenting with policies, when its business institutions were undeveloped, when its railroads and telegraphs were unthought of, when there was not that coherency in business between one section of the country and another which makes it easier to do business than ever before, and when there had not been introduced and in successful operation the many striking economies in the conduct of business which are now in existence. I know that the necessary preliminary investigation has not been made and that we are proceeding to legislate under the pressure of a situation made no less acute by the predatory elements of the national banks because they have interests to promote at this time. Investigation can be made now through official sources to an extent that will satisfy ordinary purposes, but I believe that the first duty of the Congress is to ascertain the cause of the panic, to the end that we may proceed advisedly and act decisively. I do not believe that any Government upon the face of the civilized earth would have permitted an event of the character of the late panic, one which completely convulsed and demoralized for the time the commercial peace and prosperity of the country, to pass without an investigation which would have promptly and definitely disclosed its causes, and on the foundation of the knowledge thus acquired formulated and adopted a remedy that would have made impossible the recurrence of a similar event produced by the same causes.

Such an investigation as I have made in the matter justifies me in saying that the panic is directly traceable to the operations on the New York Stock Exchange, the cotton exchange, and the grain exchanges of the country. I shall take a few minutes to say something about that, and then I will desist.

It is a demonstrated fact, which admits of no dispute, that about \$1,000,000,000 of the loanable capital of the country is employed constantly in financing the so-called deals of the gambling operations on the New York Stock Exchange. The report made to the Comptroller as late as the 22d day of August discloses the fact that the national banks of New York had \$251,000,000 loaned on stock-exchange securities—that is, on call loan, without personal indorsement, and secured by stocks and bonds.

There were sold upon that exchange last year 300,000,000 shares of stock—an unthinkable amount. There was put into the treasury of the State of New York from the State tax on those transactions \$6,000,000. In other words, the State of New York derived a privilege tax of \$500,000 a month for permitting that business to be conducted. The commission which the so-called "brokers" earned by reason of these transactions, as the rake-off on these gambling operations, amounted to \$50,000,000. There are 1,100 members, whose so-called seat or membership is worth \$52,500 each, or \$57,500,000 for the privilege of engaging in that sort of business. It is not pretended by those who think they know, because that is about as definite as you can get at it—they keep their proceedings to themselves; what gets out is merely in an incidental and fragmentary way—that 99 per cent of the transactions are mere settlements of differences on gambling operations, pure and simple.

No one pretends to defend the stock exchange against that charge, made over and over again. A lawsuit took place not long since in the city of Chicago, where it became necessary to investigate the character of business carried on by the grain exchange there. An issue was made as to the extent and character of the transactions there, and the proof showed that 95 per cent of the transactions on the grain exchange were a

mere settlement of the matter of differences, and this in a case where the brokers made the greatest efforts to prove delivery by warehouse certificates or otherwise.

I think as long as such institutions exist, unless it is the purpose of Congress to adopt them as a legitimate part of the business establishment of the country, we should not increase the volume of currency so as to make provision for their nefarious schemes, and to thus treat it as a proper and commendable business institution. But if its existence is a necessary and natural evolution of the business of our complex society, as one of the judges of the Supreme Court denominated it, then this bill ought not to pass until we determine for ourselves whether or not the time has come when that business should be put down, or if it should not be, then that we shall understand it as being a part of the recognized business system of the country that must be provided for accordingly.

I grant you that if a billion dollars of loanable capital of this country must be kept involved in stock exchange deals and not be subject to the control of legitimate business interests of the country; or, to express it differently, if a billion dollars of the loanable capital of the country must be devoted constantly to gaming—then, necessarily, it must exert a very considerable influence upon the disturbance of prices, for the methods of that institution make it necessary for it to disturb prices in order to make business. It exists by that sort of financial disorder, and it could not live six months without it.

These institutions do not deal in stable stocks, except on rare occasions. The stock of reputable national banks are never made the subject of speculation there. In 1907 there were two railroad companies of whose stock there was sold, or, rather, the brokers sold (the roads did not have anything to do with it), more than thirty times the number of shares that were ever issued.

I believe this is about all I intend to say just at this time. I had intended to deal somewhat at length with several aspects of the questions involved on this occasion, but I find myself unable to do it now. My purpose has been to say in a word why I should not vote for either the committee bill or the substitute. I am greatly disappointed to find myself unable to do so at this time. I may take occasion to say something hereafter along the lines I intended to pursue this morning. But as I take my seat I want to emphasize that in my opinion the time has arrived when, in the judgment of disinterested business men of the country, the affairs of the New York Stock Exchange and the other stock exchanges must be looked into. This belief is almost universal among them. The available proof justifies this sentiment, which is almost universally entertained.

Mr. BEVERIDGE. Would it interrupt the Senator to ask him a question?

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from Indiana?

Mr. CLARKE of Arkansas. Certainly.

Mr. BEVERIDGE. I have listened intently to what the Senator has said. Do I understand this to be the situation? I ask for information because the Senator has studied it and I have not. The banks throughout the country, in order to get the most interest that they can, deposit their money with the banks in New York, and the banks in New York loan out the money thus accumulated on call to transact the stock-gambling operations which the Senator has described; then, when all of the money that is drawn to New York from all over the country is so locked up that upon the call of the contributing banks to the banks of deposit in New York the country banks will not get it. Is that the situation?

Mr. CLARKE of Arkansas. It is.

Mr. BEVERIDGE. Then the point the Senator makes against both the minority and the majority bill is that this excess of emergency currency would merely relieve the situation created in New York in the way the Senator has described? Would it not follow then that while it would more directly help the stock exchange transactions it would also in that very way relieve the money, so that the banks could send it back to the banks from which they got it?

Mr. CLARKE of Arkansas. But I do not think that it is wise legislation to provide a benefit for the stock-exchange gamblers in order that the country bank may have the privilege of drawing its own money out of the New York bank. I do not think we ought to pay tribute to the stock exchange to that extent.

Mr. BEVERIDGE. I am somewhat inclined to agree with the Senator in what he has said. His speech is very clear and very informing—it is one of the best speeches yet made in its keen intelligence and lucid statements, and I wanted to get the Senator's exact views as to the conclusion to which it necessarily comes. I am much obliged to the Senator.

Mr. CLARKE of Arkansas. The banks, Mr. President, are induced largely to send money to New York to get interest. But they have another reason, very substantial with them. There comes a time when the country banks have to rediscount paper in order to carry on the business of the several localities where they do business. They are accommodated in return in proportion to the state of the account they keep with the central bank, so that they thus find some mutuality about the business of depositing in legitimate bank operations. They have no difficulty about getting a bank ordinarily—

Mr. ALDRICH. Mr. President—

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from Rhode Island?

Mr. CLARKE of Arkansas. Certainly.

Mr. ALDRICH. I suppose the Senator is also quite well aware that it is for the interest of the country banks to keep an account in New York entirely aside from any question of interest or any other question. It is almost a necessity for the country banks in the matter of exchanges to keep an account in New York, whether they get any interest for it or not.

Mr. CLARKE of Arkansas. I will say that the country banks usually have business connections and customers that require frequently the drawing of drafts on New York.

Mr. ALDRICH. It is undoubtedly true of almost every bank in the United States that they keep an account in New York. If the Senator should go to a bank in Arkansas and get a check to pay a bill in Chicago, or in San Francisco, or anywhere else, they would give him a draft or a check on New York, probably. New York is the great financial center of the country, and entirely aside from any stock speculative movements there, it is important that country banks and the banks of the country generally should keep accounts in New York.

Mr. CLARKE of Arkansas. That is true, partially.

Mr. NEWLANDS. Mr. President, if the Senator from Arkansas will permit me to interrupt him for a moment, I should like to ask the Senator from Rhode Island whether he thinks it is necessary to accumulate in New York the vast amount of reserves of the banks throughout the country in order to enable those banks to conduct the simple transactions of exchange on New York?

Mr. ALDRICH. Mr. President—

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from Rhode Island?

Mr. CLARKE of Arkansas. Yes, sir; very cheerfully.

Mr. ALDRICH. Of course there are varying amounts held by the New York banks of the banks throughout the country. There are varying amounts dependent upon the season and upon the demands in various parts of the country. I think myself that there is always a tendency to accumulate too much money in the banks of New York and too much of a temptation to use it for other purposes than the legitimate purposes of trade. I agree perfectly with the Senator from Arkansas to that extent, but in ordinary seasons the banks must keep an account in New York. That is entirely independent of the question of reserves.

Mr. BEVERIDGE. Everyone will agree with what the Senator says, but is it not true that it is a comparatively small portion?

Mr. ALDRICH. I think it is much the larger portion.

Mr. BEVERIDGE. You think it is much the larger portion?

Mr. ALDRICH. I think so.

Mr. BEVERIDGE. I have had a very wrong impression. My impression has been that it was a small portion. My impression had been that while some of the money went there for legitimate purposes of exchange, most of it was accumulated there because the country banks found that in that way they could earn the largest possible interest on their money. I am glad the Senator corrects me.

Mr. NEWLANDS. Mr. President—

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from Nevada?

Mr. CLARKE of Arkansas. Certainly.

Mr. NEWLANDS. Let me call the attention of the Senator from Rhode Island to the fact that one-half of the lawful reserves of the country banks and one-half of the lawful reserves of the reserve city banks go to New York.

Mr. ALDRICH. Not necessarily.

Mr. NEWLANDS. You will find by the statistics of last year that one-half of the reserves of the country banks was deposited in other banks and that one-half of the reserves in the reserve city banks was deposited in the central reserve city of New York.

Mr. ALDRICH. There are three central reserve cities.

Mr. NEWLANDS. Well, the bulk of it was deposited in New York. I do not suppose the Senator will contend for a moment

that one-half or one-quarter of that large amount is necessary to be deposited by the country banks and the reserve city banks in New York in order to conduct the ordinary transactions of exchange.

Mr. ALDRICH. I should say, most assuredly.

Mr. TILLMAN. Mr. President—

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from South Carolina?

Mr. CLARKE of Arkansas. Most cheerfully.

Mr. TILLMAN. I want to suggest to the Senator from Arkansas that, so far as I understand his contention, he is not so much concerned as to whether the local banks or country banks shall have a deposit in New York against which they can check as he is concerned about our legislating here so that when those banks call for their money they can get it.

Mr. CLARKE of Arkansas. The Senator is exactly right; and I also want to stop stock gambling, as a means to this end.

Mr. TILLMAN. I hope the Senator from Rhode Island, whose earnest efforts to better the financial condition I, for one, believe in, although I do not agree with his remedy, will aid us or will himself take the lead in furnishing some method by which the country banks can get their own money when they want it, and not let the stock gamblers hold it in their grasp by conditions which we encourage by our legislation.

Mr. BAILEY. Mr. President—

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

Mr. CLARKE of Arkansas. Certainly.

Mr. BAILEY. I merely wish to say in this connection that all we need is a Comptroller of the Currency who will enforce the law, and then the New York banks will either give the country banks their money or he will put the New York banks in the hands of a bank examiner.

Mr. CLARKE of Arkansas. That is a theoretical remedy.

Mr. BAILEY. I simply say that is the law.

Mr. CLARKE of Arkansas. It is the law that whenever a national bank makes default in the payment of its indebtedness it is subject to be proceeded against for insolvency.

Mr. BAILEY. The Senator from Arkansas will agree with me that it is better the New York bank should be closed up for failing to pay its obligations than that a country bank should be closed up because it could not pay its obligations.

Mr. CLARKE of Arkansas. I agree entirely with the Senator as an abstract proposition. But the practical difficulty with the attempt to apply a remedy would be that while the Comptroller would close the recalcitrant bank, the resulting demoralization would cause excited depositors to close a dozen more.

Mr. ALDRICH. I desire to impress upon the Senator, and I desire to repeat, that the people of this country will never permit again, in my judgment, the banks to suspend payment in the arbitrary way they did last October. I said that in my first speech, and I repeat it now.

Mr. CLARKE of Arkansas. The Senator has a great reputation as a historian, but I would not trust him much as a prophet if he makes that declaration. Whenever the same necessity presents itself they will do the same thing over.

Mr. ALDRICH. I think not.

Mr. CLARKE of Arkansas. I know the complete terror that exists in the country when the people are uncertain about their bank balances. The people did not lose confidence in the banks in 99 per cent of the territory of the country. They exhibited a forbearance that was absolutely monumental.

Mr. TILLMAN. If the Senator will permit me, in my experience last fall I discovered that the greatest concern of the people in every town which I visited was that they could not get their own money out of their own banks, because New York had had a chill.

Mr. CLARKE of Arkansas. That is true.

Mr. TILLMAN. Old Confidence had taken to the woods in New York, and therefore he was in hiding all over Texas, Oklahoma, Missouri, and everywhere else I went.

Mr. CLARKE of Arkansas. That is true. Wherever the banking operations of the neighborhood in their ultimate effect ended up in New York there was a local panic, because of New York conditions and not conditions at home. If the banks of the South and West had secured possession of their own money they would have never known that there was a panic raging, but it was prearranged that they should not do that. From June until the 1st of September the banks of the South and West were induced to make loans to the national banks in New York by tempting offers of high interest rates on high-grade, short-time paper. I saw a list of it in my home town, offering 7 per cent on such paper. The money was thus lured into the banks of New York, not by the mere low rate of interest on

reserves which they had there, but the New York banks drew many millions there by paying as high as 7 per cent interest on it for a short time. The local banks of course supposed that before they would need it for local use the paper would mature and they would have credit for it with the banks of New York and could draw it out as necessity required. But when the time came their calculations miscarried, with the result we now know.

I am about through, Mr. President. I see the Senator from Rhode Island present. There is just one feature of his bill more than any other that I think ought to receive attention. He left out a provision for keeping the reserves at home that I think ought to be in, and he has put in a provision that the national banks may retire their normal circulation at will. Parliamentary master that he is, I would discredit my own estimate of him if I believed he would leave the one out and put the other in, except for the purpose of having something with which to negotiate when he comes to hold the inevitable parley with the almost persuaded. I do not believe he intends to pass the bill with a provision that all normal circulation can be retired at will. I do not believe that he has overlooked the fact that necessity requires some modification of the law in regard to reserves. I am opposed to permitting the local banks to deposit the reserve anywhere. If they have money that they choose to deposit upon checking account, that is a different proposition altogether, having nothing whatever to do with the reserve. That is to be regulated by the volume of business that passes between two banks. That is a legitimate use of funds. But I do not believe that that reserve is dead money, as the Senator from South Carolina [Mr. TILLMAN], or probably my friend from Mississippi [Mr. McLAURIN], characterized it the other day. No such fact is true. It is just as much a part of the working capital of the bank as any other dollar in the bank.

It is not an amount of money at all; it is the mere warning to the bankers that when they reach the limit of 15 per cent of the deposits they must thereafter be careful.

Mr. McLAURIN. Mr. President—

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from Mississippi?

Mr. CLARKE of Arkansas. Certainly.

Mr. McLAURIN. I will say to the Senator that it was I who spoke of it as dead capital. I stated that I did not believe it was the intention of Congress in enacting the law that it should be treated as dead capital, but that it should be utilized for the purpose of paying the checks drawn upon this reserve; that the reserve was to be so much that could not be loaned out.

Mr. CLARKE of Arkansas. On time loans.

Mr. McLAURIN. On time loans by the banks.

Mr. CLARKE of Arkansas. Even that is not enforced by a penalty. It may be done over and over again and there is no penalty; no presumption of wrongdoing that grows out of it.

Mr. ALDRICH. Mr. President—

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from Rhode Island?

Mr. CLARKE of Arkansas. Certainly.

Mr. ALDRICH. I mean to be perfectly frank with my friend the Senator from Arkansas. I will say with reference to the \$9,000,000 limitation that two years ago, I think it was, we raised the limit on retirement from \$3,000,000 to \$9,000,000. I then stated that personally I thought there was no occasion, especially as we left the matter entirely in the control of the Secretary of the Treasury and the Comptroller of the Currency, to make that limitation. The Senate did not then agree with me, and I have a notion that they will not agree with me now. I expect that the limitation retirement of \$9,000,000 per month, except as to emergency currency, will be retained in the bill.

So far as the question of reserves is concerned, I said when the bill was reported that the committee left it out because it would lead, we thought, to a long discussion. We have had the long discussion anyhow. So I am now disposed, if I can, to get some provision affecting the reserves that will be satisfactory to Senators on both sides of the Chamber, and I want to do the very best thing possible.

Mr. CLARKE of Arkansas. And so it has come to pass so soon that my standing as a prophet is recognized.

Mr. NEWLANDS. Mr. President—

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from Nevada?

Mr. CLARKE of Arkansas. Yes, sir.

Mr. NEWLANDS. May I ask the Senator from Rhode Island whether he would be willing also to fix the relation between capital and loans so as to prevent a bank from loaning out its depositors' money in excess, say, of seven or ten times the amount of its capital?

Let me say in this connection that the capital is the security of the depositors as much as the reserve. Good banking requires that the reserves should be at least 15 or 20 per cent and the capital should be at least 15 or 20 per cent. The average of the national banks of the country is about 20 per cent. Now, would it not be wise to make that average compulsory, so that we may have some of the weak banks secured only by reserve, with their insufficient capital, and others can be secured by the reserve required by law and also by sufficient capital?

Mr. ALDRICH. I regret that I can not answer that in the time of the Senator from Arkansas.

Mr. CLARKE of Arkansas. I will be through in five minutes. The character of the provision in regard to the reserve that would please me would be one affirmatively requiring a bank to keep the reserve at home, and another provision denying to a national bank the right to pay interest to any other national bank upon a demand loan or a checking account, usually called "daily balances."

Mr. BEVERIDGE. Will the Senator please repeat the latter remark?

Mr. CLARKE of Arkansas. I say I would not only require the bank to keep a reserve at home, but I would deny to any national bank the right to pay any other national bank interest on a demand loan or a checking account. Then only such deposits would be kept in a national bank as the legitimate business of exchange would require, the interest would not enter into the question, and whether the reserves could be used at home or not would not enter into it. The matter would be disposed of on its merits as a business proposition to the mutual advantage of the two parties in interest.

Now, as I said, the reserve is as much a part of the working capital of the bank as any other dollar in it. Strangely enough that question got to the Supreme Court of the United States. There is a provision in the banking law that if a stockholder sells his stock after he knows the bank is insolvent, or after he has such knowledge of circumstances which followed up reasonably would lead to that knowledge, he does not escape the double liability by reason of transferring his stock to an insolvent transferee.

In the reported case the stockholder sold his stock, and the question arose as to whether he had knowledge at the time he disposed of it that the bank was in a failing condition, it having subsequently failed. One of the reasons advanced to show why he knew the bank was insolvent was that its published statements repeatedly showed the fact that its reserve invariably went below the legal limit. It was argued that he should have taken notice of that fact and by diligently following it up to ascertain the fact that the bank was insolvent. The Supreme Court, in an opinion written by Judge White, said that under the law he was not required to take any notice of it at all. The court refused to decide whether the provision is a directory or a mandatory statute. Permitting the reserve to run below the limit is not followed by any penalty. It depends upon the action of the Comptroller of the Currency in first giving the offending bank thirty days' notice to replenish the reserve, and a failure even then does not involve any consequence or charge anybody with notice of the irregularity. It is only when the Comptroller of the Currency reports to the Secretary of the Treasury that that particular delinquency has been kept up so long as to justify him in placing a receiver in charge that it is done by direction of the Secretary and not by the Comptroller.

The course of dealing with it is to virtually constitute the reserve provision in the national banking law a mere warning to bankers. They must be a little careful when they reach a certain point in their business. Of course it is their duty to pay everybody they owe, and it must be done whether the cash on hand is below 15 per cent or not.

Mr. ALDRICH. I think the Senator will agree with me that it has an entirely different signification as applied to the officers of the Treasury. They are bound to take notice of it, and there are certain obligations on their part and on the part of the bank officers of which they must take notice.

Mr. CLARKE of Arkansas. It is very true that the Comptroller of the Currency may take notice of it, but he will take under view the entire statement of the bank in doing so; if he, from this, finds that there is no good reason for precipitating an event that must have a demoralizing influence in the community, he will overlook the matter with an admonition.

If there are discounts which are properly secured, and the investments of the bank are of a character that indicate that there has been a judicious use of its money, and that the reserve was encroached upon temporarily to relieve some situation that seemed to justify such conduct, I take it for granted the Comptroller would pay very little attention to it; and if he did,

before any step could be taken against that bank, such action must be approved by the Secretary of the Treasury.

So I believe there is a widespread misapprehension about this matter of the reserve. I know my knowledge of the subject is of very recent acquisition, and is largely the result of investigations made since I have been here this session. I believe it to be a wise provision to require the banks to respect the reserve limitations. The idea of the necessity for a reserve was drawn from the experience and observation of bankers long before the national-banking system was created. The national act simply concreted that into a statute and made it a rule of law.

Now, I am going to make just one reference to what I think is another pernicious defect in the bill of the Senator from Rhode Island. He provides that the interest on this emergency circulation—in the bill he calls it a tax—shall not be paid on the sum delivered by Treasury officials to the banks, but it shall be paid on the average monthly amount of such notes so issued and in circulation.

Mr. ALDRICH. That is the language of the existing law. Of course if the money is in circulation, it has been delivered to the banks. If the Senator was right in his criticism, of course the language needs to be changed.

Mr. CLARKE of Arkansas. The Senator's knowledge of banking law is so much better than mine that I will have to be pretty well satisfied about a proposition before I would antagonize him. But if he will look at the returns of the amount of tax paid on the normal circulation of national banks, he will find the volume is about \$15,000,000 less than that delivered to the banks.

Mr. ALDRICH. I think the Senator will find that the difference grows out of the deposits of lawful money to retire circulation.

Mr. CLARKE of Arkansas. Here is the report of the reporting banks; none of them are in liquidation, voluntary or otherwise.

Mr. ALDRICH. Certainly; it is my purpose that they should pay a tax on all the money delivered to them.

Mr. CLARKE of Arkansas. That is not the meaning of the provision now in the bill.

Mr. ALDRICH. I have no objection to the provision, if such is not already covered by the bill.

Mr. CLARKE of Arkansas. If that is the purpose, it must be more plainly provided for.

Mr. ALDRICH. We will see that it is in, if it is not in already.

Mr. CLARKE of Arkansas. I think you will find there are on deposit to secure the circulation of national banks, \$619,000,000 in round numbers. The Comptroller delivered to the national banks depositing those bonds \$611,000,000 of notes. They had outstanding or in circulation \$601,000,000. They have practically \$8,000,000 less than they have bonds on deposit with the Treasury authorizing them to take out circulation. They took out \$8,000,000 less. The Comptroller delivered to them \$8,000,000 less than the bonds on file with him warranted them in receiving, and this to save simply the one-half of 1 per cent tax, leaving \$8,000,000 in the hands of the Treasury unissued.

Mr. ALDRICH. I think that discrepancy grows out of the fact that some small banks which are required by law to deposit the minimum amount of United States bonds never take out any circulation at all.

Mr. CLARKE of Arkansas. There are only three such, with an aggregate capital of \$75,000. Many have not taken out the authorized circulation because they thereby save the tax. I would not think that, in view of this circumstance, a very strong case was made out in favor of an emergency circulation. Consider here the question of retiring currency. I have a communication here from the Comptroller of the Currency showing that he had on file, on the 27th of February, applications to retire \$39,438,000. In January the banks retired \$9,000,000; in February they retired \$8,898,500; in March they have applications already to retire \$8,999,500; in April, \$8,407,000; in May, \$3,583,000; and in June, \$450,000. These applications to retire are permitted in the order in which the applications are filed.

Mr. TILLMAN. First come first served.

Mr. CLARKE of Arkansas. First come first served. It would not seem like there was any very great urgency about providing an emergency issue when they are retiring actual money in \$40,000,000 bunches to save one-half of 1 per cent annual tax.

In the face of that sort of practical demonstration of belief on the part of the national banks themselves there would not

seem to be a very overwhelming necessity for giving them permission to circulate \$500,000,000 of emergency currency, at an interest cost of 6 per cent per annum, when they say they can not profitably use normal currency that the Government pays them about 1 per cent bonus for taking.

Mr. ALDRICH. Mr. President—

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from Rhode Island?

Mr. CLARKE of Arkansas. Certainly.

Mr. ALDRICH. I suppose the Senator from Arkansas understands the explanation of these large retirements now? There was an extraordinary issue of currency made under circumstances last fall which were very unusual. There were fifty, sixty, or seventy million dollars added to the bank-note currency under pressure of the crisis. There is now no use for that money, and the banks, of course, necessarily retire it. That is the whole theory of the law.

Mr. CLARKE of Arkansas. Instead of retiring their own money, why have they not returned to the vaults of the Treasury the Government money loaned to them without interest? Have they not retired their own issues for the purpose of saving the one-half of 1 per cent tax? Why do they not return to the vaults of the Treasury more than \$200,000,000 of public money for which they pay no interest?

Mr. ALDRICH. That is an entirely different proposition. One is a question of currency and the other is a question of reserves.

Mr. CLARKE of Arkansas. The explanation given is that the national banks withdrew United States bonds which were held as security for public deposits and replaced them with railroad bonds, State bonds, and other bonds, under agreement with the Comptroller of the Currency, and took out additional circulation on the national bonds. They had to pay a 2 per cent bonus for the right to use the nonofficial bonds—the State bonds and railroad bonds—and they wanted to get rid of paying that by retiring this money. They would then only be compelled to pay the one-half of 1 per cent tax and would be relieved of the necessity of keeping the railroad bonds and State bonds on deposit to secure the national deposits.

It demonstrates the fact that we have money enough and that what we want done by legislation and what the demands of the present occasion require is that the money now in circulation shall be devoted to legitimate business purposes. With that ascertained, I do not think there will be any necessity for emergency legislation.

Mr. NELSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from Minnesota?

Mr. CLARKE of Arkansas. Certainly.

Mr. NELSON. As a practical question, does not this amount of Government deposits of \$222,000,000 serve as an emergency currency?

Mr. CLARKE of Arkansas. Certainly.

Mr. NELSON. Is there any good reason why the banks should not pay interest on that emergency currency as well as on the proposed currency provided for in this bill?

Mr. CLARKE of Arkansas. No good reason has ever occurred to me. It may have occurred to the Senator from Rhode Island.

Mr. ALDRICH. Mr. President—

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from Rhode Island?

Mr. CLARKE of Arkansas. Certainly.

Mr. ALDRICH. Mr. President, two years ago, I think it was—possibly five years ago—I reported a bill from the Committee on Finance requiring banks to pay not more than 1½ per cent upon Government deposits. The bill came into the Senate, and almost every lawyer in the Senate—I think the Senator from Arkansas [Mr. CLARKE] was not then a Member of the body—almost every lawyer in the Senate opposed the bill. I remember very well the arguments made by the then Senator from Wisconsin, Mr. Spooner, and the former Senator from Alabama, Mr. Morgan. The claim then made was—and I shall take occasion to have that debate reprinted in the Record—that by taking interest on such Government deposits it entirely changed the nature of the transaction; that we would thereby make it a loan and make the Government the general creditor of the banks, and that it was important from every standpoint that we should not change the relation between the banks and the Government. Whether that contention was correct or not, I do not know. In my judgment there is no good reason, unless it is a legal reason, why the banks should not pay interest on Government deposits.

Mr. CLARKE of Arkansas. Mr. President, I have only to

say to the Senator from Rhode Island that if he will prepare such a bill and bring it in here again—

Mr. TILLMAN. With 3 per cent on it.

Mr. CLARKE of Arkansas. If the Senator from Rhode Island will bring it in just at the same rate, I think I may venture to say that there are some of us over here who have made a living practicing law who will not raise that objection.

Mr. CULBERSON. Mr. President, I should like to remind the Senator from Arkansas that I myself introduced a bill to that effect, which has been pending before the Finance Committee since prior to the holiday recess.

Mr. TILLMAN. At what rate of interest?

Mr. CULBERSON. Two, 4 and 6 per cent, regulated according to crop movement.

Mr. CLARKE of Arkansas. I should be very much delighted to vote for the bill proposed by the Senator from Texas [Mr. CULBERSON], though as to the 6 per cent interest, I do not know whether or not that is reasonable, under all the circumstances; the banks must have it at a rate that will enable them to use it as some profit to themselves. But I should like the Senator from Rhode Island [Mr. ALDRICH] to bring forward his interest provision that was defeated; that ought to be regarded in parliamentary history as a very remarkable bill. A bill favorably reported from the Finance Committee, and having the indorsement of the Senator from Rhode Island on such a meritorious basis as that, it seems to me, ought not to have been defeated, and I am amazed that it was defeated by the efforts of lawyers on the minority side. There must have been some other reason for opposing its passage. I am not familiar with any of its provisions.

Mr. ALDRICH. It was defeated by the Senators sitting upon the other side of this aisle. If I might be permitted to use a phrase which perhaps is not exactly parliamentary, I would say it was defeated by a filibustering proceeding.

Mr. TILLMAN. How long ago?

Mr. ALDRICH. Five years ago.

Mr. CLARKE of Arkansas. I think we have learned something over here since then.

Mr. ALDRICH. Several Senators who are within the sound of my voice remember very well how that bill was defeated. It was talked to death.

Mr. CLARKE of Arkansas. I venture to say, looking at the Senator from Texas, that he took no part in that.

Mr. ALDRICH. I think he did not.

Mr. BAILEY. The Senator from Texas was in favor of that bill.

Mr. ALDRICH. The Senator from Texas made a speech in favor of the bill.

Mr. TILLMAN. What Senators opposed it?

Mr. ALDRICH. I do not like to refer to Senators by name, but if the Senator will look up the record he will find who they were. They were certainly not Republican Senators.

Mr. NELSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from Minnesota?

Mr. CLARKE of Arkansas. With pleasure.

Mr. NELSON. I should like to ask the Senator from Rhode Island [Mr. ALDRICH] if he does not recall the fact that during the consideration of the last financial bill here at the last session I offered an amendment to compel the banks to pay interest on Government deposits, and that he, among other Senators, strenuously opposed it?

Mr. CLARKE of Arkansas. Every Senator on this side of the Chamber voted for it.

Mr. ALDRICH. No; the Senator is mistaken. I think I made exactly the same statement I make now, that the lawyers of the Senate at that time believed that it ought not to be done for reasons of public policy and in consideration of the legal rights of the Government. Now, if I can be convinced by the Senator from Arkansas [Mr. CLARKE] and the Senator from Minnesota [Mr. NELSON] that the lawyers who opposed that bill were wrong in their statement and that no public interest of a contract nature is involved, I shall certainly be glad, for one, to vote for a proposition to require the payment of interest upon Government deposits.

Mr. NELSON. May I ask the Senator from Rhode Island another question?

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from Minnesota for that purpose?

Mr. CLARKE of Arkansas. Certainly.

Mr. NELSON. What is the difference between a Government deposit in a national bank and the deposit of a national bank with a central reserve bank that justifies in one case the payment of 2 per cent interest and in the other case none? Is there any difference in the legal relation of the two deposits?

Mr. ALDRICH. Well, Mr. President, with all due respect to the Senator from Minnesota, there is absolutely no analogy between the two cases. In the case of Government deposits, the former Senator from Wisconsin and the former Senator from Alabama both contended that by an unbroken line of decisions of the Supreme Court of the United States Government money in a national-bank depositary was money in the Treasury of the United States.

Mr. BEVERIDGE. Of course.

Mr. ALDRICH. And that to put it in the form of a loan would change the nature of the transaction.

Mr. MC LAURIN. Mr. President—

The VICE-PRESIDENT. Does the Senator from Arkansas yield to the Senator from Mississippi?

Mr. CLARKE of Arkansas. Certainly.

Mr. MC LAURIN. Mr. President, I wish to say that I was one of those who opposed the bill introduced by the Senator from Rhode Island [Mr. ALDRICH] of which mention has just been made. I did not oppose it because it proposed to require the banks to pay interest, except that the banks were not required in that bill to pay as much interest as I think they ought to be required to pay the Government, inasmuch as it loans them the money. I undertook to make an argument here against that bill. I took the floor and talked some ten minutes, I reckon, when other Senators on both sides of the Chamber got in and spoke until within five minutes, I believe it was, of 12 o'clock, when the Senator from Rhode Island suggested that the street cars would stop at 12 o'clock, and moved that the Senate adjourn. I then stated that I wanted it understood that when the bill came before the Senate the next day I would have the floor, but the bill never did come up again, and I never did get an opportunity to present my objections to it.

Mr. CLARKE of Arkansas. Will the Senator explain why he opposed it?

Mr. MC LAURIN. No; I will not explain, Mr. President, why I opposed that bill. If another bill just like it shall be introduced, I will explain why I oppose that bill.

Mr. CLARKE of Arkansas. Then the Senator is not in favor of another bill along the same line?

Mr. MC LAURIN. No, sir. I will say at the proper time why I shall oppose such a bill if it shall hereafter be introduced. The bill to which the Senator from Rhode Island referred is dead by limitation and there is no necessity for arguing about it; but I will argue any other bill that comes up if my judgment is against the adoption of it.

Mr. CLARKE of Arkansas. Mr. President, I did not intend to occupy more than ten minutes and if I had not been interrupted I do not think I should have occupied more than that time. I do not intimate any dissatisfaction with these interruptions; all have added to the interest of the occasion. I simply wanted to say that I am opposed to any emergency financial legislation at this time, in view of the demand prevalent in the country for an investigation of stock-exchange conditions, and I do not think this bill or any legislation of this character should be enacted in advance of such investigation.

I had prepared a somewhat more extended statement of my views on the general question, but I do not feel able at this time to state them. In deference to the minority of the Finance Committee, however, I thought that I would say why I am not going to vote for the bill which is proposed by the Senator from Texas as a substitute for the bill of the majority, and that I would take the liberty of calling attention to one or two defects that I thought were in that bill.

Mr. BAILEY. Mr. President, I shall detain the Senate but a moment, and I only detain it at all for the purpose of saying to the Senator from Arkansas [Mr. CLARKE] that he has not caught the purpose of the minority and does not understand, as it appears to me, the different principles upon which the minority substitute and the majority bill are constructed. He complains against the minority substitute that it does not distribute the money amongst all the banks. I call his attention to the fact that under the minority substitute the Secretary of the Treasury may not only place it in those banks which are now depositaries, but may designate banks as depositaries for the special and single purpose of this bill.

I drew that deliberately so that if the Secretary of the Treasury wanted to put money in a particular locality where there was no Federal depositary he could make one; and, in order to obviate the possibility that after having placed Federal money in the banks the Government would assume some kind of Federal supervision or control over it, I limited it to the banks designated as depositaries for this purpose, leaving untouched the general authority over the banks designated as depositaries for general and ordinary purposes.

The Senator from Arkansas also complains against my distribution of this money according to the population of the States. I must confess that to my mind that is a most singular complaint in view of what he afterwards said. I drew that limitation for the express purpose of making it impossible for the New York gamblers to obtain the money that the industrious people of Texas and Arkansas might need in the conduct of their legitimate occupations.

I recognize as well as any man that the per capita basis is not an exact and scientific basis for the distribution of money. I perfectly understand that communities and States, the same as individuals, need money according to the volume of their business, and not according to the enumeration of their heads; but, as it is impossible to measure the volume of business and comparatively easy to count the number of people, the world has universally accepted the per capita basis as correct in these matters.

The money that is proposed to be deposited under the substitute belongs to the people of the United States. It does not belong to them according to their wealth, according to their industry, or according to their business. It belongs to them man and man alike, because their labor and their property in proportion must pay the taxes that would redeem it, and their lives and their safety must defend the government which issues it. Therefore, when I came to place the people's money among the people, I placed it according to their right of ownership in it, and that right of ownership is a per capita, and not a business one.

Mr. CLARKE of Arkansas. May I ask the Senator a question?

The PRESIDING OFFICER (Mr. PERKINS in the chair). Does the Senator from Texas yield to the Senator from Arkansas?

Mr. BAILEY. Certainly.

Mr. CLARKE of Arkansas. I have no complaint to make about the statement as to who owns the money ultimately, but it encounters two limitations. You assign to some States more than they could avail themselves of if they invested the entire surplus and capital of every national bank in the State. For instance, take the State of Arkansas. Under a per capita distribution we would be entitled to some \$10,000,000, but the entire surplus and capital of the national banks of the State is only \$4,000,000.

Mr. BAILEY. The substitute does not limit this as the majority bill does, according to capital and surplus.

Mr. CLARKE of Arkansas. I know, but that would be their capacity to acquire it. There are two limitations—one of population and the other of ability. Where would they get the money? They have not got banking capital and surplus, to say nothing of the circulation that is out against their capital stock, that would entitle them to acquire half of it.

Mr. BAILEY. The Senator is mistaken. I do not limit the right to deposit according to the capital of the bank.

Mr. CLARKE of Arkansas. Certainly; but according to the capacity they have to enjoy the privileges which you give to them.

Mr. BAILEY. Not at all. The bank with only \$50,000 capital might, under the substitute bill, secure \$100,000 deposits.

Mr. CLARKE of Arkansas. Of course, if they use deposits to acquire circulation.

Mr. BAILEY. Not at all. It is just a question of their ability to give security. That is all.

Mr. CLARKE of Arkansas. But their ability to give security, I presume, bears some relation to the amount of money they have invested in the business, which is the capital and surplus.

Mr. BAILEY. That is ordinarily true, Mr. President, but it frequently happens that State, national, and other banks, when they need security and do not have it of their own, borrow it from individuals and other institutions. In other words, I have no doubt a bank in Arkansas, with ample security, could borrow from its correspondents in other places, who might have them, any kind of bonds that were needed to secure a Government deposit under the present law. However, if the people of Arkansas have only a certain amount of capital and they have no security to offer, I think you would not expect them to get the money. But the substitute does not limit it as the committee bill does. The bill requires that the banks shall have their capital paid up; that they shall have a surplus, and then that they shall have taken out 50 per cent of their circulation.

The Senator from Arkansas must understand that another and a most fundamental difference between the bill and the substitute is that, under the majority bill, if the banks did not want to relieve the panic the panic would not be relieved. If the

banks were not willing to take out this circulation the country would be left to suffer for the want of it; but, under the substitute as I have drawn it, an officer of the Government, with a sworn duty to perform and a high obligation to the people, judges whether or not there shall be an increase in the currency; and if there is necessity, under his oath of office, he relieves it. Under my substitute he is not compelled to wait, as he is under the majority bill, until the banks apply. The substitute compels him to make the deposit.

Mr. CLARKE of Arkansas. Deposit without security?

Mr. BAILEY. No, sir; with security.

Mr. CLARKE of Arkansas. Suppose the bank has not got it?

Mr. BAILEY. Then the bank simply can not take the deposit.

Mr. CLARKE of Arkansas. Suppose the bank is not willing to pledge its credit and to change the character of its assets?

Mr. BAILEY. Then, Mr. President, there is no way to compel that bank to do it, except if it is already a depository you simply strip it of its privilege as a depository not only then, but thereafter.

Mr. CLARKE of Arkansas. How would that help the local situation financially?

Mr. BAILEY. That would help it very materially in this way. The Senator from Arkansas said in the Senate a few moments ago that it was such a privilege that only a few hundred banks—fourteen hundred, I believe, out of 6,000—had been so designated. Now that fourteen hundred would not be willing to surrender their rights as depositaries because they could not comply with the law. It is worth something to a bank to write on its window—I suppose it is, because every one entitled to do so writes it on its window—that it is a depository of the United States. Assuming that that privilege is worth something, even for the purpose of advertising, they would not have it understood that they were compelled to surrender it because they were not equipped to give the security.

I have no difficulty about that. I have no doubt in the world that if this bill should become a law, or if my substitute, which I think is much better, should become a law, the banks in the South and West would immediately secure bonds as fast as those bonds were issued by municipalities, States, and counties. In other words, if a bank already in existence at the town of Gainesville, in Texas, were to find that city issuing its bonds for any municipal purpose, they would not allow those bonds to be sold, as they now are and as they have been for many years, to the East, but they would take a part of their capital or surplus, or a part of each, if necessary, and they would invest it in those bonds. They would lay them aside in their vaults to provide for precisely these emergencies when they should arise, and in twenty years—and mark you, Mr. President, we are not legislating for a day; we are legislating for all the days to come—and in twenty years every bank in the South would be equipped with a fair amount of these bonds.

Mr. CLARKE of Arkansas. Would not that depend—
The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Arkansas?

Mr. BAILEY. Certainly.

Mr. CLARKE of Arkansas. Would not that depend upon the rate of interest that money could earn in the neighborhood?

Mr. BAILEY. In some measure it would, and yet it would not be determined entirely by that for this reason: Here is a bank—

Mr. CLARKE of Arkansas. Just one other question, so that the Senator may understand me.

Mr. BAILEY. Certainly.

Mr. CLARKE of Arkansas. Do you think a bank would carry, for instance, a 4 per cent bond—you can float in the East a 4 per cent bond if it is secured, but it will not float in Arkansas, and I do not know what would be a fair rate in Texas—but assuming the rate to be 4 per cent or 5 per cent, do you suppose a bank would carry such a bond for nine or ten years in order to avoid a panic that might happen during the tenth year? Panics do not come often enough, emergencies do not arise often enough to justify the banks in lending money out for half or two-thirds of what they could get from private customers.

Mr. BAILEY. If a bank could know that a panic was not coming for ten years, of course it would not do so; it would wait until the year the panic was to come, and then buy the bonds; but banks can never calculate on that. They can never tell certainly when these disturbances will occur. Like the recent one, they come unexpectedly, and a prudent bank manager—

Mr. CLARKE of Arkansas. Mr. President—

THE VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Arkansas?

Mr. BAILEY. Certainly.

Mr. CLARKE of Arkansas. Suppose the panic came about as this one did. There was no local want of money. There were ample funds in the South and West to conduct all the business that the people there were engaged in, and they simply wanted to get their money that was impounded somewhere else. Then, why would they apply for money to relieve the situation caused by the misconduct of somebody else, or due to the disability of somebody else?

Mr. BAILEY. If New York's misconduct affected nobody but New York I would have precious little interest in it; but when it affects the remainder of the country I want to provide that the rest of the country may protect itself against the misconduct of New York. If the gamblers simply gambled with and distressed each other we could afford to let them gamble on to their hearts' content. But I do not care what produces a panic—gambling or what else—when a panic comes everybody suffers; and I should like to relieve the innocent people even from the consequences of the acts of the guilty stock gamblers.

Mr. ALDRICH. Mr. President—

Mr. BAILEY. Let me finish for a moment, before I am diverted from that point. Ordinarily, of course, a bank would not take part of its capital and invest it in 5 per cent bonds when it could realize 8 per cent on commercial loans. But when you reflect that the 5 per cent bond is an absolute security and the 8 per cent loan not only involves the value of the use of the money, but involves the chance of loss and the risk of delay and cost in collecting it, a 5 per cent loan which is absolutely secure is better than an 8 per cent commercial loan, and when you add to the absolute security of the 5 per cent loan the privilege of being converted into money on an occasion when money is much needed, I have no hesitation in saying that any wise and prudent bank manager would take a part of his capital and invest it in these bonds, though they bear a lower rate of interest than commercial loans.

Mr. President, the banks of the United States now return to their stockholders a larger per cent than any other legitimate and safe business—more than 12 per cent per annum. Surely, if they are managed by men of common prudence, they would be willing to reduce their dividends a little in order to make their capital absolutely secure, and while this may not make it absolutely secure, it makes it infinitely more secure than it is to-day.

Now, to return to the other matter—

Mr. TILLMAN. Mr. President, will the Senator allow me to interrupt him a moment?

THE VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from South Carolina?

Mr. BAILEY. Certainly.

Mr. TILLMAN. I want to suggest—the thought came into my mind while the discussion about the per capita issue of emergency money was being bandied back and forth between the Senator from Texas and the Senator from Arkansas—that what the Senator from Arkansas complained of or suggested as a criticism was that Arkansas would never be able to take out the amount of money which the per capita basis would permit, and that unless there is some limitation provided New York might be enabled to gobble up the whole amount, and we do not want any more of that kind of thing if we can help ourselves.

Mr. BAILEY. And knowing New York's disposition, I know she would, to use the Senator's expressive phrase, "gobble it up," and I have therefore carefully provided that she can not do so.

Mr. ALDRICH. Will the Senator allow me to say a word there?

THE VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Rhode Island?

Mr. BAILEY. Certainly.

Mr. ALDRICH. I merely want to say a word in answer to a suggestion of the Senator from Arkansas, who always looks upon these matters in a practical way. The Senator asked, Why should the banks buy these bonds or keep them? The Senator realizes that the banks must keep reserves. They keep a part of their reserves now in New York, and draw 2 per cent interest upon them. The rest of their reserve does not pay them any interest at all. The suggestion of the Senator from Alabama [Mr. JOHNSTON] is that bonds shall be held as a part of the banks' reserves—that is, to a limited extent. The banks would then be in this condition: Instead of their reserves paying them nothing at all, or 2 per cent when deposited in New York, they would have part of their reserves under their own control all the time, paying them 4 or 5 per cent interest, with the right at

any moment to obtain money upon them instead of taking the chance of not getting their money from the New York reserve banks.

Mr. CLARKE of Arkansas. The Senator is mistaken when he says "with the right at any moment to obtain money upon them." It seems to me it could only be had when the Secretary of the Treasury decided the conditions to be such that this emergency currency might be used—

Mr. ALDRICH. And undoubtedly any Secretary of the Treasury would so decide—

Mr. CLARKE of Arkansas. Any time they could make any money on those 4 per cent bonds.

Mr. ALDRICH. Any time that the conditions in a locality demanded its use. No bank would apply unless there was good reason for it.

Mr. CLARKE of Arkansas. I will submit the proposition that outside of the city of New York there was no disarrangement of the business conditions or banking conditions that made it necessary to forecast any such outcome.

Mr. ALDRICH. There was not a bank in the United States that was not crippled or did not suspend payment, with very few exceptions. Whether the recent panic came from the conditions in New York I do not know, but I do know that when there is an absolute suspension in New York at any time it means a suspension of the business of the whole country. It is inevitable.

Mr. BAILEY. Mr. President, it is such an easy thing to blame our misfortunes and lay our shortcomings on somebody else that it is not surprising that the banks in the country which could not pay said they could not pay their customers because their New York correspondents would not pay them. I know that many of the country banks would not pay cash over their counters. In some of the cities of our great State they limited cash withdrawals to \$20 a day.

Mr. MC LAURIN. Mr. President—

THE VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Mississippi?

Mr. BAILEY. Certainly.

Mr. MC LAURIN. In our little town we have two small banks, and there was not a day that a man could not go there with a check and get every dollar that his checks called for.

Mr. BAILEY. And he could carry away in his pockets all the dollars he obtained, too. [Laughter.]

Mr. MC LAURIN. But the banks could meet all their obligations.

Mr. BAILEY. Mr. President, I withdraw that remark, because the Senator from Mississippi lives in one of the most delightful communities in this world and among the best and bravest people. I was born near them. They do not love money half so well as they love truth and justice. It may be difficult to make money among them, but the money is safe after you have made it. You can lay it down and when you come back you can find it exactly where you left it. But it is true that Brandon, Miss., is not exactly a type of the busy and strenuous commercial life of the country. I know in our cities they limited men to \$20 a day, and we almost reached the point of paraphrasing the Lord's prayer and saying to our banker, "Give us this day our daily allowance;" and we did not always get it. They were solvent. They all stood that storm. But they did not have as much money as their depositors wanted, and I am inclined to think that the bankers throughout the country acted with great wisdom and averted a very serious disaster by looking their customers in their faces and telling them they could not and would not pay their deposit accounts.

I say that for this reason: If the bankers paid their depositors, then they must have collected from the men who owed them, and with the depositor taking out at one window and the banker calling on his debtor to pay at the other window, we would have witnessed a ruinous sacrifice of property. The banks could not pay their depositors unless their debtors paid them, and I think it was wise on their part that they did not force a liquidation at that time.

But I did not rise to discuss that. I want to impress upon the Senator from Arkansas again that the difference between the bill of the committee and the substitute of the minority is as wide as the poles are apart. The committee not only allows the banks to issue the money, but allows them to determine when and how much money shall be issued.

Mr. CLARKE of Arkansas. The Senator from Texas seems to be calling my attention to that. I will say to him that under your bill the Secretary of the Treasury might on his own initiative find some locality, and say "I think you ought to have \$20,000 in your bank," and the banker would say "I have only

bonds enough here," or "I do not choose to use bonds enough to issue more than \$10,000." Have you any provision in your bill to make him take out \$20,000?

Mr. BAILEY. I have not, and he could not be made to take more than he could secure. If he could secure but \$10,000—

Mr. CLARKE of Arkansas. Suppose he would not?

Mr. BAILEY. I would rely upon a sensible Secretary of the Treasury to leave the \$10,000 there to serve the uses and conveniences of that community.

Mr. President, we must lodge somewhere the power to determine when this money can be issued. You could not, to save your life, devise an automatic arrangement that would work itself. The Senator from Arkansas may take it and study it through the night and into the morning, and he can not draw a bill which does not leave it to somebody to initiate the issuance of this money. The Senator from Rhode Island leaves it to the banks to initiate it, and then to issue it upon the approval of the Secretary of the Treasury. I recognize that the banks are engaged in a private business. Their first duty is to their stockholders. While they are citizens, and many of them patriotic and intelligent citizens—I will even go so far as to say that an overwhelming majority of them are intelligent and patriotic citizens—yet, sir, I will never commit to any private interest the power to issue the money of the United States and to determine when or how much of it shall be issued.

Rejecting, therefore, the theory of the bill of the committee, which, I grant you, is only an application of the present banking law, I propose to commit, and I was forced to commit to somebody, this great power to an officer of this Government, bound by a solemn oath and engaged by a high sense of duty to do whatever is best for the people of these United States. That, Mr. President, is my reason for conferring this discretion on the Secretary of the Treasury instead of the banks.

Mr. CLAY. With the permission of the Senator, there is only one trouble I see about the Senator's substitute. I am going to vote for it, but there is one trouble about it. I would not agree to vote for any permanent system of finance that provided that the Government should deposit money in banks to be loaned to the people.

Mr. BAILEY. You mean for the ordinary supply of currency?

Mr. CLAY. I would not.

Mr. BAILEY. Nor would I.

Mr. CLAY. I understand this simply to be an emergency currency, and in all probability the money issued under the system provided by the majority or the minority on account of the rate of interest fixed will return to the Treasury, except when an emergency shall arise. Then I do not understand the Senator from Texas to be in favor of any permanent system that would simply issue notes and deposit them in the banks and allow the banks to furnish the money to the people.

Mr. BAILEY. I would never agree to use the banks as a permanent and ordinary method of putting money in circulation. That is neither desirable nor necessary. The Government can provide from year to year the proper increase of the currency by the issuance of its promissory notes and the payment of its current obligations in those notes.

The Senator from Rhode Island asked the Senator from Georgia [Mr. CLAY], when that Senator was making his excellent and interesting address to the Senate, if he meant to say that he would create deficiencies merely for the sake of increasing the currency. I answer the Senator from Rhode Island that without the slightest hesitation I would do it. This Government rests under no higher obligations to the people than to provide them with an ample supply of currency, and I would meet and perform that duty in any necessary way, and I would not hesitate a moment when authorizing a great public work to issue bonds so far as was necessary and to issue the noninterest-bearing notes of the Government so far as it was safe. I would not hesitate one minute to deliberately remit a part of the people's taxes in any year in order to supply the country with currency. There is no danger in such a course.

It is as much the duty of the Government to supply the people with an abundant currency, taking care that it is not superabundant, as it is to levy taxes against them for its own support, and whenever the importation of gold fails to supply such an increase in our money as is required by our growth of population and commerce, I would unhesitatingly issue the notes of the United States. But it is utterly impossible to meet an emergency in that way, and the banks, in my judgment, are the only practical means of successfully dealing with such a condition.

But, Mr. President, I beg pardon of the Senator from Maine, who has previously given notice, for taking his time, and have but a word more.

Mr. FRYE. The Senator from Maine loves to hear the Senator from Texas talk.

Mr. BAILEY. I thank you. I wanted the Senator from Arkansas to see the matter as it appears to us. I am satisfied the Senator would not turn both the issue of money and the determination as to its volume and as to the time of its issue over to the banks rather than to an officer of the Government.

Mr. CLARKE of Arkansas. I wish the Senator would indulge me one moment more.

Mr. BAILEY. Certainly.

Mr. CLARKE of Arkansas. If I thought that question was involved in it, or was decisive of any question, of course I would vote for many objectionable features rather than to commit myself to the proposition that national banks ought to have all control over the volume or the right to issue money; but, as I understand these two bills, there is no substantial difference on that particular point. The Senator is quite right, and he pays me a compliment, which I appreciate, when he says that I do not intend to permit national banks to control the volume of money or to have any definite voice in saying what that volume shall be.

Mr. BAILEY. But when the Senator votes against the substitute which we offer he does vote that as between the two systems he prefers the other.

Mr. CLARKE of Arkansas. Not at all. Now, what do you base that on?

Mr. BAILEY. Because a substitute is simply one proposition against the other. If you vote against the substitute, you vote that you prefer the original proposition over the substitute. That is the parliamentary effect of it.

Mr. CLARKE of Arkansas. That may be, according to the Senator's judgment.

Mr. BAILEY. And that is what we—

Mr. CLARKE of Arkansas. But I am opposed to both propositions.

Mr. BAILEY. Then the Senator might, if the substitute should be adopted as against the original measure, vote against the substitute on its passage. I have done that in my time. Believing that a substitute was better than a bill for which it was offered, I have supported the substitute, announcing that, though the substitute was better than the original bill, it was still not as good as it ought to be, and I reserved the right to vote against it if it should become the main proposition.

Mr. CLARKE of Arkansas. If there were any reason for announcing my adhesion to an abstract principle, I think I would do that myself. I see so definitely, or I think I do at least, that there should not be any such legislation as this, that I do not propose to vote for it partially. I say it is all out of place in advance of an investigation of that question. If a naked proposition involving the choice between the national banks issuing the circulating medium or the United States doing it in the form of Treasury notes, count me, without any further controversy on that proposition, in favor of the Treasury note.

Mr. BAILEY. I want right there to show the Senator from Arkansas how I have endeavored to take into consideration the views of gentlemen like him. It was said, and I believe truthfully said, that if you do not provide for the geographical distribution of this money, New York, occupying the highest financial eminence, would be the first to feel the breath of the coming storm, and it would take out the entire currency.

Mr. CLARKE of Arkansas. You do not understand me as advocating that?

Mr. BAILEY. No. I believe that if New York got the whole of this money supply, the balance of the country would only get what New York might graciously choose to let it have; and remembering that New York in the recent stringency did not choose to let them have what belonged to them, I was unwilling to risk New York with what belonged to the rest of the country. Therefore I deliberately provided that it should be distributed among the States according to population. I also provided that an emergency might exist in one State without existing in all the States.

In other words, when the people of Arkansas or of Texas began to move the cotton crop, there might be such a business condition there as would warrant the Secretary of the Treasury in making deposits with them without feeling it incumbent upon him to make deposits in New York or Montana or California.

Not only so, Mr. President, but I then provided—and I think I have carefully provided—that the Secretary of the Treasury shall never under any circumstances deposit more of this emergency fund in any State than its pro rata share of it. It can never happen that New York, with her one-tenth of our population, can get more than one-tenth of this money, and therefore New York could not use Texas's part or Arkansas's part to gamble with.

The Senator from Arkansas complains that one State might not need its share and might not want it, and that I did not allow it then to be given to the States that did. The reason I would not allow that, Mr. President, was this: No State can tell within a day or a week or a month whether it will need emergency notes or not. If Texas did not promptly take out her share, and you then permit New York to take it out, it might happen that at the end of thirty days Texas would find herself in need of it, and as the limit would have been reached, Texas's money would be in New York and Texas would be left stripped and helpless in a great emergency. It was to prevent that condition that I deliberately provided in the substitute that the money belonging to one State should never be assigned to any other State. I not only protected Texas in her right to get her share, but I have rendered it impossible for New York to gamble upon the emergency fund provided for the other States.

Mr. President, it is easy to criticise, but it is difficult to construct. I claim no special excellence in that line. I have no pride of authorship. If gentlemen will draft a substitute that affirms the sovereign power of the Republic to issue the money of the people and denies that power to the banks, I will surrender my preference as to details and support it. I do not forget that it is impossible to apply a principle except according to some detail, and I do not forget that good details are essential to the wise application of sound principles; but if they will give me an agreement on the principle, I will yield to them on the details. What I desire above all else is to see the Democratic party record itself here and now as unchangeably in favor of the principle of Government money as against bank money.

MATERIAL FOR CONSTRUCTION OF PANAMA CANAL.

Mr. FRYE. The currency fever seems on. Two Senators have already spoken to me, who desire to be heard for a short while, ten minutes or so. I am inclined to accommodate them, but I should like to have the Senate accommodate me. Nobody has given notice of any speech for to-morrow morning immediately after the routine business. I ask unanimous consent that the joint resolution (S. R. 40) to provide for the transportation by sea of material and equipment for use in the construction of the Panama Canal may receive consideration to-morrow after the routine business. Then I will yield the floor, and the currency debate can go on.

THE VICE-PRESIDENT. The Senator from Maine asks that Senate joint resolution No. 40 be taken up for consideration immediately after the routine morning business to-morrow. Is there objection? The Chair hears none, and it is so ordered.

Mr. FRYE. I am obliged to the Senate.

AMENDMENT OF NATIONAL BANKING LAWS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 3023) to amend the national banking laws.

BANK CAPITAL.

Mr. NEWLANDS. I should like the attention of the Senator from Rhode Island whilst I renew the question which I asked him during the argument of the Senator from Arkansas [Mr. CLARKE], and that is whether, in addition to the requirement which he has already acquiesced in—that the banks should keep in their own vaults either the whole or a very much larger proportion of the reserves now required by law—he would be willing to add the requirement that no bank shall be permitted to loan out its depositors' money in excess of seven times the amount of its capital? The purpose of that would be to secure for the depositors the protection of adequate capital amounting to about 15 per cent of their bank loans.

The Senator from Rhode Island realizes that the depositors' moneys are loaned out, and the loans about equal the deposits, and that the security of the depositors is the reserve required by law and the capital of the banks.

The Senator will also bear in mind that there is no rule imposed by the present banking act regarding the relation of capital either to loans or deposits, and that whilst the average banking capital of the national banks and the average banking capital of the nation is entirely adequate, being about 30 per cent, I believe, of the deposits, yet as a matter of fact a great many banks, both national and State, are far below that requirement. I will ask the Senator whether he would favor an additional protection to the depositors in that line?

Mr. ALDRICH. Mr. President, the bank system of New York prior to the war, which I imagine perhaps was the best of the American systems, had a limitation of this character. No bank should loan more than two and a half times its capital. As I stated in the remarks which I submitted to the Senate some time ago, twenty years ago, in 1887, the proportion be-

tween capital and loans in this country was as 1 to 2.61, being a little in excess of the New York limit. In 1907 the proportion was as 1 to 5.21, showing an increase in proportion to capital of almost double in the last twenty years.

I see no objection to fixing a limit. I think myself that the troubles we have had have grown out of overexpansion of credit. But I never would fix it as high as 1 to 7, because it would be greatly in excess of what is shown to be safe banking by the experience of the world. I do not, perhaps, think it is necessary; certainly not necessary in this bill. As I have already stated on several occasions, this bill does not pretend to be a panacea for all financial ills, and we certainly can not at this time undertake to dispose of them all. I think a limitation of loans in proportion to capital is a wise one, but I certainly would not fix the limit at 1 to 7.

Mr. NEWLANDS. As I understand, then, the Senator would fix it at 1 to 5?

Mr. ALDRICH. I would not say. I would not want to say offhand what the proportion should be. I have stated the fact that there has been a growth in this country from 1 to 2.61 to 1 to 5.21—double in twenty years.

Mr. NEWLANDS. The only difference between the Senator and myself is that he would require greater caution in this particular than I suggest. I quite agree with the Senator from Rhode Island that the relation ought to be about 1 to 5. I stated 1 to 7 in order to liberalize the suggestion in order to prevent any possible objection.

Now, let me state to the Senator, as he well knows, there is no requirement in the national banking act that the capital shall bear any fixed relation to the loans, nor is there, I believe, in the State banking acts, and the result is that we have such conditions as these: That the Knickerbocker Trust Company, of New York, with a capital of only \$1,000,000, was able to make loans to the amount of \$50,000,000. So the proportion of capital to loans was not that of 1 to 5, as the Senator from Rhode Island suggests, but was the relation of 1 to 50.

Now, when that was called to my attention it was accompanied with the suggestion that it was simply a State bank. I then looked to the national banking act to see whether there was any provision there that would prevent such reckless banking, and I found there was none; that while the depositor is partly protected by requiring the bank to keep a certain proportion of the deposits in its vaults in order to respond to checks, there is no provision at all as to the amount of invested capital that shall be maintained as security for those deposits. And it is perfectly possible under the national banking act to-day to have a bank conducting a business of the enormous proportions of the Knickerbocker Trust Company, involving fifty millions of deposits and \$50,000,000 of loans, upon a capital of only \$1,000,000. Safe banking requires that depositors should have two sources of protection, one the protection of an ample reserve, the other the protection of an ample capital. The least reserve required should be an average of 20 per cent. The least proportion of capital should be 20 per cent also. Then you have safe banking, because the depositors of the bank have not only the security of the loans in which their moneys are invested, but they also have in addition the 20 per cent reserve in cash in the bank and the 20 per cent in capital put in by the stockholders and invested in marketable securities.

The best mode of securing depositors is not by a guaranty fund contributed by the banks or by a guaranty of the Government, but by providing for a sufficient reserve and sufficient capital. If we have in reserve and in capital a security of 40 per cent of the deposits, we will have a safe banking system.

REGULATION OF STATE BANKS.

Now, Mr. President, while I am upon this subject, I wish to add that it is utterly impossible to have a safe banking system in this country as long as we have two systems differing as to the security offered to their depositors. We have in this country two systems, the national-bank system and the State-bank system, both about equal in capitalization, both about equal in deposits; and yet under State banking laws there are not sufficient requirements as to reserves and there are not sufficient requirements as to capital. So at any time, however you may guard the national banks by proper provisions regarding reserve and capital and their relation to deposits and loans, the entire system may be broken down by inadequate reserves and inadequate capital upon the part of the State banks. We all know that if the State banking system of the country is involved in difficulty it involves the national banking system also, and that you can not possibly inaugurate a system that will successfully work in preventing panics if it is confined to one kind of banks alone.

If that be so, it seems to me that the very next reform which should suggest itself to the Senator from Rhode Island is the

reform of securing under the State banking system sufficient reserves and sufficient capital such as we aim to require under the national banking system. That can be done in one of two ways, by persuasion or by compulsion, the latter being based on the power given to Congress to regulate commerce between the States, for all State banks are engaged in interstate exchange, which is one of the forms of interstate commerce. The Senator from Rhode Island asked me the other day while I was addressing myself to this question whether a check sent by a man in one State to a man in another State constituted interstate commerce. I was then endeavoring to put an hour's speech through a half hour nozzle, as I had to take the train, and I declined to enter into that question. But I find that the Wall Street Journal has answered it for me, and I will ask the Secretary to read this excerpt from the Wall Street Journal.

Mr. NELSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from Minnesota?

Mr. NEWLANDS. Certainly.

Mr. NELSON. I wish to call the Senator's attention to the fact that authority from that source is not of much value here in the Senate.

Mr. NEWLANDS. However, it may be persuasive with the Senator from Rhode Island.

Mr. FLINT. I suggest to the Senator from Minnesota that it might have great weight on the other side of the Chamber.

Mr. NEWLANDS. I ask the Secretary to read.

The VICE-PRESIDENT. Without objection, the Secretary will read as requested.

The Secretary read as follows:

REVIEW AND OUTLOOK—WHAT IS INTERSTATE COMMERCE?

In the Senate, on Tuesday, Senator ALDRICH asked the following question of Senator NEWLANDS:

"In case a business house in New York sends a check to a firm in Connecticut, does that constitute Interstate commerce?"

Senator NEWLANDS did not answer the question.

Innocent and simple as it appears, it is, in fact, a very big question, and it strikes at the very vitals of the whole problem of Federal regulation.

The answer to Senator ALDRICH's question from the point of view of the Wall Street Journal would have to be "Yes." The sending of a check from one State to another involves the transfer of a valuable thing from one State to another. It is interstate commerce. Whether we like it or not, the development of business in the United States is revolutionizing all of our conceptions and changing most of our points of view. Commerce is no longer an affair of a township or a city or of a State. The economic unit has become a continent. The mailing of a letter, the sending of a telegram, and the holding of a telephone conversation between New York and Chicago, and almost all of the operations of business, have become interstate in character.

Mr. NEWLANDS. Mr. President, whilst the reliability of this authority seems to be questioned, the logic of its statement can not be. Is there a Senator on this floor who will rise and say that the transaction by which goods are transported from the State of California to the State of New York is not interstate commerce? If that be true, is it not also true that the transaction by which the payment of those goods in money is transported from New York to California is interstate commerce? Is there a Senator on this floor who will rise and insist that a telegraphic message sent from one State to another is not interstate commerce?

Mr. BEVERIDGE. That question has been specifically decided by the Supreme Court. Of course it is interstate commerce, and was so decided several times since the Pensacola case.

Mr. NEWLANDS. Of course it is incontestable. Is there a Senator on this floor who will rise and say that a whisper through a telephone from New York to Chicago is not interstate commerce? If that be true, how can you deny that the transactions of commerce conducted through banks, the great agencies and instrumentalities of commerce, and involving interstate and foreign exchange, do not come within the supervision and the control of the National Government?

I am aware that whenever a suggestion is made of the application of the interstate-commerce power of the Constitution to an existing condition the cry of centralization is raised. If it involves control, if it involves restriction, if it involves requirements, Senators on that side of the House accustomed to invoke the power regarding interstate and foreign commerce in the subsidizing of railroads, in the subsidizing of ships, in every form of grant or privilege or subsidy, will oppose it because it involves restriction, while on this side of the House Senators have been so accustomed to stand on guard against usurpation of States rights and powers by the National Government that although they wish to institute reforms, they question the national right and our power.

There can be no question about our power. We have exercised it again and again. We take hold of a State railroad engaged in interstate commerce with not a mile of its line in any State except the State in which it is incorporated, and yet

receiving goods for shipment to other States, and what do we do with that railroad, by the vote of both sides of the Senate, by a recent vote in which there was but one dissenting voice? We take hold of that railroad and we compel it to present to the Interstate Commerce Commission of the nation reports of all its transactions, State as well as interstate. We not only regulate its rates, so far as interstate commerce is concerned, but we regulate its conduct of business. We compel it to apply safety appliances to its trains and everywhere we exercise supervision and regulation, not exclusive supervision and regulation, but supervision and regulation in the interest of interstate commerce.

Mr. ALDRICH. Mr. President—

The VICE-PRESIDENT. Does the Senator from Nevada yield to the Senator from Rhode Island?

Mr. NEWLANDS. Certainly.

Mr. ALDRICH. Does the Senator think that the Congress of the United States can fix a rate of interest to be paid by loans in State banks?

Mr. NEWLANDS. Well, Mr. President, that is a question that I would not like to answer in a moment. It certainly would have no power to fix the rate of interest as to a purely State transaction. I will admit that. But I am not prepared to answer the question as to whether it would have the power to regulate the rate of interest so far as interstate transactions are concerned. When I contend for this power of the National Government I do not contend that it is exclusive power. The National Government has the same power in its jurisdiction over interstate commerce that the State has over State commerce, and where the corporation is engaged in both State and interstate commerce it is subject to the supervision and control of the State so far as State commerce is concerned, and to the control and supervision of the nation so far as interstate commerce is concerned. The jurisdictions do not conflict, and each sovereign is supreme within the limits of its jurisdiction.

Now, what is this whole system of exchange? It is simply a system of transportation, a transportation of values. The railroads transport the goods; the banks transport the values. Both are absolutely essential to commerce; both are absolutely essential to interstate commerce. It is important to interstate commerce that we should have the safe conduct of passengers on the railroads, and therefore safety appliances are required of State railroads by national law. It is important to interstate commerce that State banks engaged in interstate transactions should have the safety appliances of a sufficient reserve and an ample capital, and it is the duty of the nation to see that these safety appliances are required.

So far as interstate commerce is concerned, the nation has all the power that the State has in State commerce.

Now, Mr. President, why should we stick in the bark when we are considering this question of the banks and of currency, this important system of transporting values, this system upon which all values in the country are dependent, the breaking down of which may at any time prostrate the industries of the country? Why should we not, when revising our system of banking, require in the interest of interstate commerce that the State banks engaged in interstate commerce should maintain as a condition of the exercise of that privilege the same reserves and the same capital as are required under similar circumstances of national banks?

PERSUASION.

But if the Senator from Rhode Island is not prepared to admit this proposition, if he insists that it is not within the power of the National Government, if he insists that it is a matter absolutely within the jurisdiction of States so far as State corporations are concerned, and that the nation's action must be confined to the corporations of its own creation, then I ask him why he should not apply all the powers of persuasion to the State banks that can be applied?

The Senator is now proposing a measure that is intended to meet the emergency requirements of the country; that is intended to prevent these extraordinary bank panics created by the timidity of depositors. The depositors of State banks can be as timid as the depositors in national banks, and they are as timid. If we are to provide an emergency measure that is to tide over a panic, there is every reason why we should give the State banks the benefit of the emergency provision. The very purpose that we have in view is the security of the country, the security of our entire banking system, national and State, and we must know that if the State banks of the country, which aggregate about one-half of the bank capital and more than one-half of the deposits of the country, are prostrated, our national banks will be prostrated with them.

If, then, we are providing for an emergency currency the

State banks should have the benefit of it upon depositing the security required by law. And we can accompany the privilege with the condition that the State banks desiring its benefit shall receive it upon the condition that they will comply with the requirements of the national banking act so far as reserves and capital are concerned.

So the nation would have a persuasive influence upon the banks of the States in gradually making them conform to national requirements in the interest and for the security of the depositors, and all doing business with it in State or interstate transactions. There is not a State bank that would not realize that at some time it would be compelled to resort to the nation for the funds with which to meet an emergency of this kind, and it would be eager to put itself on the list of those who could lawfully apply. So these State banks would gradually accommodate their reserves and their capital to the requirements of the national law.

More than that, our action would be persuasive upon the legislatures of the States themselves. They would probably pass similar laws. Thus the educational process would be set at work, and in the end we would have uniformity throughout the country in all the banks of the country, both as to the reserves and the capital required.

Mr. President, I realize that all this can not be done in a day. We can enact in a day the law by which it is to be accomplished, but the process provided by the law must be a gradual one. What is that process to be? It would not do to provide that these reserves should be required to-morrow or that this capital should be increased to-morrow. Time must be given. The State banks during the past year have had an average reserve of less than 8 per cent. In many of the State banks the reserve is far above that average, and many of them far below.

What would you think of a national-bank system if you realized, upon looking at the reports of the Comptroller of the Currency, that all the national banks of the country had an average of only 8 per cent?

To-day the national banks have an average reserve of 18 per cent, though it is unequally distributed, and the State banks have an average of less than 8 per cent. Yet if you should attempt to compel the State banks to come up immediately to the requirements of the national banks it would mean upon their part an immediate contraction of their loans, which would result in liquidation and universal distress.

The thing that we must do is to provide a gradual process for increasing the reserves of the State banks, lasting over a period of five or ten years, at the rate of a certain percentage annually, the increase to be accomplished under the direction of the Comptroller of the Currency. In that way they can gradually draw into their vaults the lawful money required for the reserves established by the national law, and thus they will be able to sustain their existing volume of bank loans and bank credits.

In this manner the business of the country will not be disturbed in the slightest degree. So far as bank capital is concerned, that can be increased in the same gradual manner, and within a period of five or ten years we will have all the banks of the country, State and national, under laws providing adequate protection to depositors, both in reserves and capital. I trust that the Finance Committee will seriously consider this suggestion, and that now, whilst the subject is fresh in our minds, reforms in our banking system, admittedly necessary, will be added to this emergency provision recommended by the committee.

INCREASE OF PENSIONS.

Mr. MCCUMBER. I ask unanimous consent for the present consideration of the bill (H. R. 15653) to increase the pension of widows, minor children, and so forth, of deceased soldiers and sailors of the late civil war, the war with Mexico, the various Indian wars, and so forth, and to grant a pension to certain widows of the deceased soldiers and sailors of the late civil war.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Pensions with amendments.

The first amendment was to strike out section 1 in the following words:

That from and after the passage of this act the rate of pension for widows, minor children under the age of 16 years, and helpless minors as defined by existing laws, now on the roll or hereafter to be placed on the pension roll, and entitled to receive a less rate than hereinafter provided, shall be \$12 per month; and nothing herein shall be construed to affect the existing allowance of \$2 per month for each child under the age of 16 years and for each helpless child; and all acts or parts of acts inconsistent with the provisions of this act are hereby repealed: *Provided, however*, That this act shall not be so construed as to reduce any pension under any act, public or private.

And in lieu thereof to insert:

That from and after the passage and approval of this act the rate of pension for the widow of any officer or enlisted man who served in any Indian war, the war with Mexico, or the civil war, whose name is now on the pension roll or hereafter shall be placed on the pension roll under any existing law, and who is receiving or is entitled under said law to receive a pension at a rate of less than \$12 per month, shall be increased to and allowed at \$12 per month, and all acts and parts of acts inconsistent with this act are hereby repealed: *Provided, however*, That this act shall not be so construed as to reduce any pension under any act, public or private.

The amendment was agreed to.

The next amendment was, in section 2, page 2, line 24, before the word "application," to insert "filing of her;" on page 3, line 2, after the word "to," to strike out "June 27, 1890," and insert "the passage and approval of this act;" on page 3, line 4, after the word "husbands," to strike out "are given" and insert "if living would have;" on page 3, line 6, after the word "the," to strike out "act" and insert "joint resolutions," and, in line 7, after the word "ninety-five," to strike out "and the joint resolutions of;" so as to make the section read:

SEC. 2. That if any officer or enlisted man who served ninety days or more in the Army or Navy of the United States during the late civil war and who has been honorably discharged therefrom has died or shall hereafter die, leaving a widow, such widow shall, upon due proof of her husband's death, without proving his death to be the result of his Army or Navy service, be placed on the pension roll from the date of the filing of her application therefor under this act at the rate of \$12 per month during her widowhood: *Provided*, That said widow shall have married said soldier or sailor prior to the passage and approval of this act; and the benefits of this section shall include those widows whose husbands if living would have a pensionable status under the joint resolutions of February 15, 1895, July 1, 1902, and June 28, 1906.

The amendment was agreed to.

Mr. MCCUMBER. I desire to submit another committee amendment to come in after line 9, on page 3, which I send to the desk.

The VICE-PRESIDENT. The amendment proposed by the Senator from North Dakota will be stated.

The SECRETARY. On page 3, line 9, after the word "six," it is proposed to insert the following:

Provided, That nothing herein contained shall be construed to affect the existing allowance of \$2 per month for each child under the age of 16 years.

The amendment was agreed to.

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

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

The bill was read the third time and passed.

The title was amended so as to read: "A bill to increase the pension of widows of deceased soldiers and sailors of the late civil war, the war with Mexico, the various Indian wars, and to grant a pension to certain widows of the deceased soldiers and sailors of the late civil war."

PROBATE COURT FEES AND COSTS IN THE DISTRICT.

Mr. GAMBLE. I ask unanimous consent for the present consideration of the bill (S. 3507) to fix fees and costs in the probate court of the District of Columbia, and to provide for the collection and payment of the same, and for other purposes.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on the District of Columbia with amendments.

The VICE-PRESIDENT. The amendments reported by the Committee on the District of Columbia will be stated.

The SECRETARY. In section 7, page 8, line 24, after the word "section," it is proposed to strike out "four" and to insert "IV."

Mr. GAMBLE. That amendment is an error, Mr. President. The figures "111" should be inserted instead of the Roman numerals "IV," and I move that amendment to the amendment of the committee.

The VICE-PRESIDENT. The amendment proposed by the Senator from South Dakota to the committee amendment will be stated.

The SECRETARY. In section 7, page 8, line 24, it is proposed to strike out "four" and to insert "111," so as to read:

But shall be entitled to the fees allowed by section 111 of the Code, etc.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. GAMBLE. In lieu of the committee amendments, the same amendment should be made in section 8, page 9, in lines 10 and 14, and I move that amendment to the amendment of the committee.

The SECRETARY. In section 8, page 9, line 10, before the

word "of," it is proposed to strike out "4" and to insert "111;" and in line 14, before the words "of the," to strike out "4" and to insert "111."

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The VICE-PRESIDENT. The next amendment proposed by the Committee on the District of Columbia will be stated.

The SECRETARY. In section 7, on page 8, line 24, after the word "Code," it is proposed to insert "of Law for the District of Columbia," so as to read:

The Code of Law for the District of Columbia.

The amendment was agreed to.

The next amendment was, in section 8, on page 9, line 14, after the words "of the," to insert "said;" and in the same line, after the word "Code," to strike out "of Law for the District of Columbia," so as to make the proviso read:

Provided, That the court may allow to the register of wills reasonable fees for any services he may perform not specified in said section 111 of the said code.

The amendment was agreed to.

The next amendment was, in section 14, on page 11, line 24, before the word "is," to insert "of the Code of Law for the District of Columbia," so as to read:

Sec. 14. That section 121 of the Code of Law for the District of Columbia is hereby amended so as to read as follows, etc.:

The amendment was agreed to.

The next amendment was, on page 12, line 5, after the word "probate," to strike out "of" and insert "and approve;" in line 7, after the word "him," to strike out "and pass any claims not exceeding \$500;" and in line 9, after the word "guardians," to strike out "provided that should the said register of wills refuse to approve any bond, any party in interest shall have the right to appeal to the presiding justice of the probate court who shall either approve or reject the bond," so as to read:

The said register of wills may receive inventories and accounts of sales, examine vouchers, and state accounts of executors, administrators, collectors, and guardians, subject to final passage or rejection of same by the court, may take probate and approve claims against the estates of deceased persons that are proper to be brought before him; may take the probate of wills and accept and approve the bonds of executors, administrators, collectors, and guardians.

The amendment was agreed to.

The next amendment was, on page 13, line 11, after the word "wills," to strike out "act of June 30, 1902," so as to read:

And provided further, That the employees of said office shall not be in excess of the number actually necessary for the proper conduct of the office of said register of wills.

The amendment was agreed to.

The next amendment was, in section 15, on page 13, line 14, before the word "is," to insert "of the Code of Law for the District of Columbia," so as to read:

Sec. 15. That section 264 of the Code of Law for the District of Columbia is hereby amended so as to read as follows, etc.

The amendment was agreed to.

The next amendment was, on page 13, line 21, before the word "register," to strike out "court or," so as to read:

Sec. 264. Executor residuary legatee.—If the executor is the residuary legatee of the personal estate of the testator, or provided the residuary legatee of full age shall notify his consent to the court, he may, instead of the bond prescribed as aforesaid, give bond with security approved by the register of wills, and in a penalty prescribed by the court, etc.

The amendment was agreed to.

The next amendment was, in section 16, page 14, line 14, before the word "is," to insert "of the Code of Law for the District of Columbia," so as to read:

Sec. 16. That section 275 of the Code of Law for the District of Columbia is hereby amended so as to read as follows, etc.

The amendment was agreed to.

The next amendment was, on page 14, line 20, before the word "register," to strike out "court or," so as to read:

Sec. 275. Special bond.—If the person appointed as administrator shall be entitled to the residue of the estate after the payment of the debts, he may, instead of the bond herein provided for, execute a bond, with security approved by the register of wills, in such penalty as the court may consider sufficient, etc.

The amendment was agreed to.

The next amendment was to strike out section 17, as follows:

Sec. 17. That all laws and parts of laws, so far as they may be inconsistent with the provisions of this act, are hereby repealed.

The amendment was agreed to.

The next amendment was, on page 15, after line 14, to insert as a new section the following:

Sec. 17. That no account shall be approved unless the executor, administrator, or collector, his agent, or solicitor, or attorney shall file an affidavit showing that, at least twenty days before presenting such account for approval, he duly addressed and mailed, postpaid, a notice of such application to each legatee or distributee to their known post-office address notifying each of them of the amounts claimed for commission and attorney's fees.

Mr. GAMBLE. In line 20 of the amendment, after the word "or," I move to strike out "distribute" and insert "distributive."

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The next amendment was on page 15, after line 22, to insert the following as a new section:

Sec. 18. That all laws and parts of laws, so far as they may be inconsistent with the provisions of this act, are hereby repealed.

The amendment was agreed to.

Mr. GAMBLE. In section 2, page 1, line 11, after the word "due," I move to insert the words "to and from the."

The VICE-PRESIDENT. The amendment proposed by the Senator from South Dakota will be stated.

The SECRETARY. In section 2, page 1, line 11, after the word "due," it is proposed to insert "to and from the," so as to read:

The inventory of money and debts due to and from the deceased.

The amendment was agreed to.

Mr. STONE. Mr. President, I should like to inquire from what committee this bill comes.

Mr. GAMBLE. It is reported unanimously from the Committee on the District of Columbia. The bill was submitted to a subcommittee and very carefully investigated. Both the subcommittee and the full committee had before them the register of wills and the judge of the probate court—Judge Gould.

Mr. STONE. Does the bill increase the fees now received for the same service?

Mr. GAMBLE. It more equally distributes the fees, and the fees will be paid more equitably, especially by the larger estates.

Mr. STONE. Will it increase the cost of administering an estate?

Mr. GAMBLE. It will to this extent—

Mr. GALLINGER. To a very small amount.

Mr. GAMBLE. To a very small amount. As the law now exists, the largest part of the burden falls upon the smaller estates; and this is to more equitably distribute the cost of administration.

Mr. GALLINGER. Mr. President—

The VICE-PRESIDENT. Does the Senator from South Dakota yield to the Senator from New Hampshire?

Mr. GAMBLE. Certainly.

Mr. GALLINGER. As an illustration, an estate in this District amounting to \$862.51 pays \$44.14, while an estate of \$1,673,820 pays \$141. There is an absolutely inequitable condition existing here, and this bill proposes to equalize it more scientifically. It increases the cost a mere trifle.

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.

PUBLIC BUILDING AT WILMINGTON, N. C.

Mr. OVERMAN. I ask unanimous consent for the present consideration of the bill (S. 2326) to provide for the purchase of a site for the erection of a customs-house and Federal court building thereon at Wilmington, N. C.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Public Buildings and Grounds with an amendment, on page 1, line 10, before the word "hundred," to strike out "five" and insert "four," and at the end of the bill to add the following:

The building shall be unexposed to danger from fire by an open space of at least 40 feet on each side, including streets and alleys.

So as to make the bill read:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to acquire, by purchase, condemnation, or otherwise, a site and cause to be erected thereon a suitable building, including fireproof vaults, heating and ventilating apparatus, and approaches, for the use and accommodation of the United States Treasury as a customs-house and for the use of the Federal court in the city of Wilmington, in the State of North Carolina, at a limit of cost not to exceed \$400,000.

The building shall be unexposed to danger from fire by an open space of at least 40 feet on each side, including streets and alleys.

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.

ADDITION TO ROCK CREEK PARK.

Mr. GALLINGER. I ask unanimous consent for the present consideration of the bill (S. 4441) to acquire certain land in the District of Columbia as an addition to Rock Creek Park.

The VICE-PRESIDENT. The bill will be read for information, subject to objection.

The Secretary read the bill.

Mr. CULBERSON. I should like to ask the Senator in charge of this bill how much appropriation it carries?

Mr. GALLINGER. Does the Senator ask what this will cost?

Mr. CULBERSON. That is the effect of the inquiry.

Mr. GALLINGER. I will say to the Senator that this is a tract of land abutting on Massachusetts avenue extended. It contains nearly 100 acres, and my impression is, without having the figures directly before me now, that the cost will be between three and four hundred thousand dollars. The bill was carefully considered last year and passed the Senate. Afterwards it was a part of a recommendation made by the commission that was appointed by the two Houses to examine the question of parks. That commission carefully looked into this matter and made a favorable recommendation. I have never heard anybody seriously object to it, notwithstanding it will cost quite a bit of money. It is a very desirable thing to be done. It completes the park and brings it out to Massachusetts avenue, where it ought to be. It is very heavily wooded, and the belief is that the cost is very low in comparison with the cost of other property in that vicinity.

Mr. CULBERSON. I will state that I am on the Committee on the District of Columbia, and, so far as I have any recollection, the bill was not considered while I was present in committee. It is a very important matter, and though I do not insist that it go to the Calendar under Rule IX, I object to its present consideration.

The VICE-PRESIDENT. Objection is made, and the bill goes over.

Mr. GALLINGER. Mr. President, before the bill goes over I want to correct a statement I made to the Senator, so that he may have accurate information. The proposed cost I said was between three and four hundred thousand dollars. The bill names the price as \$423,000. The bill last year was reported from the Committee on the District of Columbia. This year it has been reported by the Committee on Public Buildings and Grounds, the park bills having this year been referred to that committee.

ISSUANCE OF PATENTS.

Mr. SMOOT. I am directed by the Committee on Patents, to whom was referred the bill (H. R. 17703) to repeal section 4885 of the Revised Statutes and to substitute another section therefor, to report it without amendment. I ask that it be substituted for Senate bill 3972, being Calendar No. 312. I also ask for the present consideration of the bill.

The VICE-PRESIDENT. The Senator from Utah reports from the Committee on Patents the bill named by him, and asks that it be substituted on the Calendar for the bill (S. 3972) to amend section 4885 of the Revised Statutes. In the absence of objection, it is so ordered, and the Senate bill referred to is indefinitely postponed.

The Senator from Utah asks unanimous consent for the present consideration of the bill just presented by him. Is there objection?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 17703) to repeal section 4885 of the Revised Statutes and to substitute another section therefor.

Mr. NELSON. Mr. President, that appears to be a very clumsy form of changing a section of the Revised Statutes. I think the bill ought to read:

That section 4885 of the Revised Statutes be, and the same is hereby, amended so as to read as follows.

I do not think we ought to put legislation in the form this appears to be from the reading of the bill.

Mr. SMOOT. I will say that is a House bill.

Mr. NELSON. It proposes to repeal the original section and then reenacts another one to take the place of it. I think the proper way would be to say that the section proposed to be repealed "is hereby amended so as to read as follows." That is the customary way, and I move that amendment.

The VICE-PRESIDENT. The amendment proposed by the Senator from Minnesota will be stated.

The SECRETARY. In line 4, after the word "is," it is proposed to strike out "repealed and the following section is substituted therefor" and insert "amended so as to read as follows," so as to make the bill read:

Be it enacted, etc. That section 4885 of the Revised Statutes be, and the same hereby is, amended so as to read as follows:

"SEC. 4885. Every patent shall issue within a period of three months from the date of the payment of the final fee, which fee shall be paid not later than six months from the time at which the application was passed and allowed and notice thereof was sent to the applicant or his agent; and if the final fee is not paid within that period the patent shall be withheld."

The amendment was agreed to.

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

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

The bill was read the third time and passed.

The title was amended so as to read: "A bill to amend section 4885 of the Revised Statutes."

HOMESTEAD ENTRYMEN ON HUNTELY IRRIGATION PROJECT, MONTANA.

Mr. DIXON. I ask unanimous consent for the present consideration of the bill (H. R. 14043) to provide for the extension of time within which homestead entrymen may establish their residence upon certain lands within the limits of the Huntley irrigation project, in the county of Yellowstone, in the State of Montana.

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

Mr. DIXON. It proposes that the homestead entrymen on lands within the limits of the Huntley irrigation project, in the county of Yellowstone, in the State of Montana, opened to entry July 22, 1907, be granted an extension of time in which to establish their residence upon the lands so opened and filed upon until the 15th of May, 1908; but this act shall in no manner affect the regularity or validity of such filings, or any of them, so made by the entrymen on the lands aforesaid.

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

TIDE WATER BRIDGE AT EDGECOMB, ME.

Mr. FRYE. I ask unanimous consent for the present consideration of the bill (H. R. 16073) to authorize the town of Edgecomb, Lincoln County, Me., to maintain a free bridge across tide waters.

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

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

JOHN P. HUNTER.

Mr. TILLMAN. I ask unanimous consent for the present consideration of the bill (H. R. 2015) for the relief of John P. Hunter.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the Secretary of the Treasury to pay to John P. Hunter, late United States marshal for the district of South Carolina, \$308.13, which sum to be taken and accepted and receipted for in full satisfaction of his claim for services performed by his deputy, H. J. Hickson, in the case of the United States against J. T. Tillman.

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

AMENDMENT OF NATIONAL BANKING LAWS.

Mr. TILLMAN. Mr. President, I want to give notice that on Monday next, immediately after the routine morning business, I will submit some remarks on the Aldrich currency bill. I want to say further that the Senator from Idaho [Mr. BORAH] gave a similar notice this morning in behalf of the Senator from Wisconsin [Mr. LA FOLLETTE]. I have been in communication with the Senator from Wisconsin, who is now in bed, and it is with his consent that I am to take his place on Monday. I give notice that he will speak on Tuesday immediately after the routine morning business.

MONONGAHELA RIVER BRIDGE, PENNSYLVANIA.

Mr. KNOX. I ask unanimous consent for the present consideration of the bill (H. R. 16749) to amend an act entitled "An act to authorize the construction of a bridge across the Monongahela River, in the State of Pennsylvania, by the Liberty Bridge Company," approved March 2, 1907.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It proposes to amend section 2 of an act entitled "An act to authorize the construction of a bridge across the Monongahela River, in the State of Pennsylvania, by the Liberty Bridge Company," approved March 2, 1907, so as to read as follows:

Sec. 2. That this act shall be null and void if actual construction of the bridge herein authorized be not commenced within one year and completed within three years from March 15, 1908.

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

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 seven minutes spent in executive session the doors were reopened, and (at 4 o'clock and 15 minutes p. m.) the Senate adjourned until to-morrow, Thursday, March 12, 1908, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate March 11, 1908.

PROMOTIONS IN THE NAVY.

Lieut. Commander Reuben O. Bitler to be a commander in the Navy from the 1st day of July, 1907, vice Commander Samuel W. B. Diehl, promoted.

Lieut. Commander Joseph L. Jayne to be a commander in the Navy from the 3d day of January, 1908, vice Commander John R. Edwards, promoted.

Lieut. (Junior Grade) David Lyons, to be a lieutenant in the Navy from the 30th day of July, 1907, to fill a vacancy existing in that grade on that date.

Capt. Melville J. Shaw to be a major in the Marine Corps from the 1st day of January, 1908, vice Maj. Joseph H. Pendleton, promoted.

CONFIRMATIONS.

Executive nominations confirmed by the Senate March 11, 1908.

CONSUL.

Lester Maynard, of California, to be consul of the United States of class 6 at Vladivostok, Siberia.

PROMOTIONS IN THE REVENUE-CUTTER SERVICE.

First Asst. Engineer Albert Clift Norman to be chief engineer in the Revenue-Cutter Service of the United States, with the rank of first lieutenant, to rank as such from July 20, 1907.

First Asst. Engineer Theodore Graham Lewton to be chief engineer in the Revenue-Cutter Service of the United States, with the rank of first lieutenant, to rank as such from October 4, 1907.

Second Asst. Engineer Jesse Wilbur Glover to be first assistant engineer in the Revenue-Cutter Service of the United States, with the rank of second lieutenant, to rank as such from July 20, 1907.

Second Asst. Engineer George Warren David to be first assistant engineer in the Revenue-Cutter Service of the United States, with the rank of second lieutenant, to rank as such from October 4, 1907.

PROMOTIONS IN THE NAVY.

Lieut. Commander Albert L. Key to be a commander in the Navy from the 28th day of January, 1908.

Lieut. (Junior Grade) Owen Hill to be a lieutenant in the Navy from the 30th day of July, 1907.

Ensign John S. Abbott to be a lieutenant (junior grade) in the Navy from the 3d day of February, 1908.

Lieut. (Junior Grade) John S. Abbott to be a lieutenant in the Navy from the 3d day of February, 1908.

First Lieut. Theodore E. Backstrom to be a captain in the Marine Corps from the 2d day of January, 1908, vice Capt. Theodore H. Low, retired.

To be ensigns in the Navy from the 13th day of February, 1908:

Allan J. Chantry, jr.,
Whitford Drake,
John P. Miller,
Harry G. Knox,
George B. Wright,
Henry M. Jensen,
William C. Barker, jr.,
Augustus C. Wilhelm,
Hugh Allen,
Roy L. Lowman,
Robert L. Ghormley,
William L. Calhoun,
Russell Willson,
Leigh Noyes,
Stephen W. Wallace,
Walter W. Lorshbough,
Eldred B. Armstrong,
Lew M. Atkins,
William A. Glassford, jr.,
Conant Taylor,
Ray S. McDonald,
Herbert J. French,
William A. Hall,
Arthur L. Bristol, jr.,
Frank J. Fletcher,
Walter B. Decker,
Herbert B. Riebe,
John H. Towers,
Julian H. Collins,
Thomas Withers, jr.,
Isaac C. Bogart,

Pierre L. Wilson,
Owen Bartlett,
Walter F. Jacobs,
Leo F. Welch,
Carroll S. Graves,
Harry L. Pence,
Ferdinand L. Reichmuth,
Wolcott E. Hall,
Isaac C. Kidd,
Fred M. Perkins,
Robert A. White,
Frank H. Roberts,
Lewis D. Causey,
William P. Hayes,
William C. I. Stiles,
Stuart W. Cake,
Stephen Doherty,
Charles A. Woodruff,
Randolph P. Scudder,
George A. Alexander,
Edwin B. Woodworth,
Wilson E. Madden,
James P. Olding,
Roland M. Brainard,
Sherwoode A. Taffinder,
John T. G. Stapler,
Lesley B. Anderson,
John S. McCain,
Matthias E. Manly,
Ronan C. Grady,
Reuben L. Walker,
Joe R. Morrison,
Harold Jones,
Alexander Sharp, jr.,
Richard R. Mann,
Hollis M. Cooley,
Aubrey W. Fitch,
Lorenz W. F. Carstein,
Donald P. Morrison,
Edward D. Washburn, jr.,
Frank N. Eklund,
Robert V. Lowe,
Claude A. Bonvillian, and
Edwin A. Wolleson.

POSTMASTERS.

CALIFORNIA.

Charles A. Bills to be postmaster at Dunsmuir, Siskiyou County, Cal.

George Brown to be postmaster at Corona, Riverside County, Cal.

Anna C. Mahan to be postmaster at Fort Jones, Siskiyou County, Cal.

Edwin Stanton to be postmaster at Avalon, Los Angeles County, Cal.

Mary A. Warren to be postmaster at Point Loma, San Diego County, Cal.

COLORADO.

Jessie L. Cozens to be postmaster at Littleton, Arapahoe County, Colo.

CONNECTICUT.

Harry W. Crane to be postmaster at Wethersfield, Hartford County, Conn.

Joseph R. Sperry to be postmaster at Warehouse Point, Hartford County, Conn.

GEORGIA.

Augusta Glover to be postmaster at Monticello, in the county of Jasper and State of Georgia.

ILLINOIS.

Lewis J. Farmer to be postmaster at Tamaroa, Perry County, Ill.

Yale T. Kiblinger to be postmaster at Morton, Tazewell County, Ill.

INDIANA.

Charles Laramore to be postmaster at Knox, Starke County, Ind.

KANSAS.

Thomas R. Jones to be postmaster at Girard, Crawford County, Kans.

MAINE.

Eldridge H. Bryant to be postmaster at Machias, Washington County, Me.

MASSACHUSETTS.

Clarke P. Harding to be postmaster at Medway, Norfolk County, Mass.

Lyman D. Thurston to be postmaster at Leicester, Worcester County, Mass.

MICHIGAN.

Fabius A. Fisk to be postmaster at Colon, St. Joseph County, Mich.

Jacob Leroy Gumaer to be postmaster at Ovid, Clinton County, Mich.

Eugene T. Slayton to be postmaster at Lapeer, Lapeer County, Mich.

MINNESOTA.

Anton R. Erickson to be postmaster at Bemidji, Beltrami County, Minn.

MISSISSIPPI.

John W. Lockhart to be postmaster at Durant, Holmes County, Miss.

MISSOURI.

Albert F. Huggins to be postmaster at Shelbina, Shelby County, Mo.

NEBRASKA.

Daniel N. Wonder to be postmaster at Blue Springs, Gage County, Nebr.

NEVADA.

Jesse Christensen to be postmaster at Beatty, Nye County, Nev.

Theodore R. Hofer, Jr., to be postmaster at Carson City, Ormsby County, Nev.

NEW JERSEY.

Charles D. Stanton to be postmaster at Englewood, Bergen County, N. J.

NEW MEXICO.

Albert R. Carter to be postmaster at Tucumcari, Quay County, N. Mex.

TEXAS.

W. P. Harris to be postmaster at Sulphur Springs, Hopkins County, Tex.

VERMONT.

Alton B. Ashley to be postmaster at Milton, Chittenden County, Vt.

Henry S. Webster to be postmaster at Barton Landing, Orleans County, Vt.

VIRGINIA.

Benjamin P. Gay to be postmaster at Smithfield, Isle of Wight County, Va.

John A. McCloud, Jr., to be postmaster at South Norfolk, Norfolk County, Va.

WASHINGTON.

James W. O'Connell to be postmaster at Republic, Ferry County, Wash.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, March 11, 1908.

The House met at 12 o'clock m.

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

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

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. CROCKETT, its reading clerk, announced that the Senate had passed bills and joint resolutions of the following titles, in which the concurrence of the House of Representatives was requested:

S. 138. An act to provide for the survey of the public lands of the States of Idaho, Oregon, Montana, and California;

S. 6047. An act repealing section 13 of the act approved March 2, 1907, entitled "An act amending an act entitled 'An act to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings, to authorize the erection and completion of public buildings, and for other purposes,' and for other purposes;"

S. 4793. An act authorizing settlers on Crow Reservation lands in Montana to mortgage same for the construction of irrigation systems prior to final proof;

S. 3970. An act to revise and amend the statutes relating to patents;

S. R. 9. Joint resolution authorizing the Secretary of War to furnish a condemned cannon to the board of regents of the University of South Dakota, at Vermilion, S. Dak., to be placed on the campus of said institution; and

S. R. 6. Joint resolution directing the selection of a site and the erection of a pedestal for a bronze statue in Washington, D. C., in honor of John Witherspoon.

The message also announced that the Senate had passed without amendment bills of the following titles:

H. R. 16860. An act to establish a United States land district in the Territory of New Mexico, to be known as the Tucumcari land district; and

H. R. 9205. An act to make the provisions of an act of Congress approved February 28, 1891 (26 Stats., p. 796) applicable to the Territory of New Mexico.

The message also announced that the Vice-President had appointed Mr. BAILEY and Mr. GALLINGER members of the joint select committee on the part of the Senate, as provided for in the act of February 16, 1889, entitled "An act to authorize and provide for the disposition of useless papers in the Executive Departments," for the disposition of useless papers in the Interior Department.

SENATE BILLS AND JOINT RESOLUTIONS REFERRED.

Under clause 2, Rule XXIV, Senate bills and joint resolutions of the following titles were taken from the Speaker's table and referred to their appropriate committees as indicated below:

S. 138. An act to provide for the survey of the public lands of the States of Idaho, Oregon, Montana, and California—to the Committee on the Public Lands.

S. 6047. An act repealing section 13 of the act approved March 2, 1907, entitled "An act amending an act entitled 'An act to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings, to authorize the erection and completion of public buildings, and for other purposes,' and for other purposes"—to the Committee on Public Buildings and Grounds.

S. 4793. An act authorizing settlers on Crow Reservation lands in Montana to mortgage same for the construction of irrigation systems prior to final proof—to the Committee on the Public Lands.

S. 3970. An act to revise and amend the statutes relating to patents—to the Committee on Patents.

S. R. 9. Joint resolution authorizing the Secretary of War to furnish a condemned cannon to the board of regents of the University of South Dakota, at Vermilion, S. Dak., to be placed on the campus of said institution—to the Committee on Military Affairs.

S. R. 6. Joint resolution directing the selection of a site and the erection of a pedestal for a bronze statue in Washington, D. C., in honor of John Witherspoon—to the Committee on the Library.

POST-OFFICE APPROPRIATION BILL.

Mr. OVERSTREET. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 18347, the post-office appropriation bill.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the post-office appropriation bill, with Mr. OLMSTED in the chair.

The CHAIRMAN. The Clerk will resume the reading of the bill.

The Clerk read as follows:

Watchmen, messengers, and laborers, 430, at \$700 each; 225, at \$600 each; and 100, at \$500 each; in all, \$486,000.

Mr. OVERSTREET. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 12, lines 1 and 2, strike out "430" and insert "530."

The amendment was agreed to.

Mr. OVERSTREET. I also offer the following.

The Clerk read as follows:

Page 12, lines 4 and 5, strike out "four hundred and eighty-six thousand" and insert "five hundred and fifty-six thousand."

Mr. MANN. May I ask the gentleman from Indiana what is the pay provided in this bill for the watchmen and laborers in the post-offices?

Mr. OVERSTREET. There are 530 watchmen, messengers, and laborers at \$700 each, 225 at \$600 each, and 100 at \$500 each.

Mr. MANN. I understood the gentleman to say last year that the pay of watchmen was \$720 a year.

Mr. OVERSTREET. No; we have taken the watchmen, messengers, and laborers at the salaries they are now receiving and incorporated them in this item of appropriation, except that there were a few laborers at \$400, who were covered into the \$500 class.

Mr. MANN. I remember that last year the gentleman from New York [Mr. OLcott] offered an amendment for the purpose

of increasing the salaries of watchmen to \$800 a year, and the gentleman in charge of the bill, properly I think, although it was against my desire, raised the point of order on it and stated that the salary then provided was \$720.

Mr. OVERSTREET. The current law provides no \$720 compensation for employees in the post-office. It is \$700; not \$720.

Mr. MANN. Has the gentleman's committee considered the desirability or the necessity of increasing the salaries of watchmen and laborers in the large cities?

Mr. OVERSTREET. It has not been limited to the consideration of salaries in the large cities; but the committee considered, in a limited way, the problem of increases of salaries of all kinds, including those of laborers and watchmen, and determined that it would not make any recommendation for increases of salaries of any class this year.

Mr. BENNET of New York. Mr. Chairman, may we have the amendment again reported?

The CHAIRMAN. If there be no objection, the Clerk will again report the amendment.

The amendment was again reported.

Mr. OVERSTREET. Mr. Chairman, that amendment was simply to correct an error in the preparation of the bill.

Mr. BENNET of New York. I move to strike out the last word of the amendment, for the purpose of asking the chairman of the committee if the bill does not decrease the number of laborers by fifty or sixty from last year.

Mr. OVERSTREET. No. If the gentleman has noticed, the first amendment I offered increased the number in this item 100. That was a clerical error in the preparation of the bill, and is now corrected by these two amendments.

Mr. BENNET of New York. I was not here when the first amendment was adopted, and, Mr. Chairman, I withdraw my pro forma amendment.

Mr. ADAMSON. Mr. Chairman, I have some remarks and a diagram upon the Appalachian Forest Reserve which I ask unanimous consent to print in the RECORD.

The CHAIRMAN. The Chair is of the opinion that the proposal to print a diagram in the RECORD would have to be submitted to the Committee on Printing.

Mr. ADAMSON. Then I withdraw that part of my request.

The CHAIRMAN. The gentleman from Georgia asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. ADAMSON. I here submit the following letter as a part of my remarks:

JUDGE ADAMSON, Washington, D. C. COLUMBUS, GA., March 2, 1908.

MY DEAR JUDGE: I inclose diagram of Pine Mountain, which was made from United States Geological Survey, Talbotton and Opelika quadrangles. That part of it inclosed with red lines is the strictly mountainous part and consists of 12,000 acres. I have extended this by cross marks, which space within the cross marks, excluding the red-line areas, both north and south of the mountain, would make the whole area about 36,000 acres. These 24,000 acres, exclusive of the strictly mountainous part, 12,000 acres, are just as proper to be included as the strictly mountainous portion. I do not believe that the 24,000 acres contain exceeding 10 per cent of land that would be fit for agricultural purposes. Now, the object is to get this tacked onto the Appalachian forestry bill, now pending in Congress. You know that below the points where Mountain Oak and Mulberry creeks empty into the Chattahoochee River, the largest water powers on the river down to Columbus exist. This Pine Mountain reservation can be made equal to any other part of the Appalachian range for forestry preservation; between Hamilton and Mountain Hill, as the United States Geological Survey shows, on the south side of the mountain, enough water can be had at Columbus by gravity for municipal purposes for 400,000 or 500,000 people. Mulberry and Mountain Oak creeks are notoriously muddy creeks in times of high water or freshets. They used to be comparatively clear streams.

The amounts of detritus that these creeks are contributing to the river, filling up the dams and making it more difficult to keep the navigation of the river below Columbus open, are prodigious. If, in all respects, the Appalachian range in North Georgia is eligible for forestry reservation, this lowest portion of the same range of mountains is equally so, and the bill should be amended so as to include these Pine Mountain areas. I have written Mr. Pinchot to see you on the subject. Mr. Mills, who lectured here on forestry preservation, a short while ago, and myself had a conversation about the Pine Mountain area, and after my explanation he thought it should be included. I do not know what disposition will be made with the forestry bill at this or future sessions of Congress; but when the bill is likely to pass the Pine Mountain area should be already incorporated. In those respects explained by the President in his recent message on waterways, it has all of the conditions for forestry restoration, for water for municipal purposes, for increasing and steady a supply of water for water power, and for the navigation of the Chattahoochee River below Columbus.

I trust that you will see that it is incorporated in the bill, and I am sure that it will present the closest feature of the relation of the Pine Mountain to the lower waters of the Chattahoochee in the very particulars that sustain the argument favorable to forestry preservation, etc.

Although the national forestry bill may not be acted on at this session of Congress, there is no doubt eventually it will be passed. This bill includes the Appalachian range, in which the Chattahoochee River

has its source. Pine Mountain is the most southern extension of the Appalachian Mountains, and in every argument that has been made for forest preservation Pine Mountain range, traversing Harris County, with Mountain Oak Creek to the north of it and Mulberry Creek to the south, emptying into the Chattahoochee River 15 and 16 miles north of Columbus, is the fittest forestry area in the South for such preservation.

As shown by a tracing from the United States geological surveys of the Talbotton and Opelika quadrangles, those which are strictly the mountain sources of drainage into Mountain Oak and Mulberry creeks, consist of 12,000 acres. Adding to this the lower formations of the mountains, the areas would be about 36,000 acres, of which not more than 10 per cent are fit for agricultural purposes. These mountains have in times past been covered with long-leaf pines and every variety of southern timber growth. Injudicious cutting and fires have already destroyed most of this timber. If it was restored and so much of it disposed of annually by the Government for wood and lumber it is almost safe to say that it would supply the Fourth Congressional District with lumber as long as its political existence lasted. The terms proposed in the creation of national forests are to purchase the lands at not more than \$5 or \$6 per acre.

The majority of the great water powers on the Chattahoochee are below where Oak Mountain and Mulberry creeks empty into the river. The United States Geological Survey shows that between Hamilton and Mountain Hill there is a plentiful supply of water by gravity for 500,000 people at Columbus.

California, which has one-half of our annual rainfall, has proved that water supply has increased 25 per cent after forest restoration. It is safe to assert that ours would increase 50 per cent.

It cost Switzerland \$35 per acre to restore her forests, and Italy \$20 per acre. Of all the Appalachian system to be preserved, Pine Mountain is the most important in proportion. The pine growth of Pine Mountain is most prolific of turpentine. The turpentine of the South has been obtained by cutting a hole in one side of the tree, called "boxing," which in a few years kills the tree. The Forest Service has found a method of extracting turpentine by which the trees are far less injured and the yield is increased 30 per cent.

We in Columbus are thoroughly alive to this question, and I trust that you will become enlisted in the cause, seeing that your district is directly to be benefited, and that you will also secure the cooperation of the Congressmen from Florida and Alabama whose districts border the lower Chattahoochee.

It occurs to me that our opponents will have a difficult task to show that the Government has not the right to make these purchases. The closeness of Pine Mountain to the Chattahoochee River strengthens the point that the United States has power to make the purchase, in reference to their jurisdiction over navigable streams and for their protection.

I am further inclined to think that the constitutional right of the Government to acquire territory either "by conquest or treaty" can be used as an additional liberal argument in favor of Congress to acquire these mountain areas for forestry preservation, etc.

I am, yours, very truly,

CHARLES J. SWIFT.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana.

The question was considered, and the amendment was agreed to.

The Clerk read as follows:

Clerks in charge of contract stations, at a rate of compensation above \$300 each, and not to exceed \$1,000 each, \$250,000.

Mr. MANN. Mr. Chairman, I move to strike out the last word. I would like to move to increase the amount. This is a matter that affects the so-called "substations," or numbered stations. The present law and the bill both carry the distinction between salaries above \$300 and salaries of \$300 and below. I understood the gentleman from Indiana [Mr. OVERSTREET], in charge of the bill, the other day to say that in the estimates and suggestions made by the Department these provisions were lumped in some way, and it was not very clearly stated how the dividing line should be made.

For some years the Department has endeavored to arrive at some basis upon which to fix the salaries for those stations. They have changed it from time to time. It originally was based on the amount of stamps sold, the amount of business transacted in that way, but it was thought that some of the clerks in charge of substations padded their stamp sales by encouraging the sale of stamps to people in large quantities, and so that method was changed. Several years ago they arrived at a basis which fixed the salary by the amount of money orders and registered letters, and started in with a basis of \$100 for a thousand dollars of business in money orders and registered letters, and a salary of \$200 for a business of \$2,000, and between two and three thousand dollars a salary of \$300. That basis has since been changed so that the salaries are reduced somewhat. It takes a larger number of money orders and registered-letter transactions to increase the salary from \$100 to \$200, the initial salary being \$100. But while the Department has fixed their schedule of the amount of transactions upon which to base the salaries, they have not been able to keep faith because the amount appropriated was not sufficient.

For instance, in my own district, for the year 1906, station 16 received a salary of \$500, and the combined money-order and registered-letter transactions were 4,758. Last year the number of transactions increased to 5,105, and the salary was reduced to \$400.

On station 23 the combined transactions for 1906—and these

are for the year ending March 31 of the year named—were 3,180, and the salary \$400. Last year the combined transactions were 3,229, and the salary was reduced to \$300 instead of being increased.

On station 46 the combined transactions were 1,529 and the salary was \$200. But last year, while the transactions had increased to 2,972, the salary was reduced to \$100. Of course, that is not in the class above \$300.

On station 81 the combined money-order transactions and registered letters was 6,643 and the salary was \$600. I may say that is a large amount of business transacted. Last year the combined money order and registered letters at this station was 8,354, and the salary was reduced, although the amount of business had increased from 6,643 to 8,354. The salary was enough to entitle him to a raise of salary under their schedules and entitle him to a raise of salary on the amount of business transacted, but the salary, instead of being increased, was reduced.

Mr. WANGER. Mr. Chairman, right there I would like to ask my friend if it is not a fact that the schedule was changed to a different basis for compensation of these clerks by the Post-Office Department?

Mr. MANN. I have just stated that the basis had been changed, but not last year. And even upon the change of basis, even upon the basis now in force, these people are entitled to an increase in salary, but there is not sufficient appropriation. Even upon the basis which the Department endeavors to enforce there is not sufficient appropriation.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. MANN. Mr. Chairman, I would like five minutes more.

The CHAIRMAN. The gentleman from Illinois asks that his time be extended five minutes. Is there objection?

There was no objection.

Mr. STAFFORD. Will the gentleman yield?

Mr. MANN. Certainly.

Mr. STAFFORD. In reply to the gentleman's criticism, I wish to say that he is quite correct in his statement as to the schedules that have been in force in prior years for the fees to the clerks in charge of these contract stations, but I wish to direct his attention to what I believe has been the difficulty which has caused the Department not to grant all of the increases according to the schedule of business in force in the Department. In prior years these two items providing for clerks in charge of contract stations have been carried just previous to the item which carries the lump-sum appropriation for the entire clerical service in the post-offices of the country. Although in those two items for clerks in charge of contract stations we provided a definite appropriation for each of the two classes, still the total amount was embodied in the gross appropriation for clerical hire.

The Department during the last two years has inadvertently furnished erroneous estimates as to the total amount necessary in this appropriation, not only of clerks because of increase of business, but during the present fiscal year because of increases in salary for promotion purposes, so that the Department has been forced to limit the expenditure out of these two respective items and has used that money for expenditures for clerical purposes. Last year noticeably that was the case, and I have the figures here if the gentleman would wish to have them. There was at the time the bill was under consideration last year a balance of more than \$35,000 apparently available for expenditure in these two items, but that amount had been utilized for expenditure for clerical purposes other than for clerks in charge of contract stations, and to-day in this very item we are considering we appropriate in the current bill, for these contract stations of the \$300 grade and under, the sum of \$515,000. On January 16 of this year, according to the statement furnished the committee under date of January 22, there was being expended the annual rate of \$498,873, making available more than \$15,000 for the remainder of the present fiscal year.

Mr. MANN. But we are talking about an item above three hundred. I do not want the gentleman to get the committee to think that there is a large amount of money here—

Mr. STAFFORD. Oh, I wish to save the time of the House by considering both items at one time, because I believe I can convince the gentleman that the difficulty has been in the arrangement of these items, rather than the amount appropriated, and it has not been the fault of the committee in making inadequate appropriations for this service.

Mr. MANN. If the gentleman will pardon me, if the gentleman proposes to convince me by showing me that the Post-Office Department has violated the law and used this fund for something else, then I want the gentleman from Pennsylvania [Mr. WANGER], the chairman of the Committee on Expenditures

in the Post-Office Department, to pay particular attention to it, because, if that is the case, I want him to make it hot for somebody in the Post-Office Department.

Mr. STAFFORD. There is no question but that the gentleman from Pennsylvania would make it very warm for somebody in the Post-Office Department if there has been any violation of the law, but I hardly believe my statement will warrant any such construction.

Mr. MANN. The gentleman stated that a part of this fund had been diverted from contract stations, and the appropriation expressly says "for clerks in charge of contract stations."

Mr. STAFFORD. It has been diverted, yet under the decision of the Comptroller it was permissible, and the discretion rested with the Department heads to use this money for any of the items carried in the previous sections, which was included in the total appropriation. Now, what have we done this year? We have separated—

Mr. MANN. But that is a very important matter, to know whether—

Mr. STAFFORD. If the gentleman will permit me to make my explanation before he takes the floor again, I shall be very much obliged. This year we have sought to overcome that difficulty by segregating those two items and furnishing two distinct provisions, separate and apart from the total appropriation for clerical hire, and not including the amounts carried for those two items for clerks in charge of contract stations into the total amount provided for clerks and employees in first and second class post-offices.

Mr. MANN. What I want to get at is the fact in reference to the diversion of this money.

Mr. STAFFORD. The gentleman will see, if he looks at page 12, that these two items for clerks in charge of contract stations are separate and distinct, and follow the total appropriation, as found in lines 12 and 13, on page 11, while in the current law they immediately precede the total appropriation, which was provided for all character of clerks and employees in the postal service.

Now, by so segregating these items we thereby remove the discretion of the post-office officials to utilize this fund for any other purpose except as designated in the item, that of "clerks in charge of contract stations."

Mr. MANN. Now, the gentleman raised a question which goes away beyond the importance of contract stations. Does the gentleman mean to tell the House that the Comptroller rules that the different items which go to make up this \$28,661,500, on page 11, are of no consequence and that the Post-Office Department can transfer the amounts appropriated as they please?

Mr. STAFFORD. Oh, no; but the gentleman does maintain that when we make a total appropriation, as we did last year, for all this character of service, carrying the amount of twenty-six millions—

The CHAIRMAN. The time of the gentleman from Illinois [Mr. MANN] has expired.

Mr. MANN. Mr. Chairman, I ask unanimous consent for five minutes more.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. STAFFORD. Will the gentleman continue to yield to me?

Mr. MANN. Certainly.

Mr. STAFFORD. Last year the amount appropriated in this item carried \$26,390,200, which included that then carried for contract stations of \$235,000 for those of \$300 and under, and \$515,000 for those above the \$300 grade. That total appropriation of twenty-six millions and odd dollars was not the full amount that would have been computed if we had estimated for all the number of clerks at the respective salaries carried in the preceding items, because the committee does not grant the full amount of the annual rate of expenditure, because some of these clerks are put in the service at different times of the year and therefore the money is not needed at the beginning of the fiscal year, and the total estimate can be scaled down accordingly.

Mr. MANN. But has the Department the right to divert an appropriation included in that amount for a specific purpose and use it for some other purpose?

Mr. STAFFORD. But the Department has not diverted it. It has in no instance exceeded the allowance in the number of clerks that have been carried in the previous items. But the Department has the right, and there is nothing compulsory on the Department, to expend so much of the amount of money that is carried in any respective item as it determines.

Mr. MANN. I understand that.

Mr. STAFFORD. When we provide for so many clerks and

officials we do not say to the Department, "You must employ that number during the fiscal year." We naturally leave that to the discretion of the Department. Now, as far as these clerks in contract stations are concerned, we leave it to the discretion of the Department to place them where they believe the needs of the postal service demand; but the explanation of the inadequacy of appropriation is traceable to the fact that they have failed to give the committee a careful and correct estimate as to the total amount of appropriation necessary for the postal service so far as clerical service was concerned.

Mr. MANN. Now, if the gentleman will pardon me, maybe I can get at the information. Last year we appropriated \$235,000 for this item?

Mr. STAFFORD. Yes.

Mr. MANN. Contract stations above \$300. Is that \$235,000 now being used solely for the purpose of paying clerks in charge of contract stations?

Mr. STAFFORD. Some of it is and some may be used for other purposes.

Mr. MANN. That is what I wanted to know. By what authority is some of it being used for other purposes?

Mr. STAFFORD. Why, because that \$235,000 has been bulked in the total amount of \$26,390,200, which provides for all this service, and the prior items did not carry sufficient appropriation to pay for what they believed was necessary during the fiscal year and more urgently needed for the postal service.

Mr. MANN. Then the segregation of that sum into items is idle?

Mr. STAFFORD. I grant you that it was not as forceful as the method adopted in this bill.

Mr. MANN. That is not the law; that is not the ruling of the Comptroller.

Mr. STAFFORD. The committee this year, noting that there was that difficulty in the administration, has separated those items, so that it is no longer included in the total, but it is found now in two separate items, on page 12, whereby the Department can not use that money for any other purpose.

Mr. MANN. But I think the gentleman is mistaken in what the Department has done.

Mr. WANGER. That is already segregated.

Mr. OVERSTREET. The arrangement in the present bill now under consideration is a far better arrangement—

Mr. MANN. I am not complaining about that.

Mr. OVERSTREET. Than contained in the prior bill. While under the former law, as it was possible to use part of the \$175,000 for purposes other than the pay of contract station agents, it can not be used for any other purpose under the present bill.

Mr. MANN. How was it possible before? Do I understand the Committee on the Post-Office and Post-Roads to say that when we appropriate for so many clerks, and so forth, at \$1,200 each, that that means nothing—that the Department can use that money to pay clerks drawing \$1,300 salary?

Mr. OVERSTREET. But if in addition to the amount of money necessary to pay those clerks at those respective salaries you include a lump sum from which you may pay for contract stations, then that would leave a merged fund.

They had all the clerks given their respective salary during the year and it was all covered for contract stations. Now, the committee have further separated that, and made a still greater segregation of the fund, to the benefit, in our judgment, of the payment for contract stations.

Mr. MANN. Well, last year I asked the gentleman this same question, and moved to amend the appropriation by increasing it from \$235,000 to \$250,000. The gentleman from Indiana, in whom I have great confidence, informs me that the amount appropriated was sufficient for the service, and now it turns out that it is not sufficient.

Mr. OVERSTREET. I think it was, and the gentleman has stated it was by giving the expenditures.

Mr. MANN. I think there is not a dollar that is unexpended.

Mr. STAFFORD. I have given the amount in this statement.

Mr. MANN. But I am not talking about that.

Mr. STAFFORD. I am directing the attention of Members to this fact. There has been an understanding by Members of the House here that there is no fund available for that character of station. I wish to say that on January 10, although we had appropriated \$515,000 there had only been an expenditure at the annual rate of \$498,873, leaving a balance available of more than \$15,000.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MANN. I suggest to the gentleman that he claim the floor in his own right.

The CHAIRMAN. The Chair will recognize the gentleman from Wisconsin in opposition to the amendment of the gentleman from Illinois.

Mr. MANN. Now, will the gentleman permit me? He persistently talks about a proposition not before the committee. I have asked in reference to a proposition which is before the committee, and that is, whether there is any surplus fund for this purpose now?

Mr. STAFFORD. As to the appropriation for the grades in excess of \$300, there is no money at present available out of the fund appropriated.

Mr. MANN. That is what I was saying. The gentleman from Indiana corrected me, and said that it was available, upon the strength of the statement of the gentleman from Wisconsin; and the statement of the gentleman from Wisconsin is correct, but it would give an erroneous impression in the House.

Mr. STAFFORD. There is no money available so far as the item of appropriation for the grades above \$300 are concerned; but there is money available for those below. We have increased the appropriation carried last year from the amount of \$235,000 to the amount of \$250,000.

Mr. MANN. Increased it by \$15,000.

Mr. STAFFORD. We have increased it \$15,000; and we have increased the other item still more, from \$515,000 to \$525,000; and taking the annual rate of expenditure at \$498,000, or say \$500,000 even, it leaves \$25,000 additional that we have appropriated.

We have proceeded in this bill upon the recommendation of First Assistant Postmaster-General Hitchcock, made two years ago, that he believed that it was for the best interest of the service to have a larger number of these contract stations that received a small allowance, rather than too many of the higher grade, for he believed, and I believe with him, that it is better for the country and the service to have a greater number of small contract stations scattered about the city districts so as to be within easy reach of the patrons of the service, rather than to have a few large contract stations isolated and at a distance from their patrons. We have followed that recommendation by granting a heavier allowance, a heavier increase in the item of the \$300 grade than in the higher grade. I want to inform the House that we have followed that recommendation, nevertheless making provision for increases which are necessary to provide for all the present service in the \$400 grade and upward.

Mr. MANN. The gentleman understands that the Post-Office Department necessarily has some rules and regulations about the establishment of any station. Take a money-order and registry station amounting to more than \$10,000 a year, and there are not many post-offices in the country that have as large money transactions. The salary is \$600. The gentleman understands that money-order business at such stations, most of it, is foreign money orders. It is only by the greatest persuasion that it has been possible to persuade anybody to keep that place. Now, under the appropriation made in this bill it will not be possible to increase the salary according to the schedule made by the Department.

Mr. STAFFORD. We are providing \$15,000 for the very limited number of offices of that character. There are only a few.

Mr. MANN. The gentleman says that there are a limited number. I think I have twenty or twenty-five such stations in my district.

The CHAIRMAN. The time of the gentleman from Wisconsin has expired.

Mr. MANN. I ask unanimous consent that the gentleman have five minutes more.

There was no objection.

Mr. MANN. Now, it is absolutely impossible to maintain stations of this character. I have a letter in my hand from the postmaster at Chicago in which he says he has endeavored to locate a station there, but he had applied to the owner of drug stores in the locality, and as soon as they are fully informed as to the matter they declined it, and others who had formerly had them declined to keep the stations.

A few years ago I went to the Department and showed them a portion of my district that had a population of 10,000 people where you could not buy a postage stamp.

Mr. DRISCOLL. I should like to ask somebody—and I think the gentleman from Illinois can answer it—why these stations are opened right close to the central post-office, within a block or two, or very close by?

Mr. MANN. I may say to the gentleman that that is not done in Chicago. I do not know how it is elsewhere.

Mr. DRISCOLL. It is done in many parts of the country.

Is it because druggists want to advertise in that way and attract people into their stores? If that is the purpose of it, they should not receive large compensation.

Mr. MANN. They do not get large compensation in any event.

Mr. FITZGERALD. I wish to ask the gentleman from Wisconsin a question. He has made a very remarkable statement to the gentleman from Illinois, and I should like some light on it. In several places in this bill, for the convenience of Members—

Mr. COCKRAN. Mr. Chairman, a point of order. I submit that we are entirely unable to hear the conversation that is taking place between the gentleman from New York [Mr. FITZGERALD] and the gentleman from Wisconsin [Mr. STAFFORD].

Mr. FITZGERALD. I will say that in order to get into this discussion I had to come over on the Republican side.

Mr. COCKRAN. Will not the gentlemen take us into their confidence? Will not my colleague from New York come back here onto this side of the House, so that we can hear what he has to say?

Mr. FITZGERALD. No; I would not know anything about it if I were over there, and I want to see if I can find out anything.

Mr. MANN. We would not be unkind enough to say that that is the usual condition on that side of the House. [Laughter.]

Mr. FITZGERALD. There does not seem to be much hope, from the course of this discussion, that I will get the information I want.

The CHAIRMAN. The gentleman from Wisconsin [Mr. STAFFORD] has the floor. Does he yield to any gentleman; and if so, to whom?

Mr. STAFFORD. I yield to the gentleman from New York [Mr. FITZGERALD].

Mr. FITZGERALD. At several places in this bill, for the convenience of Members or the post-office officials or the public, items run along and are then totaled and a gross sum is stated as the amount appropriated for a certain service, which is divided into several items.

Mr. COCKRAN. Mr. Chairman, I again suggest that it is impossible to hear what is being said by gentlemen over on the other side.

Mr. FITZGERALD. Does the gentleman from Wisconsin wish to inform the House that there has been a ruling that the mere totaling of the amounts appropriated in certain items gives to the Department a discretion to use that sum indiscriminately for any of the purposes preceding it?

Mr. STAFFORD. Not indiscriminately.

Mr. FITZGERALD. How indiscriminately?

Mr. COCKRAN. I again call the gentlemen to order. No one of us here has the slightest idea of what the gentleman from Wisconsin is saying to the gentleman from New York. Is there any way in which the House can obtain a knowledge of what is taking place?

The CHAIRMAN. The Chair will endeavor to maintain order in the Chamber, but the Chair can not control the positions which gentlemen take when speaking.

Mr. MANN. Mr. Chairman, I am unable to hear what the gentleman from New York [Mr. COCKRAN] is saying. [Laughter.]

Mr. STAFFORD. I was about to say, Mr. Chairman, in reply to the query propounded by the gentleman from New York [Mr. FITZGERALD], that they can not use that sum indiscriminately, because they are limited by the number of men provided and the appropriations provided in these respective items. Take, for example, any of the items prior to the stated total of appropriation found on page 11. For instance, the \$900 grade. We provide 7,379 at not to exceed \$900 each, and so on through the various classes. Now, we do not provide by appropriation for the total that each of the respective numbers of employees would carry if they all received that salary throughout the year, because, as I explained, in answer to a question from the gentleman from Illinois [Mr. MANN], they are not all placed in the service at one time, and as to some the amount is not necessary for the full year, and consequently the full amount is not appropriated. Now, in closing—

Mr. FITZGERALD. I do not want the gentleman to close so quickly. In the law for the current year is an item, clerks in charge of contract stations, at a rate of compensation above \$300 each, and not to exceed \$1,000 each, \$235,000. Has it been held that the Postmaster-General can expend, out of this total appropriation, more than \$235,000 for that specific purpose?

Mr. STAFFORD. I do not so understand it. He is not obliged to use all of the \$235,000, which is included in the total amount of \$26,390,200.

Mr. MANN. In other words, your total of \$26,000,000 was insufficient?

Mr. STAFFORD. It was insufficient in the full totals—

Mr. MANN. Your guess last year was a little too low.

Mr. STAFFORD. The estimate of the Department for clerical services was too low.

Mr. OVERSTREET. Mr. Chairman, I move that all debate on this paragraph close in five minutes.

Mr. MANN. I understood the gentleman from Indiana was to allow reasonable debate.

Mr. OVERSTREET. There is no amendment pending before the committee; it is merely matters of explanation, and it has been limited to two or three individuals, and I supposed they were about through.

Mr. MANN. I propose to offer an amendment.

Mr. OVERSTREET. Well, I will make it ten minutes, Mr. Chairman; I move to close all debate in ten minutes.

The CHAIRMAN. The gentleman from Indiana asks unanimous consent that all debate on the paragraph and amendments close in ten minutes.

Mr. OVERSTREET. But there is no amendment.

Mr. MANN. I propose to offer an amendment.

Mr. CLARK of Missouri. Mr. Chairman, gentlemen on that side turn their backs to us, and no one can hear a word that is said.

Mr. OVERSTREET. Mr. Chairman, if I may be permitted to make a suggestion, it seems to me that we will make better progress if gentlemen will offer amendments and speak to them instead of making pro forma amendments.

The CHAIRMAN. The debate on the present amendment is exhausted.

Mr. MANN. Mr. Chairman, I move to amend by striking out the word "fifty," in line 8, page 12, and inserting the word "seventy-five."

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 12, line 8, strike out the word "fifty" and insert "seventy-five," so that it will read "\$275,000."

Mr. MANN. I wish the committee would accept this amendment. The Post-Office Department has its rules, and they can not increase anybody's salary above what the rule provides. It only takes care of the increase authorized under the regulations and can not be used as a fund in any way. The increase proposed this year is not sufficient.

Mr. OVERSTREET. If the gentleman will permit me—

Mr. MANN. Certainly.

Mr. OVERSTREET. The highest recommendation of the Department for all the service of contract stations embodied in both of these paragraphs aggregated \$795,000, and when the official before the committee was asked the direct question how he would separate the increase of \$45,000, which was the total of his recommendation, he said he would make it \$270,000. Now the gentleman's amendment provides for \$275,000.

Mr. MANN. I am willing to make it \$270,000.

Mr. OVERSTREET. That is the highest recommendation of a Department which is the most liberal in recommendations of any Department of my acquaintance in the service.

Mr. MANN. But the gentleman must understand that the Department establishes no stations under this clause; the stations are all established under the other clause. The increase is simply for use in accordance with the regulations fixed by the Department, and it seems to me where the business increases, where the man is told that when he reaches a certain amount he will have an increase in the salary, the Department and the Government should keep faith with him. It can not increase the expenses of the Government except in accordance with the regulations and scale fixed by the Department. Is it not fair to these people, is it not for the interest of the service, to pay them the amount that they are told they will receive when the business reaches that point?

Mr. OVERSTREET. If the gentleman will make it \$265,000—

Mr. MANN. Mr. Chairman, I will modify my amendment, if I may, and make it \$265,000 instead of \$275,000.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent to modify his amendment in the manner which the Clerk will report.

The Clerk read as follows:

Line 8, page 12, strike out the word "fifty" and insert the word "sixty-five."

Mr. OVERSTREET. I have no objection to that amendment.

The question was taken, and the amendment was agreed to.

Mr. OLcott. Mr. Chairman, I ask unanimous consent to

have a letter in connection with this subject, and also a bill introduced by my colleague, Mr. BENNET, printed in the RECORD.

The CHAIRMAN. The gentleman from New York asks unanimous consent to print a letter and the bill which he mentions in the RECORD. Is there objection?

There was no objection.

The matter referred to is as follows:

NEW YORK, February 27, 1908.

HON. VAN VECHTEN OLcott.

DEAR CONGRESSMAN: Bill No. 14369, BENNET, is now before Congressman OVERSTREET's committee, and is deserving of your most favorable consideration.

During last year we registered 2,100 letters, sold \$8,000 in stamps, mostly in small quantities at a time, and issued 1,025 money orders. During the Xmas holidays we weighed 600 packages.

Our total allowance from the Government is at the rate of \$4 per week.

The public is deriving great conveniences from these substations, and noticing this fact, the demands of the public are becoming more and more, and it requires a pretty intelligent and responsible person to attend to a substation properly. Considering further that the Government pays us no rent, and that we take all responsibility in case of theft or robbery, the Government being no loser, these substations would still be very cheap at the new rates as stated in the bill before Congressman OVERSTREET's committee, while our present compensation is not a fair one.

Earnestly hoping that you will give this bill your kind consideration and support, I am,

Respectfully,

FRED'K KLEINSCHMIDT.

[H. R. 14639. Sixtieth Congress, first session. In the House of Representatives, January 21, 1908.]

Mr. BENNET of New York introduced the following bill, which was referred to the Committee on the Post-Office and Post-Roads and ordered to be printed:

A bill to classify certain grades in numbered post-office stations.

Be it enacted, etc., That numbered stations doing post-office business of not over: Class 1, \$1,000 worth of money-order business, 500 money-order business and registry transactions, and selling \$1,000 worth of stamps, salary to be \$100; class 2, \$1,500 worth of money-order business, 1,000 money-order business and registry transactions, and selling \$2,000 worth of stamps, salary to be \$200; class 3, \$2,500 worth of money-order business, 1,500 money-order business and registry transactions, and selling \$4,000 worth of stamps, salary to be \$300; class 4, \$3,000 worth of money-order business, 2,000 money-order business and registry transactions, and selling \$6,000 worth of stamps, salary to be \$400; class 5, \$5,000 worth of money-order business, 3,000 money-order business and registry transactions, and selling \$8,000 worth of stamps, salary to be \$500; class 6, \$7,000 worth of money-order business, 3,000 money-order business and registry transactions, and selling \$12,000 worth of stamps, salary to be \$600; class 7, \$9,000 worth of money-order business, 4,000 money-order business and registry transactions, and selling \$16,000 worth of stamps, salary to be \$700; class 8, \$12,000 worth of money-order business, 4,500 money-order business and registry transactions, and selling \$20,000 worth of stamps, salary to be \$800; class 9, \$15,000 worth of money-order business, 5,000 money-order business and registry transactions, and selling \$25,000 worth of stamps, salary to be \$900; class 10, over above amounts, salary to be \$1,000.

In adjusting salaries 500 money-order business and registry transactions shall rate equivalent to \$3,000 worth of stamps sold.

Mr. McDERMOTT. Mr. Chairman, I ask unanimous consent to go back to page 12, lines 2, 3, and 4, for the purpose of offering an amendment.

Mr. OVERSTREET. Let us hear the amendment read first. The Clerk read as follows:

Amend page 12, line 2, by substituting the word "eight" for "seven." Amend page 12, line 3, by substituting the word "seven" for "six." Amend page 12, line 4, by substituting the word "six" for "five." So that lines 1, 2, 3, 4, and 5, page 12, will read, "Watchmen, janitors, and laborers, 430, at \$800 each; 225, at \$700 each; and 100, at \$600 each; in all, \$561,500."

The CHAIRMAN. The gentleman from Illinois asks unanimous consent to return to page 12, lines 2, 3, and 4, for the purpose of offering an amendment, which the Clerk has reported.

Mr. OVERSTREET. I object.

The CHAIRMAN. The gentleman from Indiana objects. The Clerk will read.

The Clerk read as follows:

Clerks in charge of contract stations, at a rate of compensation not to exceed \$300 each, \$525,000.

Mr. BENNET of New York. Mr. Chairman, I move to strike out the last word for the purpose of asking the gentleman from Indiana [Mr. OVERSTREET] or the gentleman from Wisconsin [Mr. STAFFORD] if their committee intends at this session to give a hearing on the bill which my colleague, the gentleman from New York [Mr. OLcott] has just obtained permission to print in the RECORD.

Mr. OVERSTREET. Does the gentleman refer to the famous Bennet bill to classify the contract-station clerks?

Mr. BENNET of New York. Omitting the word "famous," I refer to that bill.

Mr. OVERSTREET. Mr. Chairman, I think it is entirely unfair for any Member to force the chairman of the committee to put in the light of opposing legislation, but I know of no man who is more ready to take responsibility, if it belongs to him, than I am; and, in view of the methods which the gentle-

man from New York [Mr. BENNET] has to-day assumed to try and secure hearings, I will state that I can not tell what the committee may recommend, but that I shall oppose hearings upon that bill.

Mr. BENNET of New York. Mr. Chairman, I am very sorry that the chairman of the committee has taken that attitude. It seems to me that my inquiry was a perfectly proper one at this time. It is my recollection that I have applied before for a hearing, and the request seemed to me to be a simple one. Any committee has the right to refuse hearings, and any member of the committee has the right to say that he will vote to refuse a hearing. I do not know, of course, what attitude the committee will take, beside the chairman taking the attitude he has in regard to me, personally. If I thought my inquiry at this time would cause him any embarrassment or even indignation, I am very frank to say it would not have been made in this way. I simply wanted to get the information and felt sure that other Members of the House would. I think the bill itself is a good one, and that there ought to be that classification. Of course, as the chairman says, he can not be forced at this time to say what he will do or what the committee will do. I withdraw the pro forma amendment.

The CHAIRMAN. The clerk will read.

The Clerk read as follows:

For temporary and auxiliary clerk hire at first and second class post-offices, and temporary and auxiliary clerk hire at summer and winter resort post-offices, \$240,000.

Mr. GAINES of Tennessee. Mr. Chairman, I move to strike out the last word for the purpose of making an inquiry. I want the gentleman in charge of the bill to explain what he means by the language on lines 17 and 18 on page 12, "temporary and auxiliary clerk hire at summer and winter resort post-offices," which attracted my attention, because I have had trouble about that summer resort question. A great many people from Nashville, my home, go to Mount Eagle Assembly, Tenn., which is a summer resort for church people principally. There are thousands of church people in Nashville and in Tennessee and all over the South, who attend this summer resort, and a great many have written to me asking about having a better mail service, for the people within the limits of these inclosed grounds. I have never been able to find any law or any regulation of the Department to cover that kind of a case.

Mr. OVERSTREET. May I inquire of the gentleman if there is a post-office in that particular place?

Mr. GAINES of Tennessee. Oh, yes; Mount Eagle, while not a large place, has three or four thousand people.

Mr. OVERSTREET. It is not important whether or not it is a first or second or third or fourth class office, because this applies to post-offices of all classes that are located at summer and winter resorts, where, during the resort season, there is an unusual amount of business at the office.

Mr. GAINES of Tennessee. I will state to the gentleman this, that the church premises, as they may be called, at Mount Eagle, are in an inclosure and the Mount Eagle post-office is on the outside. The association is maintained by people who, when they go there, must pay so much for a ticket. They are given summer tickets, and the tickets are punched when they go in or go out and return, so that when they go and get their mail these five or six thousand people on the inside of the premises have to have their tickets punched two or three or four times a day, going in and out. This is a great burden on the people who go there in these mountains, that splendid and beautiful place, to rest and attend church and lectures, and be quiet during the hot summer months that we have in that country.

They have asked me to try to get relief, and hence I have spoken about it. I have had requests from Colonel Shook, one of the officers, and from the late Major Thomas and Captain Pilcher, another officer, who live in Nashville, and a host of other people. I do think that the Post-Office Committee, or Congress, to be entirely general, should take up such cases and provide a law that at least a temporary rural carrier can be employed on the inside of these grounds. That is what I have been trying to get—to get some kind of a carrier who could come through and get that mail and distribute it among the acres of houses inhabited by 5,000 or 6,000 people. Now, then, you have an appropriation here for summer-resort and winter-resort post-offices. Will this appropriation cover that kind of a case?

Mr. OVERSTREET. I do not think it would cover the case where there would be a carrier appointed to carry the mail from the post-office out to this Chautauqua, or whatever the association may be.

Mr. GAINES of Tennessee. Now, then, there is another

trouble right there. That mail carrier will not go inside to take that mail, because he has to have a ticket, and the rule of the association, or the law, is that that ticket has to be punched. The Government will not send a man to carry the mail into such premises.

Mr. OVERSTREET. I do not think there will be any authority under this appropriation, either for the mail carrier or for the punching of the tickets.

Mr. GAINES of Tennessee. Is there any law on the subject that would relieve that kind of a case?

Mr. OVERSTREET. I do not think there is.

Mr. GAINES of Tennessee. Does not my friend think there should be?

Mr. OVERSTREET. I do not know. If an association, educational, religious, or otherwise, seeks to have an organization holding its meetings out from the towns or cities, within inclosures, requiring pay for tickets for patrons, I do not know that it is within the province of the Government to hire employees to carry the mail out to them or to pay for their tickets of entry.

Mr. GAINES of Tennessee. Just a moment. The Department will not let them have a post-office on the inside. They are obliged to go outside, and they are obliged to have the gate and the fence and the ticket charge in order to get a revenue.

Mr. OVERSTREET. How long does that organization continue?

Mr. GAINES of Tennessee. It continues from about the middle of April until about the 1st of October.

Mr. OVERSTREET. It is very difficult to frame a general statute covering all of that character of cases. There are undoubtedly cases of considerable merit, but when you come to frame statutes it is so complicated that it is almost impossible to do it satisfactorily.

Mr. GAINES of Tennessee. Does the gentleman think that there are enough Chautauquas in the United States—and that is practically what this is—to have what you might call a "Chautauqua law," or "Chautauqua service," or "Chautauqua statute," of some sort?

Mr. OVERSTREET. The gentleman will appreciate that is a pretty large subject, and you could not satisfy everybody.

Mr. GAINES of Tennessee. This is an assemblage of great and good people, Mr. Chairman, and they have repeatedly appealed to my colleague, as well as to myself, for relief. Many of my people go there, and they have called on me, very naturally, and they have called on our Senators. I know that my distinguished and able colleague [Mr. Moon] has had the matter in charge. We have conferred together. We do not find any law, and I challenge this matter to the attention of my good friend from Indiana [Mr. OVERSTREET] and the committee, that you may have the facts that I have stated in a hurried way before you, and I do hope sincerely that at an early date you may take this subject up and give relief.

The Clerk read as follows:

For allowance to third-class post-offices to cover the cost of clerical services in offices where the salaries of the postmasters range from \$1,000 to \$1,500, \$500,000: *Provided*, That no allowance in excess of \$200 shall be made where the salary of the postmaster is \$1,000, \$1,100, or \$1,200; nor in excess of \$300 where the salary of the postmaster is \$1,300, \$1,400, or \$1,500.

Mr. HINSHAW. Mr. Chairman, I move to strike out the last word. I would like to ask the chairman of the committee something about this item. There have been many communications received by all of us, I suppose, in reference to increase of salary or clerk hire for third-class postmasters. This is an appropriation in a lump sum, and I would like to know whether this will increase the salary of the third-class postmasters throughout the country, and how much?

Mr. OVERSTREET. Mr. Chairman, under the law there are four divisions of the third-class post-offices under which appropriation allowances are made to cover cost of clerical hire.

In offices where the salaries of postmasters are \$1,000, \$1,100, and \$1,200 a year, not to exceed \$200 may be allowed in any one office to cover the cost of clerical hire. In the second group, with \$1,300, \$1,400, and \$1,500 a year salaries, a maximum of \$300 may be allowed. In the third group, where the salaries are \$1,600 and \$1,700, an allowance may be made not to exceed \$400, and in the fourth group, where the salaries are \$1,800 and \$1,900, an allowance not to exceed \$500 may be given to cover the cost of clerk hire. The committee found upon inquiry that the appropriations that had been carried for some years were not sufficient to warrant anything like the maximum allowance in any of these cases to be granted, and in any event no great per cent could enjoy the maximum allowance.

Where third-class offices are just about ready to ripen into second-class offices the burden of work upon the postmaster of the office is almost as great as in a second-class office just after

it has ripened from a third class. Therefore the allowance which the Government has made for the third-class post-offices of the higher classes just approaching the second class will greatly benefit them.

There is no great justification for a high allowance for clerical cost of the lower classes of the third class. Therefore the committee concluded this year to separate the total allowance for third-class offices into two groups, one group to be covered by offices of the third class, where the salaries of the postmasters are from \$1,000 to \$1,500, inclusive, leaving the schedule for those offices the same as it is now. That is, where the office is \$1,000, \$1,100, and \$1,200, not to exceed \$200 a year, and where the salaries are \$1,300, \$1,400, and \$1,500, not to exceed \$300 per year; but they make for that first division, covering these groups of third-class offices, an allowance of \$500,000, and for the second of these divisions, covering the offices where the salaries are \$1,600 to \$1,900, inclusive, we make an allowance of \$625,000. In the second division are the offices upon which will fall the heavy burden of the service in offices approaching the second class. An allowance of \$625,000 is made for this group of offices. This will permit the maximum pay in offices of this division, where the salaries are \$1,600, \$1,700, \$1,800, and \$1,900 in over 90 per cent of such offices.

The appropriation of \$500,000 for the lower grades of third-class offices will permit the maximum pay of \$200 in the offices where the salaries are \$1,000, \$1,100, and \$1,200, and the maximum of \$300 where the salaries are \$1,300, \$1,400, and \$1,500, in 50 per cent of the offices of that division.

The total appropriation has been increased by the committee by \$325,000 over the current law. It is believed that relief is deserved in these third-class offices. It is believed further that the committee has made reasonable and perhaps adequate allowance to afford the proper relief.

Mr. RUSSELL of Missouri. May I ask the gentleman a question?

Mr. OVERSTREET. I was speaking in the time of the gentleman from Nebraska. I will take time in my own right.

Mr. RUSSELL of Missouri. I am interested as the Representative of my district in these third-class post-offices, and have had several letters from postmasters upon the subject now being considered. I desire to ask who it is that determines the pay that they are entitled to for clerk hire in the third-class offices?

Mr. OVERSTREET. Well, the law itself fixes the maximum allowance under the schedule which I have just explained. Then the First Assistant Postmaster-General determines the allowance upon the character and volume of the business of these respective offices.

Mr. RUSSELL of Missouri. I understand there is a minimum and a maximum allowance for that purpose.

Mr. OVERSTREET. The law fixes the maximum.

Mr. RUSSELL of Missouri. The postmaster in the particular town where I reside writes me that the receipts of the office approach very nearly to the amount that would make it a second-class office. That is, they are almost \$8,000 a year, at which point I believe an office becomes second class; but under the law he has been permitted to receive only \$360 a year for clerk hire.

Mr. OVERSTREET. I have just explained to the committee that the provision of the bill we are now discussing allows enough money to pay clerk hire to third-class offices, which would include the office that the gentleman refers to, a maximum allowance of \$500 in 92 per cent of the cases.

Mr. RUSSELL of Missouri. That is the question I wanted to ask. My postmaster writes me—and I have the letter before me now—that he understands that the Postmaster-General or one of the assistants recommended an appropriation of \$2,000,000, and he understands that this amount, if appropriated, would authorize the Post-Office Department to pay him an increased amount, which is, I think, in his case very just. I see by the provisions of this bill the appropriation asked for is only \$1,125,000, and may even forbid the payment to third-class postmasters the present maximum rates.

Mr. OVERSTREET. No; the \$2,000,000 recommendation carries with it a second recommendation, to repeal the schedules provided by law and give them a lump sum of \$2,000,000 and let them fix their own maximum and minimum allowances. The committee has felt that it is well to maintain the schedule which the law has carried for some years, but has appropriated enough money, in the judgment of the committee, to permit the maximum allowance in the higher grade third-class offices in over 90 per cent of the cases.

Mr. RUSSELL of Missouri. The chairman of the committee, then, believes that this appropriation we are making will jus-

tify the Department in paying the maximum amount of clerk hire now authorized by law if the work justifies it?

Mr. OVERSTREET. To the extent of about 92½ per cent of the cases. It would not in 100 per cent of the cases, but if the appropriation is sufficient to pay the maximum in 92 per cent of the cases, why, naturally, there would be some offices that would not receive the full maximum, and perhaps they would not deserve the full maximum, while others would receive it.

Mr. RUSSELL of Missouri. Mr. Chairman, it seems to me, and it seems to my friends in my district, that there is an unjust discrimination in the payment to postmasters for clerical hire in the third-class post-offices, for the reason, as this gentleman writes me, that the receipts of his office are now about \$7,000 a year, approaching nearly the place where it will be entitled to become a second-class office, and that he has been paid for clerical hire only \$360 per annum. The maximum amount that he can receive, if this appropriation is sufficient to permit it, will be \$500 a year; but with an increase of \$1,000 in receipts in that office it would become a second-class office, and then the minimum allowance would be \$1,300 for clerk hire. So it seems to me that there is, under the present law, an unjust disparity in the payment of the clerical hire in these different classes of post-offices. I was especially anxious to know whether this appropriation would justify or permit the payment of the maximum amount now allowed by law, which is \$500, or \$140 more than has heretofore been paid to the postmaster in my home town.

I desire to protest against this great and very unjust discrimination in the allowance for clerk hire in favor of the second-class offices and against the third-class offices, that in many cases do almost the same volume of business as the second-class offices. The same service deserves the same remuneration wherever performed.

Mr. CRUMPACKER. While the gentleman is discussing hardships in the service I want to suggest to him that in the town of Gary, in northwestern Indiana, there is a post-office of the fourth class. The emoluments of the postmaster are \$99 a year, and it costs him \$1,700 a year for rent, light, fuel, and clerk hire to administer the office. He still holds on to it. We hope in a few weeks that it will go into the third class. But that situation is extraordinary. The postmaster is paying out of his pocket \$700 or \$800 a year more than he receives from the Government, to handle the office. I think a special allowance has been made out of the "unusual" fund of \$200. The officer in charge of the salary and allowance business at the Post-Office Department told me that that postmaster had been a little backward about coming forward. He said he recognized the fact that the situation at Gary was extraordinary, and he would send an inspector out and might possibly allow the postmaster a little more money. It will be a third-class office before long, and I suppose that now the postmaster receives his pay largely in the honor that comes to him in being postmaster of the town of Gary.

Mr. MANN. In the gentleman's district?

Mr. CRUMPACKER. Yes.

Mr. MANN. That is adjoining my district, and that is distinction enough for anybody. [Laughter.]

Mr. FINLEY. Mr. Chairman, I offer the following amendment, which I send to the desk.

The CHAIRMAN. Without objection, the pro forma amendment of the gentleman from Nebraska is withdrawn, and the gentleman from South Carolina offers the following amendment, which the Clerk will report.

The Clerk read as follows:

Page 13, line 2, before the word "thousand," insert the word "twenty-five," so that it will read "\$525,000."

Mr. OVERSTREET. I have no objection to that amendment, Mr. Chairman.

The question was taken, and the amendment was agreed to.

Mr. YOUNG. Mr. Chairman, I move to strike out the last word for the purpose of asking the gentleman from Indiana a question. Does the gentleman think there is any danger that this proviso as to the amount which may be allowed might be construed as a limitation upon the allowances other than those contained in this paragraph?

Mr. OVERSTREET. Not at all; it is impossible for it to be construed that way.

Mr. YOUNG. Has it been construed by the Department in the past?

Mr. OVERSTREET. I can not see how it is possible. For instance, a third-class office may have an allowance under the appropriation for separating the mails, and may have an allowance from the appropriation under the appropriation for unusual conditions. They are all different appropriations and under different conditions which may prevail.

Mr. YOUNG. The language is general—that "no allowance in excess of \$200," etc.

Mr. OVERSTREET. It is a limitation on this particular appropriation contained in this paragraph.

Mr. YOUNG. Will the gentleman have any objection to an amendment, "Provided, That no allowance under this provision," and so forth?

Mr. OVERSTREET. I should object to that, because if that were permitted I should feel that it would be necessary to go to every other paragraph in the bill where it might be possible to construe it otherwise.

Mr. YOUNG. I understand the gentleman from Indiana to say that this has been practically construed in former bills as applying to this paragraph.

Mr. OVERSTREET. I know in a general way that the allowances to these offices are made from different funds.

Mr. YOUNG. And all taken together they exceed this limitation.

Mr. OVERSTREET. I have no particular case that I can cite directly, but I have not the slightest fear of any such a construction.

Mr. MANN. This has been practically the permanent law for years.

Mr. OVERSTREET. Yes. I understand the gentleman from Michigan to ask if the allowance has been made, where the total amount is in excess of this, in the schedule.

Mr. YOUNG. That is it.

The Clerk read as follows:

For rental or purchase of canceling machines, including cost of power in rented buildings, motors, repairs to motors, and miscellaneous expenses of installation and operation, \$300,000.

Mr. KÜSTERMANN. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

In line 12, page 14, amend to read as follows: "Eight hundred thousand dollars: *Provided, however*, That after the expiration of the present contract no canceling machines shall be used in any post-office unless the same shall be acquired by purchase."

Mr. OVERSTREET. I reserve a point of order.

Mr. KÜSTERMANN. A few days ago, Mr. Chairman, I referred to this matter of the renting of canceling machines and pronounced it a poor business method. I am in favor of all machines that may add to the efficiency of the work in any Department, but I protest against the renting of these machines. They ought to be acquired by purchase. As I stated the other day, there are now in use in the post-offices of the country 1,540 machines, at an annual rental of \$256,920. They are now asking \$300,000 for the same purpose.

Now, I find in looking over the report of three years back that these firms that have rented these machines have been good to us in some ways; they have not raised the rental except in a few cases, but they have not, whenever the number of machines in use has increased, lowered the price. I herewith submit a detailed statement showing the number and rental price each per annum of the several kinds of canceling machines contracted for by the Department for use in the fiscal years beginning July 1, 1904, 1905, and 1906:

Made by—	1904-5.		1905-6.		1906-7.	
	Number.	Rent.	Number.	Rent.	Number.	Rent.
International Postal Supply Co., New York, N. Y.:						
Hey & Dolphin "Flier"	250	\$400	250	\$400	254	\$400
Hey & Dolphin model "S"	None.		None.		50	150
Hey & Dolphin model "L"	50	100	54	100	100	90
American Postal Machines Co., Boston, Mass.:						
Combination	64	150	120	150	225	150
Drop-feed	400	110	410	110	375	100
Hand-power	None.		50	80	100	80
Columbia Postal Supply Co., Silver Creek, N. Y.	60	150	65	150	67	150
Barry Postal Supply Co., Oswego, N. Y.	75	150	75	150	71	150
Barr-Fyke Machine Co., Kansas City, Mo.	37	150	None.		None.	
Time Marking Machine Co., Chicago, Ill.	None.		None.		6	300
Total	936		1,024		1,248	

As is shown in the foregoing statement, the American Postal Machine Company, of Boston, furnished in 1904 sixty-four machines of the so-called "Combination" at a rental of \$150 a year. They are now furnishing 225 of the same kind and pattern at the same rental per machine, thereby making no reduction for a greatly increased number of machines. I say that we ought to buy these machines or not use them at all. We should return to the old methods of cancellation if the manu-

facturers of these machines continue to "hold up" the Government and demand exorbitant rental instead of permitting the Government to buy them outright. There is to-day in the Washington post-office a canceling machine doing good work which was procured from Europe, and it is being offered at outright sale for \$800, while a similar machine is rented to us by some of these postal supply companies for \$400 a year. I say it is high time to take steps to check this high-handed method of giving away the people's money.

I have in my amendment asked for an appropriation of \$800,000 for the purchase of all machines necessary for the postal service, which is but \$500,000 more than is asked for the mere rental of these machines. I believe that the \$800,000 will buy every necessary machine, and that there will be quite a sum left over.

Mr. STAFFORD. Mr. Chairman, I took pains the other day to listen attentively to my distinguished colleague when he made his criticism of this item for the rental and purchase of canceling machines. I regret that I can not follow him to the extent that he recommended, that it would be more economical for the Government, even though it could not purchase these high-grade Hey & Dolphin "Flier" machines, for which we pay an annual rental of \$400, to discontinue their use and place employees in the offices and have the stamps canceled by hand. Any person who is acquainted with the work of this expert machine, which is patented, must know that it would require very many men by hand to perform the work that is performed by this one machine, which cancels in the neighborhood of a thousand stamped envelopes a minute, and further, it would clog the mails of the large offices if we were to go back to the old days of having the poor grade machines for cancellation. There are five or six different makes in use in the Post-Office Department, but there is only one machine that has that high record, and the Department is forced to use it because of the congested conditions which confront the postal service during the closing hours of the mail in all of our large cities.

The Post-Office Department places these high-grade machines in the offices where they are most urgently needed. Take, for instance, the conditions in New York, Chicago, Boston, Philadelphia—in fact, any of the largest offices in the country—and the mail comes in during the hours from 4 to 6 in the afternoon in such quantities that it is imperatively necessary to use this exceptionally high-speed machine, else the mail of the country would be delayed in many instances just twenty-four hours in its dispatch. Any person who has visited the Chicago or the New York office at the closing hours of the day, when the mail comes in by tons—first-class mail, not newspaper mail—will know that it is necessary to have that mail dispatched to the respective routes as quickly as possible. It would be idle for any person to say that we should resort to the old-time methods of hand cancellation.

Now, what is the condition as to this Hey & Dolphin "Flier," for which we pay an annual rental of \$400? Mr. Postmaster-General Wanamaker attempted to purchase these canceling machines, but the owners of the patents declined, and for a period of time they were withdrawn, I believe, if my recollection serves me right, for at least one year, by order of Mr. Wanamaker, in his efforts to compel the owners to sell the machines outright to the Government. The result was that the service was hampered, and Postmaster-General Wanamaker was forced to reinstall those machines, because it was urgently necessary to expedite sending the mails.

The Department has the privilege of purchasing under this item for rental or purchase, and if my colleague is acquainted with the conditions in the service to-day he knows that the Government has in its possession as owner certain low-grade machines, but it is absolutely impossible to get the right of ownership of these high-grade machines. What is the practical question before the committee and before the Department? Either to go back to an obsolete method and cancel stamps by hand or to use inferior grade machines that will retard the mail service, or by using these high-grade machines, over which the patentees have an absolute control, and obtain efficient and expeditious service.

Mr. SULZER. Mr. Chairman, I wish to ask the gentleman a question. How many of these canceling machines are now used by the Government?

Mr. STAFFORD. One thousand two hundred and forty-eight on February 14 of last year.

Mr. KÜSTERMANN. One thousand five hundred and forty.

Mr. STAFFORD. I beg to say that 1,248 machines were in use on February 14, 1907.

Mr. SULZER. How much rental a year does the Government pay for each machine?

Mr. STAFFORD. At the present time there are 1,540 ma-

chines in use, of which 259 are the Hey & Dolphin "Flier," for which we pay a rental of \$400, amounting to \$106,300; 72 machines made by the same company, known as model "S," for which a rental of \$150 is paid; another model manufactured by the same company, model "L," of which 183 are in use, for which we pay a rental of \$90; another made by the American Postal Machine Company of Massachusetts, known as the "Combination," of which 385 are in use, and for which we pay a rental of \$150; another, known as the "Drop-feed" machine, made by the same company, of which 286 are in use, and for which we pay \$100 in rental.

Mr. NORRIS. That is \$100 each a year.

Mr. STAFFORD. Yes; each year. Another, known as the "Hand-power" machine, of which 215 are used, at \$80 a year; another, manufactured by the Columbia Postal Supply Company, at Silver Creek, N. Y., of which 68 are in use, and for which we pay \$150 annual rental. The Barry Postal Supply Company, of Oswego, N. Y., makes another, of which there are 62 in use, and for which we pay a rental of \$150. Then there is a machine made by the Time Marking Machine Company, of Chicago, of which we have 10, and for which we pay an annual rental of \$300. I wish to say that these lower-priced machines are the machines that do not cancel stamped letters and postal cards with any such speed as do the higher-priced machines, such as the Hey & Dolphin "Flier" and the time-marking machine manufactured at Chicago.

The speed of those machines is something like ten times, if my memory serves me correctly, of that of the lower-priced machines, the lower-priced machines being installed, as I stated a minute ago, in the smaller offices, and used during the slack times of the day in the larger offices. And I wish to say that under the contract of rental the owners of the machines are obliged to keep all the parts in repair.

Mr. SULZER. So I understand. But, Mr. Chairman, I wish to ask another question in this connection. I wish to know from the gentleman, if he has the information, whether any effort has been made on the part of the Government to purchase these canceling machines?

Mr. STAFFORD. The Government has in use to-day a number of canceling machines known as the "Doremus type," purchased many years ago, and which did not prove very efficacious in their operation. They are found at present in the smaller post-offices. The committee inquired of the First Assistant Postmaster-General two years ago when this matter was under consideration as to what efforts had been made to purchase these machines, and, as I recall, he said it was impossible to obtain by purchase any of these high-grade machines, because the owner of the patent absolutely refused to sell them. They still maintain the same position they maintained when Postmaster-General Wanamaker was at the head of the Department.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SULZER. Mr. Chairman, I ask unanimous consent that the time of the gentleman be extended five minutes.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. STAFFORD. Postmaster-General Wanamaker, as I stated a minute ago, sought to force the owners of these machines to sell them, and they absolutely refused. They were withdrawn from the service for a period of at least a year, and the Department was compelled to have them put back in the service. And I would like at this moment to direct the attention of my colleague to the debates of three or four years ago, when he will see that at that time I called the attention of the House, when the matter was under consideration, to the difficulty that confronted the Department, and that the remedy was not by hampering the postal service and compelling the Post-Office Department to have the stamps canceled by hand, but by changing the patent laws so as to give the Government—not only in this case, but in any case—the right of appropriation at a reasonable compensation when it has use for any patented device. It is not the place here, and it is not the proper way, to seek by amendment something that might hamper the postal service and will cause millions and millions of letters to be delayed in their transit.

The very purpose of the whole service is to expedite the mail wherever it is practicable. We have established fast mail trains, for which we pay large compensation, so as to bring the mails to the large business houses twelve hours in advance of what it would be if they had the slower conveyance.

Mr. SULZER. Just a word. I am substantially in accord with the gentleman's remarks regarding a change in the patent laws. I have been on the Patent Committee of this House for several years, and I have advocated a change in the patent

laws, to the effect that when the Government gives a monopoly to an inventor, and the Government needs the invention for its own use, the Government shall have the right to use the invention at a reasonable consideration. But the question I want the gentleman to inform me about is this: I want to know whether an effort has been made to buy these machines from the owners, and if no attempt has been made, why it has not been made?

Mr. STAFFORD. I believe it was disclosed in the hearings, though I would not trust my memory absolutely on that fact—it was not brought out in the hearings this year, but I believe in prior hearings—that such an effort was made and the Department was unable to purchase the machines.

Mr. SULZER. Mr. Chairman, now another question. No doubt the gentleman has made careful investigation into this matter, and I would like him to tell us, if he can, whether, in his opinion, these rental charges are reasonable or unreasonable.

Mr. STAFFORD. If the gentleman wants to know my opinion about it, I will say frankly that the rental charge of this high-grade machine is more than I would say was compensatory, but it is the condition that confronts any user of a patented article that the patentee has the right to charge that rental which he can obtain for the service.

Mr. SULZER. In other words, the owner of these machines, on account of the Government granting him a patent, which is a monopoly, is charging the Government extortionate rentals.

Mr. STAFFORD. I would not say extortionate, but high rental, but only for one grade of machine, not for those where the rental is \$150 or thereabouts, but merely for the high-grade machine.

Mr. SULZER. Then the gentleman's judgment is that the rents for some of the machines are exorbitant?

Mr. STAFFORD. Not exorbitant, but higher than they would be if there was no patent. The gentleman well knows that a patentee charges a higher price, as he has a monopoly in the manufacture and sale, than would be charged if no such privilege was granted him by the patent laws.

Mr. SULZER. Mr. Chairman, then it seems to me that the only remedy to prevent these high rentals by the owners of these canceling machines is to change the patent laws so the Government can use them at a reasonable rental charge; especially if the Government can not purchase the machines at a fair price. I indulge the hope that the officials having this matter in charge will give it careful investigation.

Mr. DRISCOLL. There is no difficulty, in extending patents, to protect the Government in these cases.

Mr. CRUMPACKER. I do not know as to that.

Mr. MANN. Will the gentleman from Wisconsin permit me to interrogate the gentleman from New York?

Mr. STAFFORD. I will, gladly.

Mr. MANN. Is the gentleman familiar with the bill reported from the committee of which he is a distinguished member, extending the power of the patentee against the Government under such restrictions?

Mr. SULZER. No; I know of no such case. I am opposed to it, and I hope the gentleman will stand by me in opposition to it.

Mr. MANN. It was not reported by the committee of which I am a member. It came from the committee of which the gentleman is a distinguished member.

Mr. SULZER. The bill has not been reported with my consent.

Mr. MANN. I hold the report in my hand [laughter], and for the benefit of the gentleman in order to help him along, I will say it is report No. 184, and I commend it to his consideration.

Mr. SULZER. Let me see it.

Mr. MANN. It is my copy.

Mr. STAFFORD. I was giving my views to the committee about the patent.

Mr. MANN. I want to get the gentleman from New York on my side on that bill.

Mr. SULZER. Mr. Chairman, I want to say to the gentleman from Illinois that he can count on me to be with him in opposition to the bill to which he refers. I am now, and always have been, opposed to any extension of a patent. I want to say that while I have been a member of the Committee on Patents I have always opposed, in season and out of season, any extension of a patent, because a patent is a monopoly, and I am opposed to any extension of a monopoly. I know nothing about the bill the gentleman refers to, but I trust when the bill comes up, if it does come up, that my friend from Illinois will help me defeat it.

Mr. DRISCOLL. What kind of a bill was it?

Mr. SULZER. I have just seen it, and will say that the bill

was introduced by a distinguished Republican Member of this House [Mr. DALZELL] and reported by a Republican member of the committee.

The CHAIRMAN. To whom does the gentleman from Wisconsin yield?

Mr. STAFFORD. I yield to the gentleman from Indiana.

Mr. CRUMPACKER. I wanted to say something about the change of patent law. It looks to me like the Government is being held up by the manufacturer of these canceling machines; but there is no principle better settled in law than that an invention is property, and patent right can no more be confiscated or taken by the Government than any other class of property. I doubt the power of Congress to deprive any inventor of his rights.

The CHAIRMAN. The time of the gentleman has expired.

Mr. OVERSTREET. I ask that the gentleman's time may be extended.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. MANN. May I ask the gentleman from Indiana, does he contend—

The CHAIRMAN. The gentleman from Wisconsin has the floor.

Mr. STAFFORD. I will yield to the gentleman half a minute.

Mr. MANN. Does the gentleman from Indiana contend that when the Government issues a patent that the patentee has any right or claim against the Government legally?

Mr. CRUMPACKER. Just the same as if the Government uses his horse, his house, or his farm. A patent right is property, and the man who makes an invention under the law that gives him a property right in it is protected as much in that as in any other class of property.

Mr. MANN. I do not propose to take issue with the gentleman on that, but I commend the opinion of the gentleman to the gentleman from Nebraska [Mr. HINSHAW], and I commend the report of the gentleman from Nebraska to the gentleman from Indiana, because in the report made to the House it states that the patentee has no legal claim against the Government, and it struck me as a rather unusual doctrine. I call that to the attention of the gentleman from Indiana, knowing that he is one of the greatest lawyers in the House.

Mr. CRUMPACKER. The theory of that report doubtless is that there is no remedy against the Government on the ground that you can not sue the Government. But it is well settled in all the civilized world that the inventor of an idea or a mechanism has property in his invention.

Mr. MANN. I was talking about a legal claim against the Government.

Mr. CRUMPACKER. And if a man has a legal right in the enjoyment of his own property he has a legal right to its protection. He has no remedy against the sovereign or against the Government, but his legal right exists nevertheless.

Mr. MANN. He has no legal right against the Government unless he has a legal remedy against the Government.

Mr. CRUMPACKER. He would have a legal right to enjoin the Government from appropriating his patent.

Mr. STAFFORD. I will have to decline to yield further. Now I yield to my colleague.

Mr. KÜSTERMANN. Mr. Chairman, I just wish to refer to one matter mentioned by my colleague as to whether or not the rental is an exorbitant one. The canceling machine now on trial in the Washington post-office and doing satisfactory work is offered by the European manufacturers at \$800, and the American Postal Supply Companies are charging us for similar machines a rental of \$400 a year, which I say is exorbitant in consideration of the fact that twice that sum purchases the machine outright.

They have in use in some offices another machine, a hand machine, that works quite satisfactorily, which was bought for \$225, and we are paying \$80 and \$90 a year rent for a similar type of machine. Now, I say, if the manufacturers of the machines refuse to sell us them outright, it may cripple us for a little while, but it will bring the manufacturers to time, for they will not entirely destroy the goose that lays the golden egg.

Mr. STAFFORD. I wish to say, in reply to the gentleman, that Postmaster-General Wanamaker, for whom I have the highest respect, and during whose administration of the Post-Office Department more improvements were inaugurated than for a quarter of a century before, attempted that, and he found that it was not possible to force the owners of a patented article to sell those machines.

Mr. KÜSTERMANN. Just referring to the subject of the renting of canceling machines, I find that taking out those machines by Postmaster-General Wanamaker undoubtedly did

the Post-Office Department some harm, but it bankrupted the owners of the machines. If they do not want to do what is right, let them be bankrupted again. Let them throw the old machines on the scrap pile.

Mr. STAFFORD. That would compel us to sacrifice the interests of the postal service, delay the dispatch of letters twelve hours to twenty-four hours, in the larger offices, and may incur a loss of perhaps millions of dollars to the business men of the country, who demand and require the quickest possible mail dispatch. The gentleman's proposition is that if we can not purchase them we should hamper and injure the service irreparably, in order to prevent some company making a large profit, because it controls a patent. That is a policy to which I do not subscribe. The only possible and practicable remedy that I can see is to change the patent laws.

The CHAIRMAN. Debate on the pro forma amendment is exhausted. Does the gentleman from Indiana [Mr. OVERSTREET] insist on the point of order?

Mr. OVERSTREET. I insist on the point of order. It is clearly subject to the point of order in my judgment, because it in terms prohibits the rental of machines.

The CHAIRMAN. As the Chair understands the matter, the renting of machines is now authorized by law. This amendment would prohibit it. Therefore it is a change of existing law and in violation of the rule of the House which prohibits a change of existing law upon a general appropriation bill, and the Chair sustains the point of order.

The Clerk read as follows:

For compensation to ten assistant superintendents salary and allowance division, at the rate of \$2,000 per annum each, and for their per diem allowance when actually traveling on business of the Post-Office Department, at a rate to be fixed by the Postmaster-General not to exceed \$4 per day, and for other necessary official expenses, \$34,600.

Mr. JOHNSON of South Carolina. Mr. Chairman, I move to strike out the last word. Two or three years ago I investigated this question of canceling machines and came to the conclusion that the Government was being held up by the manufacturers. I offered an amendment to the post-office appropriation bill, which did not prevail, and I want now to incorporate as a part of my remarks what was said in that debate. I do not believe, notwithstanding these machines are convenient, that the Government of the United States ought to permit itself to be held up in any such style. I hope that before the next appropriation bill is made up the post-office authorities will inquire and will be able to report to the Committee on the Post-Office and Post-Roads what rental is paid in Great Britain, Germany, France, and other great countries for the use of canceling machines.

The debate referred to is as follows:

Mr. JOHNSON. Mr. Chairman, in Document 383, second session Fifty-eighth Congress, there is a very interesting story about the canceling machines rented and purchased by the Government. The First Assistant Postmaster-General testified before the Committee on the Post-Office and Post-Roads that the Department had endeavored in making rental contracts with the owners of these machines to incorporate in the contracts a clause giving the Government the right to purchase. He further stated that all of the companies had refused to incorporate this clause in their contract. There are two parties who can play the hold-up game. Some of these canceling machines are rented to the Government for as much as \$400 a year. This document which I hold in my hand shows that canceling machines were rented in some instances for more than twice what it costs to construct them. There are about eight companies making canceling machines.

Mr. NORRIS. Will the gentleman permit an interruption?

Mr. JOHNSON. Yes.

Mr. NORRIS. If your amendment does not prescribe any method by which the amount of the purchase price of a canceling machine shall be fixed, what real benefit would it be to the Government to have that kind of a stipulation in the contract, because the owner of the machine could fix the price at such a figure that the Government could not purchase it? It seems to me that in order to make your amendment effective it ought to contain some provision by which the price of the canceling machine should be arrived at.

Mr. JOHNSON. That is a very happy suggestion, and I shall be glad to accept any amendment which will effect what I am trying to accomplish. Of course the machines are of different prices, and the rentals are different. The purchasing price would be different; but I assume that under this provision, if it were adopted, the Post-Office Department would not insert a clause in the lease to purchase, except at a figure they were willing to pay, if they decided to purchase.

Mr. NORRIS. Just from hearing your amendment read, as I understand it, the Post-Office Department would not have that authority. The man who owns the machines could put in any figure he saw fit, which would nullify what you are trying to reach.

Mr. JOHNSON. As I have already stated, if the amendment as drafted is not sufficient to accomplish the purpose, let us so draft it that it will accomplish that purpose. These companies making the canceling machines are renting them to the Government at exorbitant prices. They refuse to sell because the Government pays them an annual rental that in most cases, I dare say, would be a handsome price for them if they were selling the machines outright.

The CHAIRMAN. The gentleman's time has expired.

Mr. JOHNSON. I hope the House will give me five minutes more.

The CHAIRMAN. The gentleman asks that his time be extended five minutes. Is there objection?

There was no objection.

Mr. JOHNSON. This is a business proposition. It seems to me that if we provide in the law that these gentlemen can not rent their machines to the Government unless they are willing to meet the Govern-

ment on a fair, equitable, conscientious basis, that we will accomplish our purpose. The Government is not obliged to rent any one of these machines. If these people are made to understand that the Government will no longer be held up by them, they will come to terms, because there can be no other purchaser and no other renter in the United States. I hope that the Committee on Post-Offices and Post-Roads will consent to incorporate this amendment into their bill, and trust before the next session of Congress we will have from that committee information as to the cost of these machines, and then we can legislate more wisely and understandingly on the question.

Mr. KENNEDY of Nebraska. Will the gentleman permit me to ask him a question?

Mr. JOHNSON. Certainly.

Mr. KENNEDY of Nebraska. Does the gentleman know whether or not any of these canceling machines are for sale at any price, or do the manufacturers lease them and refuse to sell?

Mr. JOHNSON. The Government has purchased in years past a large number of machines, as shown in this document, but the First Assistant Postmaster-General, in testifying before this committee that was making up this particular bill, stated that he was unable now to purchase or to get the companies to insert an option to purchase in the leases. I want to fix it so that if they are not willing to deal with us fairly they can not deal with us at all.

Mr. KENNEDY of Nebraska. Then, as a matter of fact, the manufacturers are holding the Government up and getting almost the entire price out of each machine each year?

Mr. JOHNSON. I think so.

Mr. MANN. This matter was thrashed out in the House some years ago at great length. I am rather in sympathy with the gentlemen who believe that the Post-Office Department ought to own these machines, but the mere statement that a machine costs so much and that the rental is so much has nothing to do with the case. We pay a great deal more for the care of a horse per annum in the Post-Office Department than the horse is worth, but that is no test. The decrepit cripples that deliver the House mail are under the absolute control of the House itself, not under the Government, but the House, and we pay something over \$400 for the use of those cripples hauling the mail wagons around. It might be possible that some distinguished gentlemen who are anxious for reform would wish to provide that the Government should own the horses. Now, it may be contended that you can keep a horse for no less than that.

There are 600 horses and mules in the control of the Isthmian Canal Commission on the Isthmus. The Commission reports that last year the average expense for taking care of these horses and mules, including the charges for labor, forage, and miscellaneous items, was about \$110 per horse. They asked for bids to see what it would cost to keep the horses, and the least bid they received was \$450 per year per horse.

Mr. GAINES of Tennessee. Who bid?

Mr. MANN. The proposal was received from a contractor of the United States who had had considerable experience in similar work in Central America, and he proposed to keep the horses for \$450 apiece, as against \$110 which it was costing the Commission. But that does not signify anything as to whether it would be to the advantage of the Government or the House to own the horses. We are paying in Chicago \$380 for the use of a horse and wagon, a little collection wagon; it is a great deal more than the horse is worth. It might be far cheaper for the Government to buy the horses. Certainly there would not be the same difference in that value that there is in regard to the machines, and it is far better, in my judgment, to rent the high-grade machines that require the most careful handling and are so liable to get out of order, and require the renter to keep them in order, than it is to rent the horses. It is not much trouble to take care of a horse, especially the kind of horses and the kind of care that are in the service of the Government. It is a great deal of trouble to take care of these machines.

Mr. JOHNSON of South Carolina. Can the gentleman state how much it costs to take care of one of these machines a year?

Mr. MANN. I do not know what it costs. The people who furnish the machines keep them in repair.

Mr. DOUGLAS. It does not cost half as much for them to keep them in repair as it would cost the Government.

Mr. MANN. No; not if they were used and taken care of by the Government. If they were used and taken care of by the post-office employees, it would cost probably ten times what it costs now. These clerks are not qualified for the work, they are not selected for the work, and while undoubtedly in the long run it may be desirable to have the Government own machines that are not too intricate and too highly organized and can be run easily, it is out of the question, in the postal service that we have now, to have these machines taken care of and repaired by Government clerks at any less cost than is now done.

Mr. HUGHES of New Jersey. Will the gentleman yield for a question?

Mr. MANN. Certainly.

Mr. HUGHES of New Jersey. What would the gentleman say to a proposition to have the Government purchase the machines with a guaranty on the part of the maker that the maker keep the machines in repair?

Mr. MANN. That is an impossible proposition, in my judgment. I think it would be desirable for the Government to purchase some machines and operate them and see how it compares in cost with those that we rent. We can only ascertain by experiment, but to do away with the machines, as suggested by the gentleman from Wisconsin [Mr. KÜSTERMANN]—there isn't half room enough in the Chicago post-office building today to furnish the tables and the places for the clerks to stand to cancel the mail that goes through that office, if the canceling machines were done away with.

Mr. GAINES of Tennessee. How much does the Government pay for rent now?

Mr. MANN. The gentleman from Wisconsin has stated \$80 to \$400 apiece.

Mr. GAINES of Tennessee. How much in all?

Mr. MANN. The appropriation is \$300,000 proposed in the bill.

Mr. CRUMPACKER. The gentleman from Illinois will admit that there isn't room enough in the Chicago post-office recently constructed for the proper administration of the postal work, even with the canceling machines.

Mr. MANN. There is not room enough in that part of the building devoted to postal service, but I say there isn't room enough in the whole building devoted to all the services to furnish means to cancel all the mail by hand.

Mr. JOHNSON of South Carolina. Mr. Chairman, I withdraw my pro forma amendment.

Mr. STAFFORD. Mr. Chairman, I want to say in answer to the gentleman from Tennessee [Mr. GAINES] that the whole amount, the aggregate expenditure for canceling machines last year was \$256,920.

Mr. GAINES of Tennessee. For how many machines?

Mr. STAFFORD. Fifteen hundred and forty.

Mr. GAINES of Tennessee. How long have we been paying that?

Mr. STAFFORD. That has been the practice for more than a decade.

Mr. WANGER. Mr. Chairman, the pending paragraph provides for compensation to ten assistant superintendents, salary and allowance division, and as I understand it, the principal duties of these officials are similar in nature to those of inspectors, and there does not seem to be any very good reason why they should not be included in the regular inspection force of the Post-Office Department. I have been informed by my friend the chairman of the committee, the gentleman from Indiana [Mr. OVERSTREET], that it is in consideration to consolidate all the inspection officers of the Post-Office Department in one force under the immediate direction of the Postmaster-General in the reorganization of that Department, and I simply rise at this time to express my firm conviction that that is called for by the best interests of intelligent and efficient administration. There is much of the work of the Post-Office Department that ought to be administratively audited, which is not usually done. Sometimes when it is, it is but feebly done, and this in the bureau in which the work is performed, by the very officers who have conducted it, and if they are in error as to their methods or functions under the law, that error attaches to their audit and review, and there is no correction or chance for correction.

If officers or employees under a different chief were brought in to audit that work, there might be a different result. Take, for example, all these large special allowances that are made to different post-offices in the country, aggregating hundreds of thousands of dollars. The basis for determining those allowances is fixed by the Postmaster-General in a general rule and each particular allowance is calculated and declared in the bureau or division to which it appertains, and is reviewed by nobody outside. Nominally it must be approved by the Assistant Postmaster-General under whose direction the division is, but practically, as all know, the Postmaster-General and the Assistant Postmasters-General can not give attention to that sort of detail, and it was because of that absence of review of these and similar matters that the abuse of powers in the division of salaries and allowances grew a few years ago under the then superintendent who became general superintendent, and subsequently went to prison. There is no different provision at this time for reviewing the work of that division from what there was in those days. The only additional guaranty, as I understand it, that the Department and the country has that those allowances are being honestly made is in the personality of the official who is at the head of the division. He undoubtedly justifies the confidence reposed in him, but however honest he may be, he may also be liable to error and there ought to be somebody, as I have suggested, from outside of that division to review all the action taken in apportioning allowances to grade.

different persons and different officers, and in like manner the accounting in other divisions should be audited by persons not in those respective divisions.

I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. The gentleman from Pennsylvania asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. WANGER. The Auditor for the Post-Office Department accepts, and under existing law is probably bound to accept, as conclusive the allowance by the Postmaster-General to any postmaster within the limits of an appropriation. He has no means for determining, and apparently it is not his function to determine, whether the allowance is in conformity with the rule established under which the allowance was made; and hence it was in the case of the Kansas post-office—where under the rule of the Department an allowance of only \$80 was permissible, the postmaster was annually paid \$500—that the crime was not discovered and its repetition after the first year prevented by the Auditor.

The chief inspector has a fund, often exceeding \$40,000 and rarely falling below \$25,000, of moneys officially received and disbursed, deposited in the interim in a national bank selected by one of his predecessors with the supposed approval of the then Postmaster-General, the accounts of which are seldom examined save upon a change of incumbents and then by those who have served under the outgoing and hope to serve under the incoming chief. If this fund is to be under the continual control of the chief inspector and not be required to be deposited in the Treasury, good administration would suggest quarterly audit by accountants in no sense beholden to the person most vitally interested in the result of the audit. Further illustrations might be given, but these sufficiently illustrate the importance of effectively providing for the enforcement of the principle.

Possibly the Postmaster-General will provide regulations to meet most of these contingencies, as he has for many others, but regulations are only temporary, and such essentials of safety should not be neglected in legislation.

The Clerk read as follows:

For pay of letter carriers at offices already established, including substitutes for carriers absent without pay, city delivery service, \$26,050,000.

Mr. GOEBEL. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Line 22, page 14, strike out \$26,650,000 and insert in lieu thereof \$27,835,000.

Mr. GOEBEL. Mr. Chairman, this is the amendment that I promised my colleague [Mr. OVERSTREET] I would present, with a view of increasing the salaries of letter carriers. The amendment, if adopted, will promote approximately 11,200 city letter carriers, and that would require an appropriation of \$1,120,000 and would promote about 1,300 carriers now receiving either \$1,000 or \$1,100, and that would require an appropriation of about \$65,000, so that the total increase, as proposed by my amendment, will be \$1,185,000.

Mr. CRUMPACKER. Will the gentleman allow me to ask him a question?

Mr. GOEBEL. Yes.

Mr. CRUMPACKER. Will simply increasing the amount appropriated operate in and of itself as a promotion of these various classes of carriers?

Mr. GOEBEL. It will take those who are now in the \$1,100 grade and promote them to the \$1,200 grade.

Mr. RYAN. It will promote them, but will it require it? Will it make it mandatory?

Mr. GOEBEL. It will make it mandatory. It makes it mandatory whenever we make the appropriation. On yesterday my colleague [Mr. OVERSTREET] and I did not agree in reference to the classification relating to clerks. I think we do agree that up to last year there was no classification of letter carriers in first-class offices. All letter carriers up to that time received \$1,000. Last year we created six grades. One of the grades was \$1,100, and the next higher was \$1,200. We also made sufficient appropriation to cover the \$1,100 grade, so that during the present fiscal year letter carriers who had been receiving \$1,000 and had been in the service for a year were raised to the \$1,100 grade. Now, then, this year the committee failed to recommend and include in the appropriation bill a sufficient amount of money to raise the \$1,100 carriers into the \$1,200 grade. The object of my amendment, therefore, is to raise these carriers from the grade of \$1,100 into the \$1,200

Mr. FITZGERALD. Will the gentleman yield for a question?

Mr. GOEBEL. Yes.

Mr. FITZGERALD. Why has not provision been made for the increase provided by law?

Mr. GOEBEL. That is exactly what I have been endeavoring to find out.

Mr. FITZGERALD. The gentleman is a member of the committee, and I thought perhaps there was some general policy involved, and he might give the information to the committee.

Mr. GOEBEL. I can only say to the gentleman from New York that the reason urged by the chairman of the Post-Office Committee, and I may say acquiesced in by a majority of the members of that committee, was that this year there ought to be no increase, for the simple reason that the postal receipts have decreased, and that the conditions of that Department relating to receipts did not warrant or justify this appropriation.

Mr. HITCHCOCK. Will the gentleman yield?

Mr. GOEBEL. Yes.

Mr. HITCHCOCK. I would like to ask the gentleman whether it was not intended when the bill was passed by the last Congress creating this \$1,200 class of letter carriers that some of the \$1,100 class should be promoted into it, and whether it was not also intended to appropriate enough money for that purpose?

Mr. GOEBEL. I want to say to the gentleman that that was my understanding, and I believed at the time that this year we would make the appropriation for the \$1,200 grade.

Mr. SULZER. Mr. Chairman, I think the amendment should be agreed to. It is only fair and just to the letter carriers.

The CHAIRMAN. The time of the gentleman has expired.

Mr. GOEBEL. Mr. Chairman, I ask unanimous consent for five minutes more.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. RYAN. Mr. Chairman, may I ask the gentleman a question?

Mr. GOEBEL. In just a minute.

Mr. HITCHCOCK. Then, it is the understanding of the gentleman from Ohio [Mr. GOEBEL], who was a member of this committee, that the committee intended to create a \$1,200 class of carriers and intended to appropriate enough money to pay those \$1,200 carriers?

Mr. GOEBEL. I do not want to be misunderstood by the gentleman. He probably goes too far when he says it was the understanding of the committee. I did not mean to say that that was an understanding by the committee, but what I do mean to say is that I thought there was an understanding.

Mr. HITCHCOCK. Then the gentleman has no assurances and no evidence that the committee intended when it created this \$1,200 class of carriers to provide any means for any men to get into that class?

Mr. GOEBEL. I had no assurance from that committee. But manifestly it was the intention of that committee at that time in creating this \$1,200 class that at the proper time Congress would make an appropriation for that class.

Mr. HITCHCOCK. Did not the bill provide that the proper time should be the 30th of June, 1907?

Mr. GOEBEL. No; not necessarily.

Mr. HITCHCOCK. Let me read to the gentleman:

That after June 30, 1907, clerks in offices of the first and second class, and carriers in the city delivery service, shall be divided into six grades, as follows.

Then the grades are specified, including the \$1,200 class of carriers and clerks. So that the proper time to have begun the promotion of these \$1,100 carriers into the \$1,200 class was on the 30th of June, 1907?

Mr. GOEBEL. Not necessarily. You may create a class and fail to make an appropriation for it, and it would not go into effect.

Now, it was thought advisable last year to create these two classes, but it was also thought advisable that there should be an appropriation made sufficient to carry into effect the \$1,100 grade, leaving it for the present Congress to make an appropriation so as to include the \$1,200 grade.

Mr. HITCHCOCK. Then the gentleman amends his former statement and now avers that it was not intended in this bill, which created a \$1,200 class, to make any provision for any men to get into that class?

Mr. GOEBEL. No; I do not want to be understood as amending my statement. I want to be understood that the \$1,100 and the \$1,200 grades were established with a view of making an appropriation at some time to cover the two classes, but that under certain conditions then existing it was advisable that

there should be an appropriation simply for the \$1,100 grade, and that the following year, to wit, this year, we might follow it up by making an appropriation for the \$1,200 grade.

Mr. HITCHCOCK. Let me ask one more question, if the gentleman please. Is there any provision in the present bill for the promotion of a single carrier into the \$1,200 class?

Mr. GOEBEL. None. And my amendment provides and will place them in this \$1,200 class. That can not be done unless you make the necessary appropriation. So that the creating of the \$1,200 class is of no force unless you make the appropriation.

Mr. MANN. Does the gentleman's amendment provide funds sufficient to advance all of the carriers now receiving \$1,100 to the \$1,200 class?

Mr. GOEBEL. Yes, sir; and I have the figures. I received them from the Post-Office Department.

Mr. SULZER. And that should be done.

Mr. MANN. What is the number?

Mr. GOEBEL. Does the gentleman mean the amount?

Mr. MANN. The number of carriers.

Mr. GOEBEL. Eleven thousand two hundred.

Mr. RYAN. In the law enacted last year, following up the language that was read by the gentleman from Nebraska, it goes further and says:

Clerks and carriers in first-class offices shall be promoted successively to the fifth grade.

It provided a sixth grade, but no means of promotion to that grade.

Now, then, even if you do provide the money necessary to carry into effect the original intention of the law, can you make any promotions to that grade unless you amend the act promoting clerks in the paragraph of last year alluded to?

The CHAIRMAN. The time of the gentleman has expired.

Mr. DOUGLAS. I ask unanimous consent that the time of the gentleman from Ohio may be extended.

There was no objection.

Mr. GOEBEL. I can not answer the gentleman whether that would require an amendment. I am inclined to think it would not, because they go automatically into that grade, and the appropriations cover that grade. If I am, however, mistaken my colleague [Mr. OVERSTREET], will correct me. I am inclined to think it requires no amendment.

Mr. RYAN. I think it does.

Mr. GOEBEL. I will be very glad to answer any further question.

Mr. GOULDEN. I would like to ask the gentleman if he is quite confident that the very fact of making this appropriation proposed by his amendment will carry into effect last year's legislation?

Mr. GOEBEL. Yes, sir; I am absolutely sure.

Mr. CRUMPACKER. Does the gentleman's amendment affect carriers in the cities below 50,000?

Mr. GOEBEL. It only applies to first-class offices.

Mr. KELIHER. Mr. Chairman, I offer a substitute.

The Clerk read as follows:

On page 14, lines 22 and 23, strike out the words "twenty-six million six hundred and fifty thousand dollars," and insert in lieu thereof the words "twenty-seven million two hundred and forty-two thousand five hundred dollars: Provided, That of the amount herein provided not less than the sum of \$592,500 shall be expended for increasing the salaries of 50 per cent of the carriers in the city delivery service who shall be promoted after June 30, 1908, from the fifth to the sixth grade in a manner to be prescribed by the Postmaster-General."

Mr. OVERSTREET. Mr. Chairman, I reserve a point of order against the amendment because I could not hear all of it read. It may not be subject to the point of order.

Mr. KELIHER. Mr. Chairman, my amendment aims at the same object as that of the gentleman from Ohio, except that I provide by my amendment for the advancement of 50 per cent of the carriers now eligible, by virtue of being in the \$1,100 class, to the \$1,200 grade. I am in accord with every syllable uttered by the gentleman from Ohio. When the Fifty-ninth Congress closed its business last year every man in this House, with the exception of a very few, was under the impression that when we created the \$1,200 class of carriers we had placed a live statute upon the book. When we had gone to our homes and conveyed that welcome news to the carriers of the country, who were entitled to and who expected that promotion, that they would receive it, and later found that the increase did not materialize, we were as much disappointed as the expectant carriers. I take this, the first opportunity which is afforded, to ask the House to keep faith with the betrayed carriers of the country.

Now I am heedful of the caution of the chairman of the Committee on Appropriations about the condition of the Treasury; but last year, when the Treasury was fairly bulging, when you

had a surplus of \$90,000,000 and the nation was the richest in its history, and abundantly able to do so, you did not carry out the provision of law that you had enacted; you do not keep faith with this class of employees, which is the most useful, industrious, and faithful in the Government service. [Applause.]

Now, Mr. Chairman, my amendment calls for an appropriation of \$502,500 and prescribes that the promotions shall be made and how they shall be made. The bill drawn last year was a mere makeshift. I contend that it was not honestly drawn and not reported in an honest spirit to this House, and that we voted for it under a misapprehension. Mr. Chairman, we thought we were going to increase these salaries, but as I said though we thought so, we did not, through no fault of our own. [Applause.]

Mr. MANN. Will the gentleman permit me to ask him a question?

Mr. KELIHER. Yes, sir.

Mr. MANN. Why does the gentleman propose now to increase the salaries in only 50 per cent of the cases, instead of joining the gentleman from Ohio, who increases them all?

Mr. KELIHER. Because I do not want the House to declare that, owing to the present depleted condition of the Treasury, it would be inadvisable to extend its provisions to the 11,200 men now in the \$1,100 grade. This grade at present is the limit. If you do not take care of them now, the time will come when this grade will become so choked by the mandatory promotions from the lower grades that we will be unable to get the stupendous appropriation that will be required to care for all those eligible for advancement, therefore I believe that half a loaf at this time is better than none.

Mr. MANN. If the gentleman thinks we have made a promise, why does he not keep to the whole promise?

Mr. KELIHER. If the gentleman, who is all-powerful in this House, will join with me in support of the measure, I shall be willing to withdraw my substitute and follow him in the attempt to provide for all. [Applause.]

Mr. MANN. The gentleman from Ohio [Mr. GOEBEL] has already proposed an amendment.

Mr. KELIHER. Yes; but notice has been served from the Republican side of the House upon the gentleman from Ohio (it was served yesterday) that he could not expect it. Now, I want to say if they will give us half a loaf it will be better than none. If not, I shall offer an amendment which will provide for an increase of 25 per cent of them and see whether you intend to keep faith and keep certain promises that you made to the carriers last year. [Applause.]

Mr. MANN. The gentleman himself does not propose to keep faith. He only proposes to keep half faith. The gentleman from Ohio, at least, proposes to keep faith.

Mr. KELIHER. I am attempting to breathe a little life into a dead statute; that is what I am going to do, and I feel that I can do it. You on the other side put a statute on the books and then strangled it. You created the \$1,200 class and then starved it to death by not providing an appropriation to sustain it. [Applause.] You pass my amendment to-day and promote 50 per cent next year, and if the distinguished gentleman from Illinois [Mr. MANN] will follow me with a raise of 50 per cent more, that will accomplish all that we hope to accomplish, and there will be satisfaction on the part of the carriers of the country. But you played politics and you have not made good, and I propose to-day to restate it, as my honest opinion, that when Members of this House and members of the coordinate branch reached their homes last spring they told the carriers that they had been provided for; but they have not got the money, and there is not one \$1,200 carrier in this country, although there is upon the statute book a law providing a \$1,200 class. There is not one \$1,200 carrier in all America, and I will withdraw my amendment if the distinguished chairman of the committee will state that I have erred in that statement. [Applause.]

Further on in the act of last year, the one that teemed with deceptions, you provided that clerks and carriers of the highest grade in their respective offices were eligible for promotion to the higher positions in said post-offices. You held out the hope to the carriers of the country that they might by fidelity and efficiency aspire to higher offices in the post-office service. Then you built an insurmountable barrier to that ambition by preventing them reaching the highest grade under the law, from which they were to be advanced. What was the meaning of that? This was more than an ordinary mistake. There was deliberation; there was careful study in the wording of that bill! The demand from the country was so great that you had to give heed to it.

When you did, you did not do so honestly. You created the office and you provided for the increase that public sentiment

demanded, and then you prescribed that the prospective beneficiary should rise grade by grade to the \$1,100 class, but when that grade was reached, you stopped him. You choked his advance. There was lamentable lack of faith in that action. Now, the gentleman from Illinois [Mr. MANN] is apprehensive lest I am not doing what I should do for this class of carriers.

If he will join me in a movement, all powerful that he is in this body, to provide for all the carriers that are eligible, I will willingly and gladly withdraw my amendment and support the one offered by the gentleman from Ohio. [Applause.]

Mr. BENNET of New York. I should like to recite a little history of the last Congress. In the first place, this particular classification feature was not reported from this House at all in the shape in which it now appears, but was agreed upon as a compromise between the House and Senate in conference. I am not going to let any temporary exasperation that I may feel or ought to feel toward the chairman of the Post-Office Committee, because of the rather brusque reply he made to me a while ago, make me do him any injustice. I want to say that he and his fellows in that conference did more for the carriers last year than had been done, so far as I have been able to find out, in the forty years preceding. I am going to do him the further justice of assuming that when he agreed to that \$1,200 grade he meant, so far as he could, in normal times, to follow that up with an appropriation sufficient to send the carriers to the \$1,200 grade. The position he takes is that this is not a normal year. Now, I want briefly to disagree with him to this extent: The fiscal year to which this appropriation will apply will not commence until the 1st of July.

Mr. RYAN. Will the gentleman permit an interruption?

Mr. BENNET of New York. Certainly.

Mr. RYAN. Does the gentleman believe that when this law was enacted last year it was seriously intended to allow the carriers \$1,200 this year?

Mr. BENNET of New York. I do not quite understand my colleague's question, but I will state my belief.

Mr. RYAN. I want to put my question plainly, so I will not be misunderstood, because I want to follow it up with another question. I want to ask the gentleman, does he believe it was seriously intended that on the 30th of June, 1908, the carriers in the fifth or \$1,100 grade should be promoted to the sixth grade and receive \$1,200 a year?

Mr. BENNET of New York. I believe it was seriously intended that every \$1,100 carrier should get \$1,200 beginning on the 30th of June, 1908.

Mr. RYAN. That is the sixth grade. Now, then, I would like to ask, further, why was it that this language was contained in that very paragraph, "that clerks and carriers at first-class offices shall be promoted successively to the fifth grade, carrying \$1,100," and nothing said about the sixth grade, carrying \$1,200?

Mr. BENNET of New York. Because, frankly replying to my colleague, I will say that legislation is a compromise. There were other demands upon the country. The automatic promotion scheme of carriers had never before gone above \$1,000. We were able by proper argument to show to the conferees that justice demanded that it ought automatically to go to \$1,100 and that the House ought to have the right to put it up to \$1,200.

Now, I want to say to the chairman of the Post-Office Committee that I realize his great responsibility and the great responsibilities of his committee. I sympathize with their frame of mind when they drew up the bill. But, if you take the city of New York as an index—and everybody on the floor has said that the recent financial panic has struck us harder than anywhere else, everybody getting up and saying that no bank closed in his district—if you take us as an index of the worst, we will not have any trouble after this fiscal year, because while the postal receipts fell off 6 per cent in January, they only fell off 3 per cent in February and are falling off less in March than they did in January, February, and March of the corresponding months last year. So when it comes to the 1st of July we are going to have a normal year, and I appeal to the gentleman from Indiana and his colleagues on the committee, believing that it was his intention and the intention of the conferees that if the succeeding financial year was a normal year the carriers would go from \$1,100 to \$1,200. Now, this is going to be a normal year, and I ask them to come up to the times. I will concede that the committee had a right to be pessimistic at the time they drew the bill, but now we are to be all right, and they ought to come up to it.

Mr. KELIHER. Will the gentleman yield?

Mr. BENNET of New York. I will.

Mr. KELIHER. Is it not a fact that the condition of the

country was more prosperous than it ever was before in its history when we voted the amendment, which we expected was a live one and not a dead one?

Mr. BENNET of New York. The gentleman from Massachusetts is as competent to judge of history as I am.

Mr. DOUGLAS. Why does the gentleman from New York appeal to the chairman of the committee instead of to the House to pass his amendment?

Mr. BENNET of New York. Well, I will appeal to both; but I have found in my brief experience that if you have the committee with you it is easier to get the amendment through. [Laughter.]

The CHAIRMAN. The Chair will state that debate is exhausted except by unanimous consent.

Mr. OLCOTT. Mr. Chairman, I want to speak a moment or two in connection with this matter. I think we all consider the question of the pay of clerks and the pay of carriers in the post-office on a wrong basis. The Post-Office Committee, in my opinion, considers this great appropriation bill from a wrong basis. It is the only appropriation bill where we feel hurt if we do not make a profit on the business we do. We are striving, perhaps properly, to reduce the annual deficit so as to show that the postal business of the country is running at a profit. That is not what the postal business should be run for. It should be run, as all of the other great Departments are, for the protection and, in the case of the postal service, for the convenience of the inhabitants of this country.

The difficulty about it is that we have foisted on the Post-Office Department an enormous item of expenditure that should be charged against the other Departments. The carrying of mail and merchandise for all the Departments should not be charged against the post-office appropriation, but there should be some system of bookkeeping so that the charge for transportation of the mails for the War Department should be charged to it and should be taken from that appropriation and not from the post-office appropriation. It seems to me that a statement of these facts carries belief that the principle is wrong, and then it ciphers itself down to the fact that we make the people least able to afford it pay for the expenses of the transportation of all the mail for all the Departments of the United States.

Mr. GOULDEN. Will the gentleman yield for a question?

Mr. OLCOTT. Certainly.

Mr. GOULDEN. I would like to ask the gentleman if he can give any idea of the cost of the franking privilege for the various Departments?

Mr. OLCOTT. I have not the slightest idea. I have attempted to obtain that information, but I have never been able to find that any record was taken.

Mr. GOULDEN. The gentleman spoke of it, and I thought perhaps he had the figures.

Mr. OLCOTT. I am only speaking of it with the knowledge that I as anyone else must have of mail matter from this House alone, to say nothing of the Departments.

Mr. MANN. Can the gentleman give us any information as to the value of the franking privilege to a Member of Congress?

Mr. OLCOTT. I can not. I can tell the gentleman how many letters a day I write on Congressional business.

Mr. MANN. The value of the franking privilege, I said.

Mr. OLCOTT. I usually consider that when I write a letter on official business the country is benefited to the extent of the 2-cent stamp, or I would not have written the letter.

Mr. MANN. The gentleman knows that probably he does not write a letter, but that he sends out two or three documents with it.

Mr. OLCOTT. Oh, I generally try to find documents that emanate from the gentleman from Illinois, and I know that they are worth all that they cost.

Mr. MANN. Oh, they may be worth it to the gentleman from Illinois—

Mr. OLCOTT. They are worth it to the constituents, because they get such good gospel from the gentleman.

Mr. MANN. I think the gentleman who talks about what the franking privilege is worth to the Government would find that the Members of the House might give some testimony on the subject. The gentleman probably keeps some kind of an idea in his head as to what his franking privilege is worth, and other Members do. Why can not the Members of the House dispose of the franking privilege which is worth so much to them?

Mr. OLCOTT. I think the gentleman is departing from the argument. It is not only of the comparatively small amount of money expended for transporting the mail or documents of the House of Representatives or the Senate, but of the entire departmental system of charging everything up against the Post-Office, that I speak, and I merely wanted to follow up my own idea.

Mr. CLARK of Missouri. I would like to ask the gentleman from New York, as a matter strictly for information, how charging up the business to the War Department and the franking expenses to somebody else will in the end help the Government out of the hole?

Mr. OLCOTT. I do not think it will.

Mr. CLARK of Missouri. All that would do on the face of the earth, then, would be to make the Post-Office Department make a better showing in bookkeeping as to its balance.

Mr. OLCOTT. And so make it impossible for the excuse to be offered that we are spending too much money.

Mr. CLARK of Missouri. The gentleman would be spending just as much money the other way.

Mr. OLCOTT. If we charged it to the other Departments, where it belongs, then when we are discussing the post-office appropriations we would not hear of the deficit and we might do justice to these carriers and clerks.

Mr. CLARK of Missouri. But the Military Committee or some other committee would get the larruping the gentleman is getting now.

Mr. OLCOTT. Well, I hope it would not hurt them any more than it does me.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. DRISCOLL. I ask unanimous consent that his time be extended for five minutes.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. DRISCOLL. Now, speaking of the Postal Department as a business proposition, the gentleman says that the franking privilege is a burden on it, because it must pay for all the mail that is sent out from all the Departments and by Congressmen. It is also true, is it not, that many of the buildings used by the Post-Office Department are paid for by the Treasury of the United States, and does not that much more than make up or offset the loss suffered by the Post-Office Department for the franking privilege?

Mr. OLCOTT. Possibly. I never considered that. I had not considered the item of permanent improvements to be of a similar character to that of annual expenditures.

Mr. DRISCOLL. Most of those offices are kept up by the Treasury Department, are they not—the repairs and cleaning and furniture, etc., and the Post-Office Department is free of all that expense?

Mr. OLCOTT. Yes.

Mr. DRISCOLL. Yet it does not pay expenses.

Mr. OLCOTT. It does not pay expenses; that is true.

Mr. FITZGERALD. Mr. Chairman, I hope to have an opportunity to vote, first, upon the amendment offered by the gentleman from Ohio, which I favor, and if that does not carry, then to vote upon the suggestion of the gentleman from Massachusetts. The amendment of the gentleman from Ohio is designed to carry out the existing law. Everyone is familiar with what occurred at the last session of Congress. The general provision was made for the increase in compensation of postal employees, both rural and city. It is a somewhat significant fact that the rural employees have received the highest salary provided in the law enacted last year, while it is intended that the city employees in the Post-Office Department shall not receive the highest compensation provided.

I have no sympathy with the suggestion that that may be due to the fact that a majority of the Committee on the Post-Office and Post-Roads come from the rural districts, although it is a somewhat peculiar coincidence. I do not criticise the Committee on Post-Offices for what is about to happen or what has happened. I criticise and charge that the Republican party, the majority in control of Congress, will be and is responsible for the failure to appropriate the money to enable the increases provided by law to be made. The majority can not shirk that responsibility. It is said that the increases will not be made because the revenues are falling off. There is an available cash balance in the Treasury to-day of \$266,000,000, although the revenues are falling off and there is a large deficit threatened in this fiscal year. Yet that does not deter those in control of the legislative branch of the Government from not only proposing, but actually providing, increases of pay in a number of other branches of the public service, increases of pay in the Army, increases of pay in the Navy, not for the enlisted men alone, but for the officers, increases of pay in the Revenue-Cutter Service, if I be not mistaken, and also in the Life-Saving Service. So that, Mr. Chairman, these increases which are proposed, not now authorized by law, but entirely new, should not be at all seriously considered, if there is any force in the argument that is urged against the appropriation to carry out the law as it now exists.

Mr. GOULDEN. I would like to ask the gentleman, Mr.

Chairman, whether he regards it a sufficient answer to the country to say that the absence of normal conditions, the falling off of the revenue, etc., is sufficient for the Government not to keep faith, or this Congress not to keep faith with the employees; when it has distinctly stated in last year's law that certain things be done? I am heartily in favor of the amendment offered by the gentleman from Ohio.

Mr. FITZGERALD. If the condition of the country was such that it would be ill-advised to make the appropriation I would not favor it; but that is not the condition. While there will be a large deficit for the present fiscal year, and, from the present indications, in my judgment, for the next fiscal year, the fact is that there is an available cash balance in the Treasury to-day of over \$266,000,000, which will be ample to provide for this increase, as it will be ample to provide for the proposed increase in compensation in the other branches of the public service.

Mr. DRISCOLL. Has not the gentleman heretofore in his campaign speeches accused the Republican party of extravagance in the administration of public affairs?

Mr. FITZGERALD. Yes, and I will do it this campaign, and prove it. [Laughter.]

Mr. DRISCOLL. And the gentleman will do it again, will he not?

Mr. FITZGERALD. I said I would prove it in this campaign.

Mr. DRISCOLL. He is trying to make out a case of extravagance in order to hurl it at us next fall.

Mr. FITZGERALD. The gentleman is mistaken. The gentleman's party took credit for increasing the compensation of the postal employees, and they boasted of it. They went about the country boasting of it. They did not do what they pretended. They are not going to do it now, as these amendments provide, and it would not be any extravagance, I will say to my colleague, for him to assist the carriers in his city, who are now getting \$1,100 a year, to obtain the \$1,200 they are entitled to under the law. Nobody will criticise him in the campaign if he does that, but they will if he fails to do it.

Mr. DOUGLAS. Mr. Chairman, I move the following amendment to the amendment of the gentleman from Ohio [Mr. GOEBEL]:

Provided, That of the amount herein provided not less than the sum of \$1,185,000 shall be expended for increasing the salaries of the carriers in the city delivery service who shall be promoted after June 30, 1908, from the fifth to the sixth grade, in a manner to be prescribed by the Postmaster-General.

Mr. OVERSTREET. Mr. Chairman, I reserve a point of order on that.

Mr. GOEBEL. I understand the gentleman proposes to add that to my amendment?

Mr. DOUGLAS. Yes, to simply add it to the amendment of the gentleman from Ohio [Mr. GOEBEL], so as to obviate the question as to whether or not—

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Add to the amendment the following:

Provided, That of the amount herein provided not less than the sum of \$1,185,000 shall be expended for increasing the salaries of the carriers in the city delivery service who shall be promoted after June 30, 1908, from the fifth to the sixth grade, in a manner to be prescribed by the Postmaster-General."

Mr. MANN. A parliamentary inquiry, Mr. Chairman. What has become of the amendment to the amendment offered by the gentleman from Massachusetts?

Mr. OVERSTREET. I have reserved the point of order on it.

The CHAIRMAN. The gentleman from Massachusetts offered a substitute in order to perfect the amendment of the gentleman from Ohio.

Mr. GOEBEL. Has the amendment of the gentleman from Massachusetts been withdrawn temporarily?

Mr. DOUGLAS. Mr. Chairman, the object is very clearly understood. I have no doubt the gentleman from Indiana and other members of the committee think that any question is obviated as to the increase in the appropriation. I doubt whether the appropriation would be available for the purpose intended without some such provision, and it seems to be generally conceded that the faith of the House was to some extent pledged to this increase.

Mr. OVERSTREET. I would like first to dispose of the point of order which has been reserved by me against the amendment offered by the gentleman from Massachusetts and the one just offered by the gentleman from Ohio. I insist upon both points of order; and the reason that I regard them as subject to the point of order is that they change existing law. The so-called "classification act" passed last year prescribed the method of promotion from one grade to another, the two chief limitations of which were a year's service in the next lower grade and an

efficiency record. Both amendments now before the committee undertake to direct, without regard to these limitations, that these men shall be promoted, and, in addition to that, emphasize that it shall be as the Postmaster-General may prescribe. No such authority of law, to my knowledge, has gone upon the statute books. I insist upon the point of order against each of these amendments.

The CHAIRMAN. Does the gentleman from Massachusetts desire to be heard upon the point of order?

Mr. KELIHER. The amendment offered by the gentleman from Ohio and my amendment are identical, simply as a limitation upon the manner in which that money shall be expended. They carry out the intent of the law, the spirit of the law, written into the statute of last year. They are almost identical. It is a limitation on the manner in which that money shall be expended, and purely a limitation.

The CHAIRMAN. The Chair will rule first upon the amendment of the gentleman from Ohio. The first clause of Rule XXI reads as follows:

Nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.

Frequently such provisions do go through on general appropriation bills, no point of order being made against them. But when the point is made it must, of course, be passed upon.

It seems to the Chair that this provision is not a limitation upon an appropriation, but is a limitation upon the discretion or power of the Post-Office Department; that it is affirmative law. It is not in the negative form, providing that no part of the appropriation shall be expended for a certain purpose or except for a certain purpose. It commands the purpose for which it shall be expended, and in that respect proposes to make affirmative law. It changes existing law. The Chair therefore must sustain the point of order. The same ruling, of course, applies to the point made against the amendment of the gentleman from Massachusetts.

Mr. OVERSTREET. I now move that all debate close on the paragraph and pending amendments in seven minutes, and I request that I may proceed for seven minutes.

Mr. FITZGERALD. I ask the gentleman not to put the limitation upon amendments.

Mr. OVERSTREET. I know the gentleman desires to offer some amendment as to substitutes. I have no objection to have it understood that he may offer such an amendment as to substitutes.

Mr. FITZGERALD. I would like to have a few minutes of debate upon that, and if the gentleman's present motion should prevail that would cut off debate.

Mr. OVERSTREET. I am perfectly willing that the gentleman may have an opportunity to offer an amendment affecting substitutes. I now move to close debate on the paragraph and pending amendments thereto, except the amendment relative to substitutes.

The CHAIRMAN. Now the gentleman from Indiana moves that debate on this paragraph and all amendments thereto, except an amendment offered by the gentleman from New York, be closed in seven minutes.

The question was taken, and the motion was agreed to.

The CHAIRMAN. Now, the gentleman from Indiana being recognized by the Chair, asks unanimous consent that he may proceed for seven minutes. Is there objection? [After a pause.] The Chair hears none.

Mr. OVERSTREET. Mr. Chairman, I appreciate the solicitude of Members in whose districts reside a large number of carriers of the \$1,100 grade, in their desire to have those carriers advanced to the \$1,200 grade. I stated yesterday that I have a number of such carriers in my own district. Personally, I should be much pleased that these men might receive increased salaries. My opposition to this amendment is not directed because I do not believe in the increase of salaries, but it is directed to this particular bill now under consideration, the conditions under which that bill has been prepared, and to the further fact that this is the first session following the session when Congress made such liberal appropriations for the increase of salaries of the postal employees.

The gentleman from Massachusetts [Mr. KELIHER], who offered the amendment, inveighed against the honesty of the classification act and charged deceit and subterfuge in its preparation and enactment. I may say that, with one exception, it is in the identical language recommended by the First Assistant Postmaster-General and urged so strenuously from that Department. That single difference is that under the original bill recommended by Mr. Hitchcock the arbitrary promotion of carriers halted at the \$1,000 grade, and the conference committee, acting after the amendment of the Senate upon the bill, increased it to the \$1,100 grade as the final point of stopping

the arbitrary promotions. So that, if anything, the action of the conference committee was even more liberal in its provision for the arbitrary promotion than the provision carried in the original bill recommended by the First Assistant Postmaster-General. Now, this amendment seeks to increase all of the carriers of the \$1,100 grade. The \$1,100 grade of carriers have now over eleven thousand out of the total number. Last year there was not a carrier in the \$1,100 grade, because prior to the classification act there was no carrier receiving in excess of \$1,000 a year.

And Congress, by the provision of the classification act, created two grades of carriers, \$1,100 and \$1,200, and promoted all of the carriers of the \$1,000 grade into the \$1,100 grade, provided they had served a year in the \$1,000 grade and had a proper efficiency record. Mr. Hitchcock in his testimony last year specifically stated to the committee that he was not recommending that these upper grades be filled at once, and he said:

All I ask as to the \$1,200 grade is that it be authorized, and leave to Congress the determination of when and how many carriers shall be advanced into that grade.

Instead of there being the practice of deceit or subterfuge, the provision was made with eyes open, not only of the committee of conference, but the First Assistant Postmaster-General himself. We promoted the \$1,000 men to \$1,100 last year. In deciding not to promote those men this year we are simply following the policy which I have announced repeatedly in the past two days, of not making provision for increases of salaries this year.

Mr. SULZER rose.

Mr. OVERSTREET. I prefer not to be interrupted, because I have so little time.

Mr. SULZER. Will the gentleman state that appropriation will be made for the \$1,200 grade next year?

The CHAIRMAN. The gentleman from Indiana declines to yield.

Mr. OVERSTREET. I should be glad to yield if the time were longer. I mean no courtesy to the gentleman. We have provided in this very paragraph an appropriation of sufficient money to pay the full salary of every carrier in the service on the 1st day of next July at the salary he is then receiving. In addition to that, the committee provides for 1,500 additional carriers, to be appointed at the lowest grades, and then it provides for \$1,297,900 for promotion purposes of the carriers in the grades from \$600 to \$1,100. Hence every carrier in first-class offices below the \$1,100 grade will get a promotion, provided he has served a year in the next lower grade and has a proper efficiency record, under the automatic provision of the classification act.

By withholding the appropriation from the \$1,100 grade we have neither violated the provisions of the law nor the intent of its framers. Neither have we violated the intent of the author of that law, Mr. Frank Hitchcock, the First Assistant Postmaster-General. Therefore, Mr. Chairman, I can see no occasion for gentlemen becoming so exercised, nor for leaving the impression that they are badly abused, or that we are not making ample and adequate provision for the service. I sincerely hope that the amendment will be voted down. It is 40 per cent greater than was recommended by the Department. Last year we only promoted 50 per cent of the \$1,100 clerks. This year we are only promoting 15 per cent of the \$1,100 clerks. If you are going to promote according to the real merits, the ability and intelligence required for the performance of the service, we ought to promote the clerks of the \$1,100 grade and not the carriers. The \$1,100 grade of clerks requires a higher class of service than that which is performed by the \$1,100 carrier; but on yesterday we refused an increased appropriation for the salaries of the \$1,100 clerks. Having done that the promotion of all the carriers of the \$1,100 grade is wholly unjustifiable, and I hope the committee will vote down the amendment of the gentleman from Ohio [Mr. GOEBEL]. I ask for a vote.

Mr. GOEBEL. What is the status now, so that we may understand the situation?

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio, the substitute having gone out on a point of order.

Mr. HITCHCOCK. Let us have the amendment again reported.

The CHAIRMAN. Without objection, the Clerk will again report the amendment.

The Clerk again read the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio.

The question was taken, and on a division (demanded by Mr. GOEBEL) there were—yeas 45, nays 43.

Mr. OVERSTREET. Tellers, Mr. Chairman.

Tellers were ordered. The Chair appointed as tellers Mr. GOEBEL and Mr. OVERSTREET.

The committee again divided and the tellers reported that there were—yeas 70, nays 56.

So the amendment was agreed to.

Mr. FITZGERALD. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

On page 14, line 23, after the word "dollars," insert "Provided, That when substitutes for carriers absent without pay are employed on Sundays and holidays, they shall be paid for double time."

Mr. OVERSTREET. Mr. Chairman, on that I reserve a point of order.

Mr. FITZGERALD. Mr. Chairman, the object of this amendment is quite simple. At present substitutes for carriers absent without pay are paid 30 cents an hour. As is well known, service on Sundays and holidays is always considered as unusual service and paid for at extraordinary rates. Very frequently a number of substitutes are compelled to take the places of regular carriers who are absent and from whose compensation a full day's pay is deducted. These substitute carriers frequently are compelled to work two or three hours on Sunday or holidays, owing to the conditions that exist in the large cities; while the substitute may work two or three hours, the time actually taken will be four or five hours. Under the law at present, if a substitute works upon Sunday or a holiday for two hours, he is paid 60 cents, and he may be occupied three hours or three hours and a half. If he is employed three hours, he is paid 90 cents. Take the Christmas holiday time, when mail matter is very heavy; the substitute may be employed four hours in actually delivering the mail from the time he reports to his office until he completes his delivery, and for the four hours' work, although the time actually employed by him may be five or six hours, he receives \$1.20, while the man whose place he takes has eight hours' pay deducted from his compensation.

In view of the fact that it is everywhere recognized that service upon Sundays and holidays is of an unusual and extraordinary character, and additional compensation, paid therefor, I trust that the gentleman from Indiana will permit this amendment to be adopted. It will not add much to the cost of the public service, but it will enable these men to earn a comparatively reasonable compensation for this work of an extraordinary character. There is not much more to be said. The conditions under which substitutes are employed in the large cities are well known. They may serve a period of two, three, or four years as substitutes before they obtain regular appointments. During that time they are paid at the rate of 30 cents an hour when actually employed. It is impossible for them to accept other employment, because they do not know when they may be called upon for service. After the apprenticeship of three or four years they get a regular appointment at a very meager salary. I trust the chairman will not press his point of order.

Mr. OVERSTREET. Mr. Chairman, I feel constrained to make the point of order. The law fixes the amount of compensation, and this is a change of existing law.

The CHAIRMAN. Does the gentleman from New York desire to be heard upon his point of order?

Mr. FITZGERALD. No, Mr. Chairman; it is clearly subject to a point of order.

The CHAIRMAN. The Chair sustains the point of order.

The Clerk read as follows:

For pay of letter carriers, substitute, and auxiliary letter carriers at new offices entitled to city delivery service under existing law, \$75,000.

Mr. HAGGOTT. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Amend after line 5, page 15, by adding the following:

"Whenever a postmaster certifies to the Department that owing to unusual conditions in his community he is unable to procure the services of efficient employees at the initial salary provided for post-office clerks and letter carriers, the Department may authorize in its discretion the appointment of clerks and letter carriers for that office at such higher rate of compensation within the grades prescribed by law as may be necessary in order to insure a proper conduct of the postal business."

Mr. OVERSTREET. I reserve the point of order on that.

Mr. HAGGOTT. Mr. Chairman, in many localities of the Rocky Mountains and Pacific States and Territories the cost of living is very much greater than prevails generally elsewhere and wages in the usual employments are almost double what obtains in the States to the east. This condition prevails particularly in the mining camps.

The amendment which I have just offered was suggested by the First Assistant Postmaster-General, Hon. F. H. Hitchcock, in his report to the Postmaster-General for the year ending June 30, 1907. If this amendment is adopted it will permit the Postmaster-General to pay adequate wages to post-office employees where unusual conditions exist. By existing law the Postmaster-General can not exercise the necessary discretion in paying proper salaries where the expense of living is unusually great and wages in all other occupations are higher than usually prevails.

In many of our Western towns the postmasters must pay out a great part of their salaries for clerk hire in order to secure competent help. This is done in my own town, a mining camp, and is the usual condition in all Western mining communities.

Mr. OVERSTREET. Mr. Chairman, the amendment is clearly subject to a point of order, as it changes existing law.

The CHAIRMAN. The matter is very clear. The Chair sustains the point of order.

The Clerk read as follows:

Office of the Second Assistant Postmaster-General: For inland transportation by star routes, including temporary service to newly established offices, \$7,200,000: *Provided*, That no part of this appropriation shall be expended for continuance of any star-route service the patronage of which shall be served by the extension of rural delivery service, nor shall any of said sum be expended for the establishment of new star-route service for a patronage which is already served by rural delivery service: *Provided*, That out of this appropriation the Postmaster-General is authorized to provide difficult or emergency mail service in Alaska, including the establishment and equipment of relay stations, in such manner as he may think advisable without advertising therefor.

Mr. HOUSTON. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

On page 16 amend by adding at the end of line 14 the words:

"*Provided*, That no part of said sum shall be used to pay for the carrying in the mails any malt, vinous, or spirituous liquors, or intoxicating liquor of any kind."

Mr. OVERSTREET. On that, Mr. Chairman, I reserve a point of order.

Mr. HOUSTON. Mr. Chairman, in submitting this amendment, which I believe to be in order and not subject to the point of order made against it, I want to state that it is in line and in keeping with an amendment that I had offered to the section of the criminal code providing what should be mailable and nonmailable matter and prohibiting the transportation of certain articles through the mails. If I knew I could have an opportunity to offer that amendment to that section in the penal code I would not offer it now, because I should much prefer to legislate in a different way than that of putting clauses in an appropriation bill. If, however, we shall not get that bill before this House again, then it will be necessary to make this provision after the manner that has been in vogue heretofore—that is, by inserting clauses in appropriation bills, to make limitations and restrictions upon different branches of the public service, and even creating penal offenses this way. As a member of the House Committee on Revision of the Laws, when we were considering the bill that was reported to this House two years ago, when we got to the section of that bill declaring what should be mailable and what should be nonmailable matter I offered an amendment similar to the one I offer here, only it was more comprehensive, inasmuch as it was a part of a penal section in a criminal statute.

When that provision was not adopted by the House committee I gave notice that I would offer the amendment upon the floor of this House; and again, Mr. Chairman, when the joint committee composed of Members of the House and Senate were considering this measure in November last, I offered the same amendment to this section. When this amendment did not prevail there, I again gave notice that I would offer this amendment upon the floor of the House. That, Mr. Chairman, I expected to do until it now appears from the course of events that I may not have an opportunity to offer that amendment to the bill reported by the committee. The committee reported the bill with full knowledge of the fact and with the understanding that this amendment would be submitted by me to the House for its determination, as other amendments would be to other sections to which a number of us did not agree.

Mr. SIMS. May I ask the gentleman a question?

Mr. HOUSTON. Yes.

Mr. SIMS. Is it not a fact that under the bill as reported, without the amendment which the gentleman intended to offer when we reached the proper section, dealing with nonmailable matter, if passed without amendment, intoxicating liquors would not only be mailable, but that the Postmaster-General would, in the provisions, have to provide rules and regulations by which they could be mailed?

Mr. HOUSTON. I think, Mr. Chairman, that is a matter of some doubt. However, I am of opinion that it would have been mailable matter. There was some difference of opinion on that proposition, and in order to settle this question beyond a doubt I offered a positive amendment, so that we would not have anything uncertain in regard to it.

I think, Mr. Chairman, that Congress should legislate on this question. I want to say right here that as the law now stands it is a matter of some doubt as to whether or not alcoholic liquor is mailable matter, and this is the very situation that I want to relieve. I am opposed to leaving any statute in such an ambiguous condition that it is susceptible of any uncertain construction. I am opposed to leaving to departmental bureaus or officials the power to say what the law is in any case. Hence I favored in committees, as I do now, a positive declaration by Congress of what should be mailable matter—so definite and plain that no question could be made as to its meaning.

It is insisted by lawyers that under the law as it now stands it is mailable matter, and that the Post-Office Department has no right to refuse to ship within certain limits whisky or alcoholic liquors through the mails. That, however, is a question upon which there is a great deal of difference. The Department puts a different construction upon it, and it has done so for years, and refused to ship liquors through the mails because of the construction that they give to existing law.

Now, Mr. Chairman, I very much hope that there will be an opportunity to engraft that amendment in the penal code, and I hope that penal code may be perfected and finished, but if it shall fail it is very important that this provision be engrafted on this appropriation bill. And without arguing at present the point of order which has been reserved upon this amendment, I merely desire to say I have considered this very carefully, and I do not believe it is subject to the point of order. I will only call attention to the fact that this is simply a limitation upon this appropriation, limiting it to certain purposes, and I think for that reason is not subject to the point of order. But, Mr. Chairman, this brings me to consider and to make reference here to another bill very much akin to this that I hoped I would have an opportunity to vote for in the Fifty-ninth Congress and failing in that one then in this Congress, but I have not had that opportunity. I refer to the bill regulating the shipment of liquors from one State into another; the bill providing that when liquor is shipped from one State into another it shall be subject to the laws of that State. This bill has been known under different names in the past in different Congresses. When I was a candidate for Congress four years ago the question was often asked the candidates in the State I come from, How do you stand as to the "Hepburn-Dolliver bill?" as it was called then.

I favored that bill, and I announced to my constituents that I would support it. I hoped I would have the opportunity, and I believed then, when I had not seen so much of the proceedings of this House as I have since, that I would have the opportunity to vote for that measure. But for three years that opportunity has been denied. There are a number of men on the floor of this House that want to support that measure, that are in favor of it, that have expressed the hope that they might have an opportunity to vote for that bill. No such opportunity has yet been given them. I believe that we ought to have an opportunity in this House to vote upon it. I furthermore believe if the opportunity was ever presented in this House that that bill would pass and become a law.

The CHAIRMAN. The gentleman's time has expired.

Mr. SIMS. Mr. Chairman, I ask that my colleague have five minutes more.

The CHAIRMAN. The gentleman from Tennessee [Mr. Sims] asks unanimous consent that his colleague may proceed for five minutes. The Chair hears no objection.

Mr. HOUSTON. As to the amendment, this merely proposes that no money shall be paid out of this appropriation for this star-route service for the transmission of alcoholic liquors through the mails. I have three other amendments of a similar character, applying to the different branches of the mail service, one to the railway mail service, one to the steamship service, and one to the foreign service. They are all very much the same thing, only they apply to different parts of the service. Now, then, as I said, this provides that liquor can not be shipped through the mails, in that it puts a limitation upon the funds appropriated in this appropriation bill to the extent that they shall not be applied in compensation for this kind of mail service, and, as such, I do not think the amendment is subject to the point of order. This amendment will make it definite, at least, during the time that this appropriation bill shall cover that liquors can not be transported through the mails of the United States. [Applause on the Democratic side.]

This amendment emphasizes the necessity for enacting a law giving to the States a right to control whisky when shipped within its borders from another State. The sentiment of this nation, to my mind, demands the passage of this law. If I am not mistaken in that, it is the duty of the people's Representatives to respond to that demand. They have a right that their views shall be heard and enacted into law. There can be no justification in a course of procedure in this House that will deny to them this right.

If the rules of this House are so manipulated as to defeat this measure in defiance of the American people, a sad day has come for our institutions.

Many States in this Union have taken advanced ground in the way of temperance legislation and great good has been accomplished. Yet their power for good is crippled by the fact that it is beyond the power of the State to control liquors shipped from beyond the State line. I know there is much opposition to all temperance legislation. Those that oppose this legislation grow eloquent in advocacy of personal freedom and individual liberty. Many Democrats in the past have approved this doctrine. Many of them have changed their views and are now most earnest in advocating laws that will prevent the traffic and diminish the use of liquor.

My own State has made great progress in the suppression of the liquor traffic. We have had there temperance legislation that, judged by its result, is among the wisest and best of any State in the Union. What is there known as "The 4-mile law," first intended to have a very limited scope, carried with it more power for good than its framers realized. This scope has been enlarged from time to time, until it now embraces the entire State, with the exception of three or four cities. We have had an object lesson that has convinced our people that it is best for our welfare, material and moral. Lawlessness has been reduced, our criminal dockets greatly cut down. We have seen desolate homes built up and thrift and happiness preside where want and suffering once existed; we have seen weak men built up and made strong in intellectual and moral force.

The opponents of these measures insist that you can not enforce laws to prevent the sale and use of whisky. This argument is as applicable to every statute for the preservation of law and order and for the protection of mankind.

Right here in the capital of the nation it is impossible to enforce laws against robbery and highway assaults so as to prevent them, as is shown by their frequent occurrence; yet I take it that no man would favor an abrogation of the laws against robbery and larceny for this reason. When the American people shall surrender to this doctrine that you can not enforce a wholesome law, then they are ready to surrender their manhood as a civilized and progressive nation. The spirit that supported and sustained our ancestors in carving out this Republic, in establishing law and authority over all opposition, is abandoned when we say we can not enforce a law that the enlightened conscience of the nation says is right.

I know the laws upon this subject have been and will be evaded and circumvented, as all laws are to some extent; but I do know, as every man of common reason knows, that the farther you put whisky away from a man or a community and the more difficult you make it to get, the less of it will be used by that man or that community. No argument can refute this. I believe that the American people can enforce any law when they are alive to its importance and realize that it is best for the welfare and happiness of the people. When we realize, as we are doing more and more fully every day, that "we are our brother's keeper" and that men should "as brothers be o'er all the world," then we can enforce this law.

You hear it said that we have periodical revivals of this temperance craze; that the pendulum is swinging forward in the temperance movement, but will swing back when the excitement of the period passes; that the present temper of the public mind is temporary—not so. The pendulum has not swung backward. It is advancing year by year, gathering force steadily, sometimes checked for a time, but renewed each time with redoubled force, gathering fresh power and vigor with each succeeding onrush, and as civilization proceeds and religion triumphs it will progress.

It is well to develop individual virtue and character as the strongest reliance for safety for nations as for men, but in developing this character I believe in the benefit of healthy and wholesome environments. We are the creatures of influence, more or less, and we do know that "evil communications corrupt good manners," and an ever-present temptation is more than most men can resist. I believe in that doctrine and that spirit that prays lead us not into temptation and that asks to be delivered from evil.

This prayer should be supported by a live faith that will work for what it prays and will use every effort to remove this evil as far away as possible, and every vote that I shall cast shall be to that end.

Mr. OVERSTREET. Mr. Chairman, I insist upon the point of order.

The CHAIRMAN. Does the gentleman desire to be heard upon the point of order?

Mr. OVERSTREET. I think not. If I heard the amendment correctly, I think it undoubtedly not only changes existing law, but makes new law.

The gentleman who offered the amendment conceded that he had sought to incorporate it in the criminal code; and if it is not in the law now, and he is seeking to put it in this law, that would be a change of law.

The CHAIRMAN. The amendment is—

That no part of said sum shall be used to pay for carrying in the mails any malt, vinous, or spirituous liquors or intoxicating liquors of any kind.

The gentleman from Tennessee has stated that the law now prohibits the carrying of any such articles in the mails.

Mr. HOUSTON. By a construction of the Department.

The CHAIRMAN. Very well. Upon its face the amendment seems to be a straight limitation upon the appropriation. It may be that if the law, as it now stands, authorizes the carrying of liquors in the mails this amendment would in its operation affect the carrying out of existing law. But upon that the Chair can hardly pass. There is nothing upon the face of the amendment which leads to the conclusion that it is anything but a limitation upon the appropriation. It is not necessary, however, to rest a decision upon that ground. The paragraph itself already contains certain provisions important to consider. The first proviso is:

That no part of this appropriation shall be expended for continuance of any star-route service the patronage of which shall be served by the extension of rural-delivery service; nor shall any of said sum be expended for the establishment of new star-route service for a patronage which is already served by rural-delivery service.

They are propositions against which no point of order was made. But then there is in the paragraph this further proviso:

That out of this appropriation the Postmaster-General is authorized to provide difficult or emergency mail service in Alaska, including the establishment and equipment of relay stations, in such manner as he may think advisable without advertising therefor.

That is clearly a provision changing existing law, left in the bill by unanimous consent we must presume, no point of order having been made against it.

It has often been ruled that a paragraph itself being out of order having been allowed to remain in the bill, it is in order to amend it by any germane amendment, even though the amendment itself might otherwise be out of order. The Chair overrules the point of order.

Mr. SHERLEY. Mr. Chairman, the statement just made by the gentleman from Tennessee [Mr. HOUSTON], together with the statement previously made by his colleague, the gentleman from Tennessee [Mr. SIMS], when the penal code was being considered, makes it proper that I should state to the House what action was taken by the Committee on the Revision of the Laws and what is the existing law to-day relative to alcoholic liquors going through the mails. A rather sensational statement was made by the gentleman from Tennessee [Mr. SIMS] to the effect that he had discovered what he was pleased to term a "nigger in the wood pile," and that the Committee on the Revision of the Laws, by a proposed section, known as section 218 of that bill, was proposing to authorize and legalize the shipment through the mails of alcoholic liquors.

Now, unfortunately, this is a subject about which some men are frequently apt to be a little extreme, to say the least. The committee found that there was no law existing to punish persons causing the shipment through the mails of articles dangerous either to the mails or to the persons handling them. For instance, as the law exists to-day, if there is shipped through the mails poisoned candy, there is no provision in the statutes which enables the Government to punish the man shipping it through the mails.

That is a condition which we felt ought to be remedied, and which the Commission when it prepared the work, which was the basis of our committee's work, thought ought to be remedied. The result was that they provided that certain articles should not be shipped through the mails, and then provided a penalty for a disregard of that provision. But they also provided:

That the Postmaster-General shall permit the transmission in the mails, under such rules and regulations as he shall prescribe as to preparation and packing, of any articles hereinbefore described which are not outwardly and of their own force dangerous and injurious to health, life, or property.

A majority of the members of the committee believed that it should be left to Congress to declare what would be nonmailable matter, and that it was not the privilege of the Department to exercise a discretion as to what should or should not be permitted to go through the mails. The committee did not feel warranted in a revision of the law to provide that alcoholic liquors should be excluded from the mails, that not being existing law, but that Congress could and doubtless would so provide when its attention was called to the matter. In the existing law there is no provision which prohibits the shipment of alcoholic liquors through the mails. I make that statement as the result of a very careful research and as the result of frequent conferences with the Post-Office Department.

The Post-Office Department claims the right to exclude liquors from the mail, but they base that right on a regulation, and when you ask them for the law which is the basis of their regulation they refer you to what is now the existing law, which is in these words:

Mailable matter of the fourth class shall embrace all matter not embraced in the first, second, or third class which is not in its form or nature liable to destroy, deface, or otherwise damage the contents of the mail bag or harm the person of anyone engaged in the postal service and is not above the weight prescribed by law.

Now, it might be tenable to say that no sort of a liquid under that provision could go through the mails, but that is not the position that the Department takes. To-day you can ship—and there are being shipped through the mails, and properly shipped through the mails, in my judgment—inks that are poisonous and, except for the special packing, dangerous both to the contents of the mail bag and the person handling them; mucilage, antitoxins, patent medicines, and all sorts of liquids; but when it comes to alcoholic liquors, then the Department determines that although the same packing could be used as to them as was used as to inks and mucilages, they shall not be allowed to pass through the mails.

Only now, for my part, I have no desire to have the mails used for the shipment of alcoholic liquors, though there is much to be said in favor of the right of a broker engaged in what is yet a legitimate business, and one from which the Government receives a large revenue, to ship samples of liquor through the mails. For my part I have no desire to have that the law. I do desire, however, that Congress itself shall determine that liquors shall not go through the mails, and not that the Department shall make a discrimination which has no basis either in law or in fact. There is no reason why a mucilage or a red ink can go through the mails without damage to the mail bags or to the person handling it and whisky or beer can not, provided they are all packed so that in case of breakage the contents will be absorbed by the wrapping, which is all that is required by the Department in the case of these other things.

Now, the Committee on Revision of the Laws did not change the law, because, in my opinion, a mandamus would lie to compel any postmaster to receive a shipment of alcoholic liquors. They did not change that law at all, but they simply provided for the punishment of people who shipped through the mails articles that are prohibited from being shipped, and then they said that the postmaster shall make regulations as to articles that, by virtue of being packed in certain ways, may be shipped without injury.

At that time the gentleman from Tennessee [Mr. Houston] offered an amendment excluding liquors from the mails, and it was understood that he would offer on the floor such amendment, and if that bill had continued to be considered by the House he would have offered the amendment, which is similar in purport to the limitation that he has now offered, that alcoholic liquors should not be permitted to go through the mails. The committee on revision believed that by this action of one of its members the matter would properly come before the House for its determination without the committee departing from its generally observed rule of not proposing new legislation touching matters about which there might be division of opinion. It seemed proper, inasmuch as the gentleman from Tennessee [Mr. Sims] had made the charge referred to, that I should make this statement. It is perhaps proper also to add that the print of the bill, coupled with what purported to be existing law, may have misled the gentleman.

Right opposite the new section 218, that was proposed by the committee, two sections were printed which purport to give the existing law, but unfortunately they do not give existing law, because one of those sections is repealed by the other, and while that is known to those who have examined the law, it is, as I have said, what probably misled the gentleman from Tennessee [Mr. Sims]. Section 3878 of the Revised Statutes, after providing that mailable matter of the third class shall embrace all pamphlets, publications, etc., then has a provision excluding from the mails all liquids, poisons, glass, explosive material,

obscene books, etc.; but that section was repealed by section 20 of the act of June 8, 1896, found in the second supplement, page 507, which simply provides, as I have stated, that mailable matter of the fourth class shall embrace all matter not embraced in the first, second, and third class, and so forth.

So that to-day, as the law is, there is no prohibition in terms upon the shipment through the mails of alcoholic liquors. It is for this committee to determine whether they want to create such a prohibition, and inasmuch as the Department is prohibiting the shipments through the mails it would be infinitely better for Congress to clearly pass such a law than to permit this distinction without warrant of law to be made by the Department; in other words, for the Government to cease to be hypocritical and for us to be frank in dealing with the subject.

Now, I think another good purpose may come out of the amendment offered by the gentleman from Tennessee, and that is the avoidance of the error fallen into by the other branch of Congress when dealing with this subject-matter, for when the penal-code bill was considered in the Senate section 218 was so amended as to exclude from the mails all liquids.

Now, it is manifest that to exclude liquids other than alcoholic liquids would work a very great wrong. For instance, to-day a physician can have sent to him antitoxin and various medicines that are in liquid form to places where the express does not carry packages, and where, but for the facilities afforded by the mail, the packages could not be received. Under the modern system of packing there is no greater danger of carrying liquids than there is of carrying an ordinary package of equal bulk. If we are going to legislate on an appropriation bill in regard to this matter, it is well to bear in mind that in striking at the evil that many people think would follow the use of the mail for shipment of alcoholic liquors we do not also interfere with the shipment through the mails of other liquids that can properly go through the mail without doing damage to anyone.

I have taken occasion to make these remarks for the primary purpose of putting the Revision Committee right. I am satisfied that the gentleman from Tennessee [Mr. Sims], having investigated this matter subsequent to his statement, will be more than glad to say to the House publicly, as he said before publicly, that his statement, in the light of the history of the whole affair, was not warranted.

MR. SIMS. Mr. Chairman, I am glad to have an opportunity to state what prompted me to make the statement that I did. I would have made it long ago had it not been that I expected that the same bill would be back here and the section be reached. It became manifest that there was a disposition, from the various votes given on that bill at the time it was being considered, to vote with the committee, and that is perfectly natural. We all do that. I supposed that the committee had considered everything carefully and that in the main they were right. I will trust to the committee any time when I have not investigated the matter. As I stated at that time, I saw a gentleman in the gallery of the House—and when I say gentleman I mean it, because I knew nothing discreditable to him—a gentleman who had been before the District Committee in opposition to temperance legislation. Naturally I supposed there was something in the bill that we were then considering in which the interests he represented were interested, because I knew he was not in the gallery to hear what he was then hearing in a general way.

I began an examination of the criminal-code provision, and first examined the internal-revenue provisions, and I found nothing there that I thought he was interested in. I turned to the provisions of the postal laws. As the gentleman from Kentucky kindly stated, at that time I had seen no report and heard no reference to any except the large printed one which Members were referring to, when discussing the bill, as the report, on the left-hand page of which was printed what purported to be the law as codified, and on the right-hand page the law as it stood without the codification. I read first the law as codified, and then I read the provision on the right hand which provided as nonmailable matter all liquids and the provision which the gentleman from Kentucky referred to making it mandatory on the Postmaster-General to mail the matters therein, provided they were packed in the manner prescribed in the codified law.

Now, it looked to me, not with an ulterior motive, not charging the committee with intending to do something covertly or underhandedly by means of this revision, without it being particularly pointed out, but that it did change existing law in the manner reported; and I did call it a "nigger in the woodpile," meaning that by means of a revision there was made a change of existing law without having it pointed out in the report. With all I had before me then I felt I was fully justified in making the remark that I did, but my purpose was to get gentle-

men on the other side, who are in the majority, to examine the section referred before we reached it, and vote upon it from an understanding of what was in the section, and not merely to be regular and stand by their side in the committee. If I had seen the other part of the report, I would not have used the language I did, and I was very glad to know that it was the intention of my colleague from Tennessee [Mr. HOUSTON] to offer the amendment which I learned he had offered in the committee and had notified the committee that he would offer it in the House positively excluding intoxicating liquors from the mails, and I have no doubt that when that bill is considered, if it is ever so considered, that amendment will be so offered by him and supported by both the gentlemen from Kentucky [Mr. SHERLEY] and my colleague from Tennessee [Mr. HOUSTON].

But, for fear that bill may not reach us, I hope the House will vote for the amendment of my colleague now. The excluding of alcoholic liquors at present is by regulation of the Department, by departmental law, if the gentleman from Kentucky [Mr. SHERLEY] is correct in his contention, and with the investigation he has made I will not controvert it. Therefore it is of more importance that we should make it mandatory, because some subsequent Postmaster-General may differ from this one and take off the brakes or change the regulations. Therefore I hope that the committee will vote for the amendment.

Mr. MANN. Mr. Chairman, I offer the following amendment as an amendment to that offered by the gentleman from Tennessee.

The Clerk read as follows:

Insert at the end of the amendment the following: "or any cocaine or derivative thereof."

Mr. MANN. Mr. Chairman, if the amendment of the gentleman from Tennessee prevails, it prohibits the transportation of alcoholic liquors by mail. This adds to that the prohibition of cocaine by mail. I take it that if the amendment should prevail—

Mr. SULZER. Why not put in morphine also?

Mr. MANN. It means that in the Senate or in conference the provision will be carefully corrected and put in shape of a more perfect provision of law than could possibly be had by offering it as an amendment on an appropriation bill in the first place, the gentleman being required to so form his amendment so as to keep it in order. Now, while the transportation of liquor by mail in many places is undoubtedly a great detriment to the people, it is true to a much greater extent, probably, that the transportation of cocaine and its derivatives, like alpha and beta eucaine, and heroin, and others, is of much greater detriment. In the investigation concerning the pure-food law we determined, and the House put the provision into the law requiring, that all of those articles should be named either upon medicines or upon foods. It has been called to my attention, growing out of my interest in this matter, that in some places they are circulating advertisements and extensively selling small quantities of cocaine and its derivatives and sending them by mail.

Mr. GAINES of Tennessee. What are the derivatives?

Mr. MANN. Alpha and beta eucaine and heroin and a number of others. They are perfectly well known in the drug business and to the medical profession. There are a great many of them. If there is to be any prohibition in the law of things to save people from becoming slaves to habit, of all things that should be safeguarded are the mails. I was told this morning that in the city of Richmond, right close to us, it was a most common thing to-day to obtain cocaine or some of its derivatives by mail, and that some people, doing business not a hundred miles from Washington, were engaged in advertising these classes of habit-forming drugs, especially in that place. The same is true in a number of other places, and there is a very widespread demand upon the part of the people who have taken notice of that matter that as far as possible the mails shall not be used for the transportation of these habit-forming drugs to people who become slaves of the habit and whose health is ruined by the use of the drug.

Mr. SULZER. Will the gentleman consent to put the word "opium" after the word "cocaine?"

Mr. MANN. If the gentleman will pardon me a moment I will state that I first wrote the amendment "cocaine, opium, or any of the derivatives," and the question was raised as to whether that would permit the transportation of paregoric or things of that sort in the mails, and while personally I do not think that is a derivative of opium, I think it would be best if we could insert in the bill an item calling attention to this

project, to let it be perfected in a way where it could be perfected, when the committee would have a better opportunity of considering it either in the Senate or in conference.

Mr. SULZER. Opium is twice as deleterious to health as cocaine.

Mr. MANN. Well, not so bad as cocaine.

Mr. HOUSTON, Mr. GAINES of Tennessee, and Mr. CRUMPACKER rose.

The CHAIRMAN. The Chair will recognize the gentleman from Tennessee [Mr. HOUSTON].

Mr. HOUSTON. If I may be permitted, I may say that I am willing to accept the amendment offered by the gentleman from Illinois [Mr. MANN].

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. GAINES of Tennessee. Mr. Chairman, just a word or two about these amendments. I am in favor of both, and I hope they may be adopted. The liquor proposition has been thoroughly discussed, and I trust that it will do as I think it will—that is, help the "dry" States, and Tennessee is almost one of them, and even the "wet" States enforce their local laws against intoxicants. We should not send anything through the mails that will interfere with the mail service or that tends to break down the local laws, and especially the police laws of the several States. Now, I happen to personally know that the mail, Mr. Chairman, is being used for the distribution of cocaine and other things with cocaine in them, notwithstanding there are strict local statutes that say it shall not be used unless a physician prescribes it.

All over the United States, in the principal cities, are advertisements sent through the papers to the effect that they will send you so much cocaine, and the cocaine victim will read it, and he will send there for it. He will send a postage stamp, he will send a copper, he will send any kind of money, or any amount of money to get the amount of cocaine that the law of his State or city says he shall not have, and which the doctor prescribes he shall not have. And yet he defeats the law of his State, the prescription of the doctor, by the efforts of these people who send it through the mail. I do hope, Mr. Chairman, that both of these amendments will be adopted.

Mr. OVERSTREET. I have no objection to either amendment. I ask for a vote.

The CHAIRMAN. The question first is on the amendment of the gentleman from Illinois [Mr. MANN] to the amendment of the gentleman from Tennessee [Mr. HOUSTON].

The question was taken, and the amendment to the amendment was agreed to.

The CHAIRMAN. The question now is on the amendment of the gentleman from Tennessee as amended.

The question was taken, and the amendment as amended was agreed to.

Mr. HOUSTON. Mr. Chairman, I desire to offer a similar amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 16 amend by adding at the end of line 16 the words: "Provided, That no part of said sum shall be used to pay for the carrying in the mails of any malt, vinous, or spirituous liquors or intoxicating liquors of any kind."

Mr. OVERSTREET. Mr. Chairman, I reserve the point of order on that.

The CHAIRMAN. The Chair will state that, the paragraph not having yet been read, the amendment is not now in order.

Mr. JOHNSON of South Carolina. Mr. Chairman, at the end of line 14 on page 16 I desire to offer an amendment.

The CHAIRMAN. The gentleman from South Carolina offers an amendment which the Clerk will report.

The Clerk read as follows:

"Provided, That rural carriers who are required to carry locked pouches shall be paid out of this fund the sum of \$10 per month in addition to their compensation as now fixed by law."

Mr. OVERSTREET. Mr. Chairman, I reserve the point of order upon that.

Mr. JOHNSON of South Carolina. Mr. Chairman, of course the amendment is clearly subject to the point of order, and it is not necessary to discuss it. I ask permission to extend my remarks in the RECORD.

The CHAIRMAN. The gentleman from South Carolina asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. JOHNSON of South Carolina. Mr. Chairman, I very much regret that the gentleman from Indiana [Mr. OVERSTREET] has made the point of order against this amendment. It is clearly subject to the point of order and must therefore go out

without giving the House the opportunity to vote upon what I believe to be a meritorious proposition. The maximum pay allowed rural letter carriers is \$900 per year. In many instances the rural letter carriers are required to carry lock pouches to supply fourth-class post-offices which they reach. This work results in a large saving in that it prevents the necessity of keeping up the star route at a considerable expense. It does seem fair and just that the rural letter carrier, who has this additional work placed upon him and thus saves the Government a large sum of money, should have some compensation for this extra work. I have offered a very moderate amendment, which provides compensation for this extra service at \$10 per month. I know in my own district there are instances in which rural letter carriers carry lock pouches to offices which are the distributing offices for a number of rural routes. I think the chairman of the Committee on Post-Offices and Post-Roads should permit the amendment to be voted upon.

The CHAIRMAN. The Chair sustains the point of order. The Clerk will read.

The Clerk read as follows:

For inland transportation by steamboat, or other power-boat routes, \$800,000.

Mr. HOUSTON. Mr. Chairman, I now desire to offer the amendment.

The CHAIRMAN. The Clerk will again report the amendment.

The amendment was again read.

Mr. OVERSTREET. Mr. Chairman, I reserve the point of order on that.

Mr. HOUSTON. It is the same amendment as the other one, only it provides for the transmission of mail by steamboats. That is the only difference.

Mr. OVERSTREET. Exactly the same language as the amendment that has been adopted?

Mr. HOUSTON. It is the same language without the amendment of the gentleman from Illinois [Mr. MANN], but which I should be glad to see added to it.

Mr. OVERSTREET. Mr. Chairman, I want to say as to the point of order, while I will make no objection on the merits of this amendment, I want to again address the Chair upon the subject of the point of order, as I did before.

It seems to me, Mr. Chairman, that a provision of law which prohibits the use of any part of an item of appropriation for the carriage of any specific article in the mail would be obnoxious to the rule, unless there was some machinery provided whereby you could ascertain and identify the article which you seek to prohibit. How are you going to tell whether a package which was sealed and paid for at a rate which will not permit the seal of the package to be broken, whether or not it contains any of those articles which you seek to prohibit? Take some cocaine, or even a small vial of liquor, that is incased in a package, which is not broken, upon which a sufficient amount of postage has been paid to guarantee that it shall not be broken. First-class mail can not be broken. How is it to be determined, and when we seek to determine, what officers of the law are called upon to exercise that function? I am not insistent in opposing either one of these amendments upon their merits, but I do not want to fail to call attention of the Chair to the law when it is proposed to put legislation of this character upon a bill of this kind.

Mr. HOUSTON. Mr. Chairman, it seems to me that all that the gentleman has said might be said with equal propriety as to a limitation of any character as to any appropriation. I believe it would be better to enact a clause in the penal code to make it a crime and punish it as such to ship liquors through the mails; but when it comes to this case, it is only a limitation, and the same criticism can be made to any limitation of any appropriation whatever that would apply as well to any other limitation or prohibition as it does to this.

Mr. OVERSTREET. Just one further word, Mr. Chairman. When a limitation upon an appropriation is sought to be effected, that limitation must be certain in its purpose and must be reasonable. You can not say because you put words in a phrase that seeks to impose a limitation that you thereby escape a point of order. You might say, "*Provided*, That no part of this sum shall be used for carrying the mail on any vessel if the master is less than 8 feet in height." That would be a limitation, but it would be a foolish limitation. I undertake to say that the limitation in this amendment is not a reasonable limitation, because it can not be enforced. If this subject was before the House upon its merits, I would very willingly support it; and yet there is not the same justification for this amendment to be applied to this item of appropriation as there was to the former item of appropriation, because the former limita-

tion was to put into law what is now the practice or regulation of the Department, where there is a limitation of the Department on the carrier upon the star routes. He can be directed not to receive packages which in themselves would appear to be packages which it is sought to prohibit.

But when you seek to prohibit by what I think is an unreasonable limitation the use of transportation that is upon steam-boats, why that leads into all varieties of boats, large and small, large items of mail that go into the mail transportation, without a proper knowledge and means of ascertaining whether or not any of those prohibited articles are in the mails when carried.

Mr. MANN. Will the gentleman yield to me for a question?

Mr. OVERSTREET. I yield to the gentleman from Illinois.

Mr. MANN. I quite agree with the gentleman that practically it would not be possible to carry out the provisions of the amendment in the shape the amendment is offered. But is it not practical, with the amendment in the bill, or another amendment like this going into the bill, to perfect that legislation in the Senate or in conference? Of course, necessarily, an amendment offered like this has got to endeavor to conform to the rules when it is offered. Would it not be practical in the bill, before it becomes law, to have a prohibition which might be effective?

Mr. OVERSTREET. I can think of no amendment of the statute that would meet the situation except it should be a universal provision that hereafter no article of such character shall be admitted to the mails at all, anywhere, and fix a penalty. There is no penalty in this amendment offered here.

Mr. MANN. I know; that is just it. The gentleman understands that you have got to have some things put before the House in the way the rules provide. Here is the point of it. This is now in the bill. Is it not possible for the gentleman to work out a proposition of this sort, so that the provision can be changed in the Senate or can be inserted in conference?

Mr. OVERSTREET. I think there is no means whatever that would apply to a provision of this character that does not apply to fifteen items of the bill in order to perfect that kind of legislation.

Mr. MANN. I agree with the gentleman on that.

Mr. OVERSTREET. There is already something in the bill.

Mr. MANN. The best place for this item, if it is in order there, would be on the item for inland transportation by railroad routes.

Mr. OVERSTREET. I think so.

Mr. MANN. Of course, that would cover everything.

Mr. OVERSTREET. Of course, that would cover everything.

Mr. MANN. But this amendment might be in order on the item to which it has already been made, and not be in order on the other item.

Mr. OVERSTREET. I can not think so.

Mr. MANN. Because the paragraph to which the amendment has already been made was itself subject to a point of order, and hence, as this paragraph is not subject to a point of order, a different question arises. As far as I am concerned, my own judgment would be that this amendment is not in order on this paragraph. I think it is a change of existing law, and yet it is a very close line of authority and decision as to whether this is a mere limitation or a change of law. I take it, in any event, that if it is inserted in the bill the gentleman will endeavor to work it out so that it will be practicable as a legal proposition.

Mr. KEIFER. Mr. Chairman, I wanted to suggest one thing in the interest of a good and sound parliamentary rule, to be applied in this and all like cases. I am not opposed to this amendment. I think the other amendment that was just adopted was in order, for the reason just stated by the distinguished gentleman from Illinois [Mr. MANN]. That is, that it was an amendment to that which was not objected to, but which would have been subject to a point of order if it had been made. One test, and perhaps the proper test, of this modern rule allowing a provision to be in order on an appropriation bill when it is a limitation on the money proposed to be appropriated, is whether the provision or amendment proposed is intended to prevent the use of a part of the money at all, or merely to prevent its use for a certain purpose. If the amendment proposed merely excludes from the mails the things mentioned, it is not a limitation within the rule. If that is the object of it, and that is the thing to be or that will be accomplished, then it is not in order, unless it follows that in excluding those things it saves the money to be appropriated from being expended at all.

If the money is to be expended in a way provided for in the bill, without reference to whether these things are excluded or not excluded, then the rule, as I have understood it hitherto, and I think it is and should be the rule now, would be to treat the amendment as a mere proposition to exclude from the mails the things that are referred to, and not in order for the reason it is not a limitation on the expenditure of the money, because the money is to be expended at all events. That is the way I understand the chairman of the Committee on the Post-Office and the Post-Roads understands it, and that the amendment is not to save the money. It might well be that when money is proposed to be expended you may say that it is only to be expended for a certain purpose, and then if it is not necessary for that the money shall not be expended at all. Here it is proposed to expend the money, but to tack on a clause that the money is not to be used for certain purposes will only, as in this case, exclude some things from the mail and results only in making a law prohibiting the things named in the amendment from the mails, and not in preventing the money from being expended. Under the guise of such limitations much wholly new legislation can be put in appropriation bills, and the spirit if not the letter of the rule will be violated.

Mr. CRUMPACKER. Mr. Chairman, it seems to me that the proposed amendment is in order. It is clearly a limitation, and I thought that question was decided by the Chair in the ruling the Chair made upon the amendment offered by the gentleman from Tennessee on the paragraph just preceding the one now under consideration. The amendment is a limitation of the appropriation. It provides, as I understand it, that no part of the appropriation shall be used for carrying certain kinds of mail that under the law are mailable. It does not change the law. The effect of it is that Congress refuses to make an appropriation for carrying certain classes of mail that is now admitted under the law. It is generally understood, it is known by every Member of the House, that Congress may appropriate or withhold appropriations for legal purposes. Congress may appropriate for one of a number of legal purposes, and not for others. Now, numerous articles are mailable. Appropriations may be made to carry them all. Congress may provide, however, in connection with the appropriation, that no part of it shall be used to carry one particular line of articles. Does that repeal the law? Does it change the law? No; it is a limitation upon the appropriation. That is all there is to it. It simply expresses the purpose of Congress not to appropriate money to carry certain kinds of matter that it might appropriate money to carry. Congress need not appropriate money to carry anything. It may appropriate money to carry certain classes and not others, and under the rules of the House it can only express that intention in the form of a limitation upon the appropriation itself.

Now the question, Mr. Chairman, of the difficulty that may arise in the administration of the provision is not one that may affect the validity of the amendment. It is not one that can be considered in connection with its admissibility under the rule; that is a matter that addresses itself to the discretion of the House when it comes to act upon the proposed amendment. It may be a foolish amendment, it may be one that it is difficult to administer, but I repeat that that question addresses itself entirely to the good sense of the House when it comes to act on the amendment proposed. I think this amendment is exactly in line with the amendment offered by the gentleman from Tennessee a few moments ago, which was upheld by the Chair.

The CHAIRMAN. This amendment, unlike the one upon which the Chair ruled, is offered to a paragraph which is of itself not subject to a point of order. The question, therefore, comes up squarely for decision whether or not this amendment is to be considered as merely a limitation upon the appropriation, or whether it changes existing law.

The Chair listened with great attention to the argument of the gentleman from Indiana [Mr. OVERSTREET], and if this were entirely a new question, might be inclined to give it more consideration than it now feels at liberty to do. It may be that the operation of this amendment would be difficult. It may be that it would be impossible to carry it into effect without stopping the entire transportation of the mails by inland waters, and yet, if it did, would that take it out of the position of a limitation upon an appropriation? It is within the power of the House to refuse to appropriate at all, which would, of course, stop the transportation entirely. It may be that this is a very unwise amendment, but upon that the Chair can not pass. It may be that the operations of the Department in determining what does go by mail would be so affected as to make it impossible of carrying the mail at all if this amendment were adopted. That is a matter for the House or the committee in its wisdom to determine, and not for the Chair.

The Chair must be guided, it seems, by what appears on the face of the amendment, unless some provision of law is shown to be changed by the amendment as offered.

It has been held in several instances that, while it is not in order to legislate as to qualifications of recipients of appropriations, a general appropriation bill may specify that no part of the appropriation shall go to recipients lacking certain qualifications. Again, it has been held that an amendment providing that no part of an appropriation shall go to a Soldiers' Home where a canteen is maintained—involving, of course, an investigation to see whether a canteen was maintained—was a mere limitation upon the appropriation and therefore in order. It was held very recently that, while it is not in order on an appropriation bill to require letters on public vehicles, it is in order to withhold the appropriation from all vehicles not lettered. It has been held in order to provide in an appropriation bill that no part of an appropriation shall be expended in the payment of adjudicated claims until the said claims shall have been certified as finally adjudicated. An amendment that no part of an appropriation for the Army should be available for an army of over a certain size has been held in order as a limitation and not as a change of existing law; so it has been held that a provision that no part of an appropriation for an article should be paid to any trust was in order as a limitation. These precedents would seem to rule the pending case.

In other words, the power of the House to refrain entirely from making an appropriation argues that in making one it has the power to provide that it shall not be used in a certain manner or for a certain purpose. While the Chair would, if this were an original proposition not covered by precedents, think it very close under all the circumstances, the Chair feels constrained to overrule the point of order.

Mr. MANN. I move to amend the amendment by adding at the end thereof "or any cocaine or derivative thereof."

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amend the amendment at the end by adding "or any cocaine or derivative thereof."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois to the amendment offered by the gentleman from Tennessee.

The question was taken, and the amendment to the amendment was agreed to.

The CHAIRMAN. The question now is on agreeing to the amendment offered by the gentleman from Tennessee as amended.

The question was taken, and the amendment as amended was agreed to.

The Clerk read as follows:

For the transmission of mail by pneumatic tubes or other similar devices, \$1,000,000; and the Postmaster-General is hereby authorized to enter into contracts not exceeding, in the aggregate, \$1,388,750, under the provisions of the law, for a period not exceeding ten years: *Provided*, That said service shall not be extended in any cities other than those in which the service is now under contract under authority of Congress, except the borough of Brooklyn, of the city of New York, and the cities of Baltimore, Md.; Cincinnati, Ohio; Kansas City, Mo.; Pittsburg, Pa., and San Francisco, Cal.: *Provided*, That no part of this appropriation shall be expended for any extension of pneumatic-tube service in any city, where by limitation of franchise or ordinance, a special taxation or exaction other than the ordinary taxation upon property generally in such city is imposed; nor where provisions in any franchise or ordinance may require the ultimate ownership of such tube property by such city, except at a reasonable cost.

Mr. FITZGERALD. Mr. Chairman, I reserve a point of order on that paragraph.

Mr. JOHNSON of South Carolina. Mr. Chairman, I reserve a point of order on that proviso beginning on page 16 with the word "Provided" and ending on page 17 with the word "cost."

Mr. OVERSTREET. Mr. Chairman, I did not quite catch what the gentleman from South Carolina said.

Mr. JOHNSON of South Carolina. Mr. Chairman, I reserve a point of order against this new legislation.

Mr. FITZGERALD. Mr. Chairman, reserving a point of order against the paragraph, I wish to call the attention of the committee to the object in doing so.

Mr. OVERSTREET. I presume the gentleman is referring to the last proviso.

Mr. FITZGERALD. Yes. I would first like to state the facts and then call the attention of the gentleman to another situation, which I doubt that the committee had in contemplation at all.

In the first place, this proviso to which I have offered objection, "that no part of the appropriation shall be expended for the extension of pneumatic-tube service in any city where provision of any franchise or ordinance may require the ultimate ownership of such property by such city except at a reasonable cost," applies, I understand, to the city of Chicago.

Mr. OVERSTREET. It applies wherever those conditions exist.

Mr. FITZGERALD. But particularly now to the city of Chicago. In that city the Pneumatic Tube Company has a franchise which runs for a period of twenty years. It has fifteen years yet to run, and the franchise provides that at the end of the twenty years the company shall convey all of its rights and property to the city of Chicago free of cost. The hearings show that the company has attempted to obtain from the common council of the city of Chicago a modification of its franchise, so that when the franchise expires the city shall pay to the company compensation for its property.

Mr. CRUMPACKER. Let me ask the gentleman if this proviso does not apply also to every city that imposes a license tax upon a theater, upon a saloon, or upon a franchise, or any kind of business excepting a general property tax?

Mr. FITZGERALD. So far as it applies to pneumatic tubes.

Mr. CRUMPACKER. I want to call the gentleman's attention to the fact that it is not limited to pneumatic tubes.

Mr. FITZGERALD. I think it is. Outside of the extraordinary attempt on the part of Congress that this would be to coerce the municipality into modifying a franchise, this provision applies with particular force to a situation that may arise in the city of New York. In the city of New York and its several boroughs there is a pneumatic-tube service. The city is building, either with its money or with the city's credit, a great system of subways. It is intended in time to utilize these subways not only for the passage of passenger cars, but to install pneumatic tubes, telephone wires, telegraph wires, and as many other public-service conveniences as can readily be inserted into the subways, and thus prevent the continual digging up of the public streets and the consequent interference with business.

These subways in the city of New York are being built in such a way that the city either owns them now or ultimately will. They are operated by lessees. Under this provision, if it be incorporated into the law, if the pneumatic-tube company in the city of New York obtained a license from the city to build its tubes through the subways, and agreed that at the expiration of a certain number of years the city should own the tubes, then it would be an impossibility for the Post-Office Department to expend any money in a pneumatic-tube service carried in those tubes unless the city modified its agreement and agreed to pay for the rights and privileges and property of the corporation willing to accept a franchise upon the other conditions. I believe this is an indefensible proposition. I know that in the hearings it is asserted that in the city of Chicago, because of this peculiar franchise which this company accepted, I suppose with great eagerness, it is difficult now to obtain money to provide for the extension of the pneumatic-tube service, because the franchise has only fifteen years more to run, and at the end of that time the property will belong to the city of Chicago.

I think it would be a great benefit to the Federal Government to have the municipalities own the pneumatic tubes. Of what use would they be except to permit the Federal Government to utilize them free of cost in order to facilitate the transmission of the mails in the city. I have no doubt that in every city wherein the municipal authorities owned or controlled a great system of pneumatic tubes it would gladly permit the Federal Government to utilize them in order to obtain the additional facilities that would result in the mail service. To incorporate into this bill that if a company willingly accepted a franchise providing that at the end of a certain time it will donate or turn over its property to the city, a condition that under such circumstances no money appropriated for a pneumatic-tube service could be expended in tubes so operated under such franchise, is an outrage upon the great municipalities of the country.

I shall prefer to see the entire provision for the extension of pneumatic-tube service in the great cities of the country, including the city of which I am a resident, eliminated from this bill rather than that the power of the Federal Government should be utilized as a club to coerce municipalities or any portion of their government into rescinding the provision that requires the turning over of such property free, and coerces the municipality into paying for the property at the end of the franchise period. For these reasons, Mr. Chairman, unless an agreement can be reached that the last clause of the paragraph can be eliminated, I shall insist upon this point of order.

Mr. MANN. Mr. Chairman, it looks to me as though the provision as it is printed in the bill would prohibit the expenditure of any of the appropriation for pneumatic-tube service in Chicago. The pneumatic-tube service is now established.

I take it, it was the intention of the committee in framing the bill, however, to make this provision only apply to the extension of the pneumatic-tube service.

Mr. GOEBEL. It says so.

Mr. MANN. I beg the gentleman's pardon. In my judgment, he is mistaken. The first proviso says that "no part of this appropriation shall be expended for any extension of pneumatic-tube service where," and so forth, and then comes the end of that clause and then a semicolon; then "nor where provisions in any franchise or ordinance may require the ultimate ownership of such tube property." I think "nor where" relates back to "no part of this appropriation shall be expended," so that if the provision as it stands in the bill shall become a law, no part of the appropriation could be expended. It is a matter that could be easily fixed by punctuation.

Now, in the city of Chicago a franchise was granted to the Pneumatic Tube Company at the time when it became the settled policy of the city to require a percentage of the gross receipts of any company making use of the streets in any way to be paid into the city treasury. The Pneumatic Tube Company was not excepted from that settled policy of the city. I am personally inclined to think that the city ought not to require a percentage of the gross receipts of a pneumatic tube, devoted wholly to the transportation of mails, to be paid into the city, because probably that means that in order to accommodate the city, and provide for its mail delivery there, the National Treasury shall pay part of the appropriation into the city treasury. But, of course, Congress in its willingness is desirous of contributing something to the city treasury of Chicago. We have not any too much money in our city treasury, and we would be very glad to have the benefit of the National Treasury to help us.

Mr. JOHNSON of South Carolina. Will the gentleman let me interrupt him?

Mr. MANN. Certainly.

Mr. JOHNSON of South Carolina. I wish to say to the gentleman that the United States Government pays the full limit of \$17,000 a mile in every city where the service is in operation. So we do not pay any more in Chicago than we do anywhere else.

Mr. MANN. It may be. I was about to say that I did not know whether the full limit was being paid or not. I do not know about that provision as to the extension. My understanding is, however, that in the past it has been impossible to get the company to extend its pneumatic-tube service, because in one way, or to some extent, at least, it was claimed that part of the revenue had to be paid into the city treasury, but it does seem to me that there may be decided objections to that portion of the proviso concerning which the gentleman from New York [Mr. FITZGERALD] has already spoken, and which would prohibit the franchise or city ordinance from requiring ultimately the property of the tube company coming to the city. I am inclined to think if the city of Chicago or any other city in granting a franchise for the pneumatic tube can ultimately acquire the ownership of the tube, that means the General Government will obtain it in the end free of cost. It is undoubtedly true, I would say, that if the city of Chicago should now become the owner of the pneumatic-tube service there, now devoted wholly to the postal service, the city would have no use for it.

The city has no occasion to make use of the pneumatic-tube service, and it would naturally and willingly turn it over to the General Government if the Government desired to use it. And I can see no reason why the city should not require in its ordinance that ultimately the ownership of the tube should come to the city, and thereby afford the opportunity of having it come to the General Government.

Mr. CRUMPACKER. I want to ask the gentleman a question or two in relation to the service in Chicago. I understand from him that the tube service there is used exclusively in the transmission of mails?

Mr. MANN. That is my understanding of it.

Mr. CRUMPACKER. Is it capable of use for any other purpose than the transmission of mails?

Mr. MANN. It would be capable of other use undoubtedly to a certain extent if the mails were not transported in it, but I think it is not capable of transporting the mail and other packages besides.

Mr. CRUMPACKER. It would not be practical, then, to use it for the transmission of private matter and mail at the same time?

Mr. MANN. I think not. These tubes run from the city post-office in the various cities using the system for the transmission of the mails.

Mr. CRUMPACKER. It was constructed for the transmission of mails under a contract with the Government?

Mr. MANN. Of course it is owned by a private corporation. Mr. CRUMPACKER. Not by the city?

Mr. MANN. It is owned by a corporation. They are all practically owned by the same corporation. Its name was very familiar at one time since I first came to Congress. They were as thick as flies at one time.

Mr. GAINES of Tennessee. How many of these tubes are in service, and in what cities are they in service?

Mr. MANN. Well, I can not tell the gentleman. They are in service now. They are in service in New York and in Chicago, Philadelphia, and, I think, St. Louis also, although I am not sure about that. They are in service principally in New York and Chicago. There are eight or nine miles in Chicago; how many miles there are in New York I do not know.

Mr. OVERSTREET. The bill provides, I may say to the gentleman, that they may be used in other cities.

Mr. GAINES of Tennessee. I would like to ask the chairman of the committee a question or two about this.

Mr. OVERSTREET. If I can have the attention of the committee I can explain the whole matter.

Mr. GAINES of Tennessee. How many cities have this tube service?

Mr. OVERSTREET. If I may have permission I will answer.

Mr. Chairman, under the act of 1902, establishing the operation of the pneumatic-tube service, the service has been installed in five cities—the cities of Boston, New York (including Brooklyn), Philadelphia, Chicago, and St. Louis.

A few years ago authority for the extension of the service was made so as to provide for the service in five additional cities, namely, the cities of Baltimore, Pittsburg, Cincinnati, Kansas City, and San Francisco, and further extensions authorized in the original five cities which I have just named. There are no contracts in operation in any one of those five new cities. All of the contracts are in the five original cities. The appropriation is sufficient to carry out the contracts now in existence. It does not cover sufficient money to carry out any new contracts in any one of the five new cities because, even if under the authority they should make the contract, it would be impossible to put them in operation in time to make any draft upon the appropriation during the next fiscal year.

Mr. GAINES of Tennessee. How much does it carry now?

Mr. OVERSTREET. One million dollars, I think.

Mr. GAINES of Tennessee. How much increase is that?

Mr. OVERSTREET. Well, it is a decrease, as a matter of fact, of two or three hundred thousand dollars. We made a decrease because we found that no new contracts had been entered into. Now, Mr. Chairman, the last proviso the committee has inserted for a certain reason. That is to discourage in the future any new contracts (because the committee recognize the contracts that now exist; and if it did not recognize them it would be unlawful and could not be enforced), but in the future there ought not to be any additional contracts for extension of the service when the city within which the service is situated exercises the power to place heavy exactions upon the service so as to make it a burdensome transaction. This is entirely for mail facilities. These tubes are used for no other purpose at all, and I take it that where the Government has made contracts at considerable expense, at a high rental for the use of the tubes for the benefit of the people of those localities in order to facilitate the collection and delivery of the mail, that those cities should have sufficient patriotism to at least refrain from making extraordinary exactions upon that property.

It may be said, as the gentleman from New York said, what difference is it so long as the contractor makes no objection? There is just this difference, Mr. Chairman: Wherever an unusual charge is laid upon the property the contractors, you may depend upon it, will pass that burden back upon the Government itself in its charges. It is true that the payments now under the various contracts are for the maximum authorized by law, and they will always be the maximum as long as these extra exactions are permitted. And I imagine that in the future, if this tube service shall be extended, if we can be assured that these localities will make no greater tax levy or assessments upon that property than it makes upon property generally of that community, that in time we may hope, at least, and expect lower rental charges.

Mr. CRUMPACKER. One thing I want to call the gentleman's attention to.

Mr. OVERSTREET. I want to yield to the gentleman from South Carolina first.

Mr. JOHNSON of South Carolina. The gentleman has already stated what I wanted to ask him. We are paying more, perhaps, in New York than in Boston, so that the burden does now fall back upon the Government.

Mr. OVERSTREET. Now, the gentleman will appreciate the fact that this provision is not entirely for New York and Chicago. Authority is now made by law for the extension to five new cities. But in these cities it is quite possible for these burdens on franchise limitations to be exacted; and if the gentleman will permit me just a moment, under the law of 1902 \$17,000 annual rent is the maximum rate in cities where the mileage of the tube service is in excess of 3 miles. By general provision of the law the rate of expense for the tube service is less in each instance than 3 miles, so that it is entirely possible under the law for a higher rate than \$17,000 a mile to be tube service shall not exceed 4 per cent of the gross receipts of the post-office in a community where it is proposed to locate the service in those five new cities. The mileage authorized by law is less in each instance than 3 miles, so that it is entirely possible under the law for a higher rate than \$17,000 a mile to be made, providing that the total expense in each city shall not exceed 4 per cent of the gross receipts of the office in those respective cities.

Therefore it is important that before any of these contracts shall be made there be a limitation that this expenditure shall not be made where there is an undue requirement or exaction by the city in the franchise.

Mr. CRUMPACKER. Right upon that question, in reading this proviso, it seems to me that there is some uncertainty in connection with this question of taxation. The proviso is that no part of this appropriation shall be expended for any extension of the pneumatic-tube service in any city where by limitation of franchise or ordinance a special taxation or exaction, other than the ordinary taxation upon property generally in such city, is imposed.

Upon what? It is not limited to the tube-service property. It may fairly be construed to be upon any other property. It occurred to me that in the interests of certainty that ought to be qualified "imposed upon the tube service."

Mr. OVERSTREET. The meaning of that is that the tube property shall suffer no greater taxation than property generally.

Mr. CRUMPACKER. I understand that is the purpose of it, but I think you have not expressed it with sufficient certainty so as to leave it free from doubt.

There is one other proposition. Let me ask the gentleman if provision is made now against the imposition of any extraordinary tax or exaction upon the tube-service property what is the object of the second clause in the proviso, in relation to the character of contracts with the city? Is the Government fully protected by providing against the imposition of any extraordinary taxation or levies upon the tube-service property?

Mr. OVERSTREET. I think the most objectionable part is the provision for ultimate ownership of the property, because, undoubtedly, where a city, granting an original franchise for tube service to be inaugurated, requires that ultimately the city shall own all of the property it is more objectionable than a simple franchise tax.

Mr. CRUMPACKER. But I do not understand how that can affect anything.

Mr. OVERSTREET. Just in this way: Suppose they require that on a ten-year contract at the end of the term the property shall become owned by the city, why, naturally, the parties would not contract with the Government unless they could exact a sufficiently high annual rental to compensate them for the original investment.

Mr. CRUMPACKER. The parties probably would not construct a tube system, it would seem to me, under any such conditions and limitations. It occurred to me that there is some danger of this standing as a precedent for our regulating the system of taxation in the various municipalities, through limitations upon appropriations. My first impression was that this was a dangerous provision. As explained by the gentleman from Indiana, I can see how it is proper, under certain restrictions. But suppose, now, some gentleman should propose that no part of this money should be expended in any city where the liquor traffic is licensed. That would probably go through the House.

Mr. OVERSTREET. I do not doubt that it would. That undoubtedly would affect the city of Chicago.

Mr. MANN. I doubt whether it would have any effect in Chicago. [Laughter.]

Mr. CRUMPACKER. It would doubtless apply to several large cities in the country. It seems to me this is a dangerous proposition to enter upon, and that we want to consider it with a good deal of care. But, of course, the Government must protect itself.

Mr. OVERSTREET. With reference to this last provision,

relative to ultimate ownership of the tube property, and possible contracts in the five new cities where the service has been authorized to be installed; supposing in any one of those five new cities a contract or franchise should be authorized under the terms of which at the end of ten years the tube property should become owned by the city itself. Then the contracting parties would ask the Government to increase the annual rental of those tubes, so as to enable them to recoup themselves for their original investment.

How do they do it? Why, they refuse to inaugurate the service here except upon the rental, which would be equivalent to the use of the tube for the term of years including their operation and a fair profit on the investment and the original cost of the property.

Mr. MANN. Of course this is a practical question and not a theoretical question merely. The gentleman knows that if any city should require the tube to become its property at the end of ten years, there would be no tube service in a city that made such a requirement. No company could afford to build or operate a tube on those conditions at the rate we are paying. Is it not desirable where the tubes are used for nothing except the transportation of mail, like in Chicago, already in existence, that if possible in the end it shall become the property of the Government?

Mr. OVERSTREET. That is a far better proposition than for it to become the property of the city.

Mr. MANN. If it should become the property of Chicago to-morrow, it would be offered to the General Government. The city could make no use of it.

Mr. OVERSTREET. I do not know about that; the city could sell it.

Mr. MANN. All the General Government would have to do would be to omit making appropriations. The General Government has absolute control of the subject. The General Government has the right to refuse to make appropriations except upon its terms, and can just as well say at the expiration of the franchise it will make no appropriation unless the pneumatic tube is turned over to the Government as to say what it is saying now. Would not the gentleman be willing to let the latter provision go out, in view of the attitude of Chicago, to which this only applies, and which attitude is in the interest of the General Government?

Mr. OVERSTREET. I have realized ever since this tube subject has been before the committee that it is unpopular in some sections and very popular in others. There are Members strongly prejudiced against it and Members strongly prejudiced in favor of the service. It is a peculiar situation. Undoubtedly in cities where the topography of the city is such as to make it extremely difficult to use the streets for carrying large quantities of mail it is of very great benefit.

In Chicago I think it is of especial benefit because of the drawbridges, the stoppage of traffic on the streets, the congested condition of the streets, and I think in the city of New York it has been of vast benefit. Without it the streets would be greatly congested even with the use of the elevated cars and the subway. It performs a peculiar and important service for the Government. I do not undertake to free the prejudice from the minds of some men that think the corporations are exacting high rentals, and that they ought not to be permitted to do so. Neither do I think that we ought to require that they shall give us the property after the term of the contract has expired. It is a patent. We are obliged to pay for this on account of the patent rights, the same as we discussed this afternoon in relation to canceling machines. We think we have been fairly liberal in the extension of the service. In New York it is being extended rapidly and used extensively. Chicago, St. Louis, Boston have demanded further extension, often more rapidly than the extension has been granted; but in doing that the committee felt that it was not acting unfairly to require that hereafter, in the new extensions where contracts have not already been entered into, there should be some sort of limitation relative to the ownership at least of the tube properties so that we might avoid, if possible, the continuance of high rental charges.

Mr. FITZGERALD. Will the gentleman yield for a question?

Mr. OVERSTREET. Certainly.

Mr. FITZGERALD. There has been no contract let up to this time which has not provided a maximum amount that shall be paid.

Mr. OVERSTREET. I quite agree with the gentleman.

Mr. FITZGERALD. How do we benefit any by coming to the relief of this one company and freeing it from exactions to which it willingly submitted? It is simply stopping it from dividing profits with the municipality.

Mr. OVERSTREET. I suppose that if any impairment of the authority for the tube service or of the appropriation carried should be determined upon by the House, my friend from New York and my friend from Illinois would be among the first to complain against such impairment of the service in their own or other cities.

It is a good service, and gentlemen must admit that it has not been abused up to date; and the only desire we have is that before any additional contract shall be made in any of these new cities, or even an extension of service in any of the old cities shall be made, we shall have set our faces against the cities themselves becoming parties to the increased burdens upon this service.

Mr. FITZGERALD. Let me call the attention of the gentleman to this: Under the law of the State of New York, under the charter of the city of New York, the city can not grant any franchise in perpetuity. It must have a provision in it which limits the rights granted to a specified time. Suppose somebody should suggest that this extension shall not be made in any city where a franchise shall not be granted in perpetuity. It can be argued in that case just as strongly as it can in this one, where this corporation was willing to take the franchise under which it was to surrender all of its property at the end of the twenty years. Why should we interfere in a dispute between a municipality and a private corporation?

Mr. MURDOCK. The gentleman from Indiana spoke of some who have a strong prejudice against the pneumatic tube and this service. I have a strong prejudice against the service, as he well knows. I want to ask him if it is not a fact that the pneumatic-tube service means refinement of facility which sometimes defeats itself, and my point is this, that the last part of the large given amount of mail will arrive through a pneumatic tube at its destination at a later time than it would if carried by ordinary wagons.

Mr. OVERSTREET. I presume if there were but one wagon load of mail, and it all of the first class, that the last letter which might have been transported through the tube would have reached the office just as quickly if it had been transported from the wagon, but there is, as a rule, much more mail than a wagon load in cities where the service is installed, and it is difficult to put into practice the proposition which the gentleman submits, because there is a continuous stream of letters through the tube.

As long as there are letters to be sent either to the office or to one of the stations fed by the tube, this stream of letters keeps up. Now, I doubt whether there has ever been a time in actual practice where they took just the mail from one particular load and started it through one particular tube. So that in practice the theoretical proposition submitted by my friend from Kansas, I think, would never happen.

Mr. MURDOCK. The gentleman actually believes, then, that the pneumatic-tube service does facilitate the bulk of the first-class mail.

Mr. OVERSTREET. Unquestionably in these cities where it is in use.

Mr. FITZGERALD. The gentleman from Kansas overlooks the fact that it is distributed in the office as quickly as it arrives when it comes through the tube.

Mr. MURDOCK. I understand that out in Kansas City, Mo., where there is a provision for a pneumatic-tube service to carry the mail from the Union Depot to the post-office, the great bulk of the mail carried by wagons will arrive at the post-office before it will by pneumatic tube. I wish also to call the attention of the gentleman from Indiana [Mr. OVERSTREET] to this proposition, that by very reason of the large mail in cities, even if you do have an ever continuing line of mail through the pneumatic tube, from station to station or from railroad to station to post-office, the last part of any great bulk of mail is delayed and not facilitated.

Mr. STAFFORD. Mr. Chairman, I move to strike out the last word. The suggestion of the gentleman from Kansas [Mr. MURDOCK] that this service is unsuitable for short distances, such as that in Kansas City, I believe is confirmed by the opinion of post-office officials who have given any consideration whatever to this service. The value of this service lies not so much for short distances as where the distances are long and where the collections of mail are frequent. For instance, in Philadelphia they used that service originally between the main post-office and the Bourse substation, a distance of half a mile, and from the main station to the Reading terminal and Broad Street station. It was the opinion of the postal officials of that city that mail could be much more expeditiously dispatched to those points by wagon than by pneumatic tube; but in a city where you have trains arriving very frequently, as in New York City, where 90 per cent of all the mail arrives and de-

parts over the New York Central and the Pennsylvania railroads, it is of great value in dispatching the mail to the trains and from the trains to the many postal stations in the city.

Then, again, it is of value in the transmission of city mail, which is very large in New York, because, as gentlemen are aware, these tubes have connections with postal stations, and it would require an hour or more to have that mail carried by screened-wagon service, which is the only method of service in New York, whereas by this tube service it can be taken from Station H, at the New York Central depot, to the main post-office or to the Wall street station or to Brooklyn in the course of from six to twelve minutes.

Mr. MURDOCK. Will the gentleman yield?

Mr. STAFFORD. I will yield.

Mr. MURDOCK. I would like the gentleman to explain to the committee, if he can, why it is that these extensions have not been made in the cities named in the bill?

Mr. STAFFORD. To be frank with the gentleman, there is one company, though under different names, that operates this system in the five respective cities in which the service is now in operation. A few years ago there were two rival companies, but now one company has gained control of the entire system and owns some of the patents. Of course, there are different means of conveyance by pneumatic tube and other devices, but this company has control of one set of patents.

The reason why they have not been extended is largely because they have limited capital, and they can make more money by investing that capital in those cities where the cost of construction is less than in cities where the cost of construction is great. For example, the greatest extension of this service has been during the last two years in the city of Philadelphia. Until two years ago there was in the neighborhood of a mile and a half of service. At the present time there are nearly 4 miles in operation, and there are under contract 7.35 miles. There, as the gentleman from Philadelphia and others who are acquainted with the topography of that city know, it is easy to excavate to lay the tubes. They have no marshes there; and I have seen during the past two years the ease with which they have extended the pipes from the main post-office to the Fairmount Avenue station, and up to Columbia avenue and Tenth street, and another line of tubes from Columbia avenue to Ridge road, and still another south to the Snyder Avenue station.

In that city, which is the only city, I may say, where there have been any extensions during recent years, the company has utilized its available funds for the extension of the system. It was more profitable, as a bare statement of the subject will show that they could make more money by extending the system in one city than by branching it out by piecemeal in these other five cities where the service was very limited in extent, as, for instance, in Kansas City, where it was proposed to extend it not more than a mile and a half, and in Cincinnati about 1½ or 2 miles, and in Baltimore less than a mile, and where they would receive for those short distances the maximum of \$17,000 a mile.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STAFFORD. Mr. Chairman, I ask unanimous consent to proceed for five minutes.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. STAFFORD. In New York, I may say, the service is being extended in Brooklyn, and also in the outlying suburbs; but some of the extensions have been delayed because of the building of the new Pennsylvania station. In Chicago one of the difficulties encountered in the extension of the service has been the limitation in the franchise which provided that these tubes should revert to the city at the expiration of fifteen years. The company, as I stated a few moments ago, thought it was more practicable and a better investment, as their means were limited, to invest them in those localities where they did not have restrictions, and accordingly they have centered all their extensions there.

Mr. FITZGERALD. Will the gentleman yield to a question?

Mr. STAFFORD. I will.

Mr. FITZGERALD. Will the gentleman state who recommended the provisos that are contained in this paragraph?

Mr. STAFFORD. To which provisos does the gentleman refer?

Mr. FITZGERALD. The ones about the extraordinary tax and the one about the ultimate ownership of the property by cities. I have searched through the estimates and hearings and have been unable to find any recommendation by any official. I would be glad to know just who made this recommendation.

Mr. STAFFORD. If you will examine the hearings you will find that there are various communications that were sent to members of the committee protesting against the existing condi-

tions of the pneumatic-tube service in Chicago and also protesting against the continuation of the limitations in the franchise that prevented the extension of the service to the outlying suburbs which has been recommended by the board that investigated this system some few years ago.

Mr. FITZGERALD. Will the gentleman call my attention to where these communications can be found in the hearings? I have not been able to find them.

Mr. STAFFORD. On page 261 of the hearings and subsequent pages he will find a letter from Mr. David R. Forgan, president of the First National Bank, addressed to Mr. George W. Hinman, president of the Inter Ocean Publishing Company, Chicago, in which he directs attention to the general service in Chicago, and some other communications.

Mr. FITZGERALD. Will the gentleman tell me whether Mr. Forgan or his bank has any interest in this tube-service company or has been approached to finance this extension?

Mr. STAFFORD. There is nothing disclosed in the record and nothing presented to the committee that showed any interest on the part of Mr. Forgan except as a citizen of Chicago interested in the service.

Mr. FITZGERALD. The president of one national bank and the Pneumatic Tube Company itself wrote letters, and then there are some resolutions adopted by the chamber of commerce. I undertake to say, from what my experience has been, that a chamber of commerce in a large city will pass a resolution in favor of anything that can be suggested to a legislative body; and if that is the only thing upon which the recommendation has been based it does not impress me very much.

Mr. OVERSTREET. Mr. Chairman, it is quite evident that we can not conclude this paragraph this evening. I suggest that we stop at this point. I want to ask unanimous consent to recur to page 5, which I think will take just a minute.

Mr. MURDOCK. A parliamentary inquiry. Has a point of order been reserved to any part of this paragraph or the paragraph?

The CHAIRMAN. The point of order has been reserved against the paragraph.

Mr. OVERSTREET. At page 5 of the bill, the gentleman from Pennsylvania [Mr. WANGER], I understand, will withdraw his point of order against the proviso contained in lines 12, 13, 14, and 15. I desire to have that put back in the bill.

The CHAIRMAN. The gentleman from Indiana asks unanimous consent to return to a paragraph on page 5 of the bill for the purpose stated. Is there objection? [After a pause.] The Chair hears none.

Mr. WANGER. Mr. Chairman, being fully persuaded of the propriety of the provision as reported by the committee, I respectfully withdraw my point of order.

The CHAIRMAN. The Chair will state that the point of order being withdrawn, the Chair thinks the better practice would be for the gentleman from Indiana to move an amendment.

Mr. OVERSTREET. I move to reinsert in the bill lines 12, 13, 14, and 15, on page 5.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

After the word, "dollars," in page 5, line 12, insert:

"Provided, That hereafter a second assistant postmaster may be employed at the city of Chicago post-office at an annual compensation of \$2,500."

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Indiana.

The question was taken, and the amendment was agreed to.

Mr. GOEBEL. Mr. Chairman, several days ago I addressed the committee upon the question of ocean mail subsidy. I desire now to ask unanimous consent to extend my remarks in the RECORD upon that subject.

The CHAIRMAN. The gentleman from Ohio asks unanimous consent to extend in the RECORD some remarks made by him in committee on a former day concerning this bill. Is there objection? [After a pause.] The Chair hears none.

Mr. HOUSTON. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD on the amendment I offered.

The CHAIRMAN. The gentleman from Tennessee asks unanimous consent to extend the remarks made upon his amendment. Is there objection? [After a pause.] The Chair hears none.

Mr. OVERSTREET. I move that the committee do now rise. The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. OLMPSTED, Chairman of the Committee of the Whole House on state of the Union, reported that that committee had had under consideration the post-office appropriation bill and had come to no resolution thereon.

ENROLLED BILLS SIGNED.

Mr. WILSON of Illinois, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles, when the Speaker signed the same:

H. R. 9205. An act to make the provisions of an act of Congress approved February 28, 1891 (26 Stats., p. 796), applicable to the Territory of New Mexico; and

H. R. 16860. An act to establish a United States land district in the Territory of New Mexico to be known as the Tucumcari land district.

AGRICULTURAL APPROPRIATION BILL.

Mr. SCOTT, from the Committee on Agriculture, reported the bill (H. R. 19158) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1909, which was read a first and second time and, with the accompanying report, ordered to be printed and referred to the Committee of the Whole House on the state of the Union.

Mr. FITZGERALD. I reserve all points of order on the bill.

The SPEAKER. The gentleman from New York reserves all points of order.

ADJOURNMENT.

Mr. OVERSTREET. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to.

Accordingly (at 5 o'clock and 13 minutes p. m.) the House adjourned.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, the following executive communications were taken from the Speaker's table and referred as follows:

A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of fact and law in the French spoliation cases relating to the schooner *Hazard*, Barnabas Young, master—to the Committee on Claims and ordered to be printed.

A letter from the assistant clerk of the Court of Claims, transmitting a copy of the findings filed by the court in the case of Hans Peter Guttormsen against the United States—to the Committee on War Claims and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the several Calendars therein named, as follows:

Mr. VOLSTEAD, from the Committee on the Public Lands, to which was referred the bill of the House (H. R. 6283) permitting homestead entries upon certain lands in Whatcom County, Wash., being a portion of the "Point Roberts Reserve," reported the same with amendment, accompanied by a report (No. 1215), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. HAMILTON of Michigan, from the Committee on the Territories, to which was referred the joint resolution of the Senate (S. R. 37) disapproving certain laws enacted by the legislative assembly of the Territory of New Mexico, reported the same without amendment, accompanied by a report (No. 1216), which said resolution and report were referred to the House Calendar.

Mr. HAY, from the Committee on Military Affairs, to which was referred the bill of the House (H. R. 18689) to authorize the Secretary of War to furnish two condemned brass or bronze cannon and cannon balls to the city of Winchester, Va., reported the same with amendment, accompanied by a report (No. 1219), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, private bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the Committee of the Whole House, as follows:

Mr. TIRRELL, from the Committee on Claims, to which was referred the bill of the House (H. R. 10986) for the relief of L. H. Lewis, reported the same without amendment, accompanied by a report (No. 1211), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the

bill of the House (H. R. 10987) for the relief of A. A. Lewis, reported the same without amendment, accompanied by a report (No. 1212), which said bill and report were referred to the Private Calendar.

Mr. WALDO, from the Committee on War Claims, to which was referred the bill of the House (H. R. 8661) for the relief of the Richmond Light Infantry Blues, of Virginia, reported the same with amendment, accompanied by a report (No. 1214), which said bill and report were referred to the Private Calendar.

Mr. FULTON, from the Committee on Claims, to which was referred the bill of the House (H. R. 17344) for the relief of Frederick Daubert, reported the same without amendment, accompanied by a report (No. 1217), which said bill and report were referred to the Private Calendar.

Mr. CLAUDE KITCHIN, from the Committee on Claims, to which was referred the bill of the House (H. R. 5826) to pay the Woodward Carriage Company, of San Antonio, Tex., for the loss of a horse while being used by the Department of Agriculture, reported the same without amendment, accompanied by a report (No. 1218), which said bill and report were referred to the Private Calendar.

Mr. LOUDENSLAGER, from the Committee on Pensions, to which was referred the bill of the House (H. R. 19101) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the civil war, and to widows and dependent relatives of such soldiers and sailors, reported the same with amendment, accompanied by a report (No. 1220), which said bill and report were referred to the Private Calendar.

ADVERSE REPORT.

Under clause 2 of Rule XIII.

Mr. YOUNG, from the Committee on Military Affairs, to which was referred the bill of the House (H. R. 17556) to grant an honorable discharge from the military service to Robert C. Gregg, reported the same adversely, accompanied by a report (No. 1213), which said bill and report were laid on the table.

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. 618) granting a pension to Charles M. Baughman—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 11942) granting an increase of pension to Elizabeth Graham—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 16911) granting an increase of pension to Clara B. Mercur—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 15183) authorizing the Secretary of the Interior to issue patents in fee to the Protestant Episcopal Church for certain lands in Wisconsin set apart for the use of the said church for missionary purposes among the Oneida Indians—Committee on the Public Lands discharged, and referred to the Committee on Indian Affairs.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred as follows:

By Mr. HAMLIN: A bill (H. R. 19080) for the relief of postal employees—to the Committee on the Post-Office and Post-Roads.

By Mr. ACHESON: A bill (H. R. 19081) to promote efficiency among military officers—to the Committee on Military Affairs.

By Mr. GOULDEN: A bill (H. R. 19082) providing for the assembling, collecting, editing, and transmitting by the Secretary of War to Congress for printing as a public document for distribution the rolls of soldiers, sailors, and marines, and correspondence and reports relating to the war of the Revolution—to the Committee on Military Affairs.

By Mr. BURTON of Ohio: A bill (H. R. 19083) to prevent the disclosure of information concerning interstate shipments of any person, firm, or corporation by common carriers, their officers, agents, or employees, or persons having access to their records, to another person, firm, or corporation—to the Committee on Interstate and Foreign Commerce.

By Mr. HOWELL of Utah: A bill (H. R. 19084) to provide for the erection of a public building at the city of Ephraim, Utah—to the Committee on Public Buildings and Grounds.

By Mr. SMITH of Michigan: A bill (H. R. 19085) to amend section 691 of subchapter 7, building associations, of the Code of Law for the District of Columbia—to the Committee on the District of Columbia.

By Mr. FULTON: A bill (H. R. 19086) to establish a sub-treasury at Oklahoma City, Okla.—to the Committee on Ways and Means.

By Mr. SNAPP: A bill (H. R. 19087) to authorize the Secretary of War to furnish two condemned cannon to the Elgin Academy, Elgin, Ill.—to the Committee on Military Affairs.

By Mr. FOSS: A bill (H. R. 19088) to protect the uniform of the naval and military service of the United States—to the Committee on Naval Affairs.

By Mr. HUMPHREY of Washington: A bill (H. R. 19089) to encourage private salmon hatcheries in Alaska—to the Committee on the Merchant Marine and Fisheries.

By Mr. FOSS: A bill (H. R. 19090) to provide for the examination of certain officers of the Navy, and to regulate promotions and retirements therein—to the Committee on Naval Affairs.

Also, a bill (H. R. 19091) to provide for the arrest of deserters from the naval service of the United States—to the Committee on Naval Affairs.

Also, a bill (H. R. 19092) for the relief of certain commissioned and warrant officers appointed while serving in the Regular Navy—to the Committee on Naval Affairs.

Also, a bill (H. R. 19093) to amend section 1624, article 34, of the Revised Statutes—to the Committee on Naval Affairs.

Also, a bill (H. R. 19094) to authorize the Secretary of the Navy in certain cases to mitigate or remit the loss of rights of citizenship imposed by law upon deserters from the naval service—to the Committee on Naval Affairs.

By Mr. FRENCH: A bill (H. R. 19095) authorizing the Secretary of the Interior to sell isolated tracts of land within the Nez Perce Indian Reservation—to the Committee on Indian Affairs.

By Mr. SPARKMAN: A bill (H. R. 19096) to increase the limit of cost of a public building at the city of Ocala, in the State of Florida, and to authorize the erection and completion of such building—to the Committee on Public Buildings and Grounds.

By Mr. FAIRCHILD: A bill (H. R. 19097) awarding medals of honor to the officer and enlisted men of the Third Regiment New York Cavalry—to the Committee on Military Affairs.

By Mr. OLCOTT: A bill (H. R. 19098) for the establishment of an asylum for the criminal insane in the District of Columbia—to the Committee on the District of Columbia.

Also, a bill (H. R. 19099) for the erection of a building for the criminal insane in the District of Columbia—to the Committee on Public Buildings and Grounds.

By Mr. HUGHES of West Virginia: A bill (H. R. 19100) for the protection of the banks of the Guyandot River at Barboursville, Cabell County, W. Va.—to the Committee on Rivers and Harbors.

By Mr. LOUDENSLAGER, from the Committee on Pensions: A bill (H. R. 19101) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and certain soldiers and sailors of wars other than the civil war, and to widows and dependent relatives of such soldiers and sailors—to the Private Calendar.

By Mr. STEPHENS of Texas: A bill (H. R. 19156) to authorize the sale of the property and the migration of certain full-blood Indians, and for other purposes—to the Committee on Indian Affairs.

By Mr. FERRIS: A bill (H. R. 19157) to provide for the sale of the remnant of certain Indian pasture and wood reserve lands in Oklahoma, and for other purposes—to the Committee on Indian Affairs.

By Mr. SCOTT, from the Committee on Agriculture: A bill (H. R. 19158) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1909—to the Union Calendar.

By Mr. ANDREWS: Joint resolution (H. J. Res. 151) disapproving certain laws enacted by the legislative assembly of the Territory of New Mexico—to the Committee on the Territories.

Also, joint resolution (H. J. Res. 152) concerning the Navajo Indian Reservation in New Mexico—to the Committee on Indian Affairs.

By Mr. SMITH of California: Joint resolution (H. J. Res. 153) concerning the acquisition of a site for a public building

in the city of San Diego, Cal., and for other purposes—to the Committee on Public Buildings and Grounds.

By Mr. SCOTT: Resolution (H. Res. 294) for payment for services of a messenger to the Committee on Agriculture—to the Committee on Accounts.

Also, resolution (H. Res. 295) requesting the Secretary of Commerce and Labor to investigate the causes of the fluctuations in the price of grain, etc.—to the Committee on Interstate and Foreign Commerce.

By Mr. HARRISON: Resolution (H. Res. 296) requesting the President of the United States for certain information relative to the Panama Canal Zone—to the Committee on Interstate and Foreign Commerce.

By Mr. HULL of Iowa: Resolution (H. Res. 297) for pay for services of a messenger to the Committee on Military Affairs—to the Committee on Accounts.

By Mr. BURTON of Ohio: Concurrent resolution (H. C. Res. 33) for printing copies of preliminary report of the Inland Waterways Commission—to the Committee on Printing.

By Mr. HARRISON: Concurrent resolution (H. C. Res. 34) to provide for the printing of the proceedings attending the unveiling of the statue of Maj. Gen. George B. McClellan—to the Committee on Printing.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions of the following titles were introduced and severally referred as follows:

By Mr. ANDREWS: A bill (H. R. 19102) granting a pension to W. H. Gooden—to the Committee on Pensions.

Also, a bill (H. R. 19103) for the relief of F. Nerio Gomez—to the Committee on Claims.

By Mr. ASHBROOK: A bill (H. R. 19104) granting an increase of pension to William M. Seymour—to the Committee on Invalid Pensions.

By Mr. BARCLAY: A bill (H. R. 19105) granting an increase of pension to Newton Reed—to the Committee on Invalid Pensions.

By Mr. BROUSSARD: A bill (H. R. 19106) granting a pension to C. H. St. Clair—to the Committee on Pensions.

By Mr. BRUMM: A bill (H. R. 19107) granting an increase of pension to Robert M. McCormick—to the Committee on Invalid Pensions.

By Mr. BURNETT: A bill (H. R. 19108) for the relief of the heirs of Edward H. Wade, deceased—to the Committee on War Claims.

Also, a bill (H. R. 19109) granting an increase of pension to Malinda Foust—to the Committee on Pensions.

Also, a bill (H. R. 19110) granting a pension to Robert W. Burkart—to the Committee on Pensions.

By Mr. BURTON of Ohio: A bill (H. R. 19111) granting a pension to Carl Keyerleber—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19112) to correct the military record of Lora E. Reed—to the Committee on Military Affairs.

By Mr. CARLIN: A bill (H. R. 19113) for the relief of Julia T. W. Furlong, executrix of estate of Thomas Wrenn, deceased—to the Committee on War Claims.

By Mr. CARTER: A bill (H. R. 19114) to remove the restrictions upon the alienation, sale, incumbrance, or taxation of certain lands of W. H. L. Campbell, a citizen by intermarriage of the Chickasaw Nation—to the Committee on Indian Affairs.

By Mr. Chaney: A bill (H. R. 19115) granting an increase of pension to Joseph Dulieu—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19116) granting an increase of pension to Marquis L. Walts—to the Committee on Invalid Pensions.

By Mr. CHAPMAN: A bill (H. R. 19117) granting an increase of pension to Alexander Tuck—to the Committee on Invalid Pensions.

By Mr. COCKS of New York: A bill (H. R. 19118) granting a pension to Louise E. Eberle—to the Committee on Invalid Pensions.

By Mr. COOPER of Pennsylvania: A bill (H. R. 19119) granting an increase of pension to William Love—to the Committee on Invalid Pensions.

By Mr. DAVIDSON: A bill (H. R. 19120) to reimburse Andrew Noll, postmaster of Chilton, Wis., for damage to post office property by burglary—to the Committee on Claims.

By Mr. DOUGLAS: A bill (H. R. 19121) granting an increase of pension to Major Randolph—to the Committee on Invalid Pensions.

By Mr. FOCHT: A bill (H. R. 19122) granting a pension to Jacob H. Howell—to the Committee on Invalid Pensions.

By Mr. GAINES of Tennessee: A bill (H. R. 19123) to correct the lineal and relative rank of Granville Sevier, captain, Coast Artillery Corps, United States Army—to the Committee on Military Affairs.

By Mr. GILHAMS: A bill (H. R. 19124) for the relief of the estate of J. Calvin Kinney, deceased—to the Committee on Claims.

By Mr. HARDING: A bill (H. R. 19125) granting an increase of pension to Joseph D. Callaghan—to the Committee on Invalid Pensions.

By Mr. HELM: A bill (H. R. 19126) granting an increase of pension to Lytle Kays—to the Committee on Invalid Pensions.

By Mr. HOWELL of Utah: A bill (H. R. 19127) granting a pension to Helen M. Morgan—to the Committee on Invalid Pensions.

By Mr. HUGHES of New Jersey: A bill (H. R. 19128) granting an increase of pension to Charles M. Titus, Jr.—to the Committee on Invalid Pensions.

By Mr. HULL of Tennessee: A bill (H. R. 19129) for the relief of the heirs of James D. White, deceased—to the Committee on War Claims.

By Mr. JENKINS: A bill (H. R. 19130) granting an increase of pension to Christian Evenson—to the Committee on Invalid Pensions.

By Mr. LANGLEY: A bill (H. R. 19131) granting an increase of pension to Robert Elliott—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19132) granting an increase of pension to John Owens—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19133) granting a pension to Caleb Chearnault—to the Committee on Pensions.

Also, a bill (H. R. 19134) granting a pension to Frank P. Collins—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19135) for the relief of the legal representatives of Adam Baum—to the Committee on War Claims.

Also, a bill (H. R. 19136) to correct the military record of Henry Ritchie—to the Committee on Military Affairs.

By Mr. McCREARY: A bill (H. R. 19137) granting an increase of pension to Abram P. Eaton—to the Committee on Invalid Pensions.

By Mr. MCKINLAY of California: A bill (H. R. 19138) granting an increase of pension to John Winter—to the Committee on Pensions.

Also, a bill (H. R. 19139) granting an increase of pension to Billings A. Clark—to the Committee on Pensions.

By Mr. MONDELL: A bill (H. R. 19140) to donate certain carriages, caissons, and equipments to General O. O. Howard Post, No. 110, Grand Army of the Republic, of Basin, Wyo.—to the Committee on Military Affairs.

By Mr. MOUSER: A bill (H. R. 19141) for the relief of the heirs at law and legal representatives of Asahel Bliss—to the Committee on War Claims.

By Mr. NYE: A bill (H. R. 19142) granting an increase of pension to William Ray—to the Committee on Invalid Pensions.

By Mr. PATTERSON: A bill (H. R. 19143) granting an increase of pension to Patrick P. Toale—to the Committee on Invalid Pensions.

By Mr. PUJO: A bill (H. R. 19144) granting an increase of pension to Paul Sullivan, alias Matthias G. Clark—to the Committee on Invalid Pensions.

By Mr. RODENBERG: A bill (H. R. 19145) for the relief of David Ryan—to the Committee on Claims.

By Mr. SMITH of Missouri: A bill (H. R. 19146) granting an increase of pension to George Leadbetter—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19147) granting an increase of pension to Benjamin F. Pew—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19148) granting an increase of pension to Andrew J. Williams—to the Committee on Invalid Pensions.

By Mr. SULLOWAY: A bill (H. R. 19149) granting a pension to Sarah J. Davis—to the Committee on Invalid Pensions.

By Mr. THISTLEWOOD: A bill (H. R. 19150) granting an increase of pension to Joseph M. Smith—to the Committee on Invalid Pensions.

Also, a bill (H. R. 19151) granting an increase of pension to Jacob Taylor—to the Committee on Invalid Pensions.

By Mr. TIRRELL: A bill (H. R. 19152) for the relief of Paul Butler—to the Committee on Claims.

By Mr. BURNETT: A bill (H. R. 19153) granting a pension to Pauline E. Hauk—to the Committee on Pensions.

By Mr. RHINOCK: A bill (H. R. 19154) to correct the military record of Conrad Seither—to the Committee on Military Affairs.

Also, a bill (H. R. 19155) granting a pension to Sarah Moore—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 Liberal Alliance, of Los Angeles, and 480 similar organizations, against legislation to restrict interstate commerce in beer and wine—to the Committee on the Judiciary.

By Mr. ACHESON: Petition of Branch No. 93, Glass Blowers' Association of the United States and Canada, against S. 2926 (Tillman bill)—to the Committee on the District of Columbia.

Also, petition of Local Union No. 266, United Mine Workers of America, against S. 1518—to the Committee on the Post-Office and Post-Roads.

Also, petitions of citizens of New Brighton, Rochester, and Beaver Falls, Pa., for an international court of arbitration—to the Committee on Foreign Affairs.

By Mr. ANTHONY: Petition of sundry officers of the Hanoverian army who came to America during the civil war, for a volunteer officers' retired list—to the Committee on Military Affairs.

By Mr. ASHBROOK: Paper to accompany bill for relief of Caroline M. Douglas—to the Committee on Pensions.

By Mr. BATES: Petition of Reed Manufacturing Company, of Erie, Pa., for Gallinger amendment to shipping bill—to the Committee on the Merchant Marine and Fisheries.

Also, petition of citizens of Crawford County, Pa., for additional protection to dairy interests—to the Committee on Agriculture.

Also, petition of Muncie Iron Works, of Erie, Pa., favoring Fulton amendment to interstate commerce law (S. 423)—to the Committee on Interstate and Foreign Commerce.

By Mr. BIRDSALL: Petition of Independence Tobacco Manufacturers, against H. R. 17520—to the Committee on Ways and Means.

Also, petitions of S. J. Stack, Clarence Warren, and D. W. Rand, of Dubuque, Iowa, for battle-ship building at navy-yards—to the Committee on Naval Affairs.

By Mr. BRADLEY: Petition of Shawagunk Grange, Patrons of Husbandry, of Minisink, N. Y., for H. R. 15837, for a national highway commission—to the Committee on Agriculture.

By Mr. BRICK: Petition of St. Joseph Valley Grange, No. 584, of South Bend, Ind., for a national highway commission—to the Committee on Agriculture.

Also, petition of William Landon Post, No. 290, Grand Army of the Republic, for the Sherwood pension bill (H. R. 4038)—to the Committee on Invalid Pensions.

By Mr. BURKE: Petition of William McMahon, against sale of intoxicants on all Government property—to the Committee on Alcoholic Liquor Traffic.

By Mr. BURNETT: Papers to accompany bills for relief of heirs of Edward H. Wade and Solomon Kean—to the Committee on War Claims.

By Mr. BURTON of Ohio: Petition of United Mine Workers of America, for amendment to Constitution against disfranchisement of woman—to the Committee on the Judiciary.

Also, petition of veterans of the civil war, for repeal of section 3 of service-pension act of February 6, 1907, and in lieu a reasonable attorney's fee be allowed as per pension act of July 4, 1884—to the Committee on Invalid Pensions.

By Mr. CALDER: Petition of Association of American Directory Publishers, for the Kittredge copyright bill—to the Committee on Patents.

By Mr. CAPRON: Petition of Bryan, Marsh Company, of Central Falls, R. I., against child-labor bill—to the Committee on Labor.

Also, petition of Davisville (R. I.) Grange, Patrons of Husbandry, for a national highway commission—to the Committee on Agriculture.

By Mr. CHANEY: Paper to accompany bill for relief of Maryius L. Waits—to the Committee on Invalid Pensions.

By Mr. CLARK of Florida: Petition of officers of First National Bank of Madison, Fla., for the Fowler currency bill—to the Committee on Banking and Currency.

By Mr. COOPER of Texas: Petition of Sam Roker and 11

other citizens of Jacksonville, Tex., against S. 1518 (Penrose amendment)—to the Committee on the Post-Office and Post-Roads.

Also, petition of Oscar Ackerman and members of Electrical Workers' Local No. 221, for battle-ship building in navy-yards—to the Committee on Naval Affairs.

By Mr. DAVEY of Louisiana: Petition of William Growland, jr., and others, of New Orleans, La., for telegraph investigation—to the Committee on Interstate and Foreign Commerce.

By Mr. DAVIS of Minnesota: Petition of Travelers and Merchants' Association of Baltimore, for the Fowler currency bill (H. R. 12677)—to the Committee on Banking and Currency.

By Mr. DRAPER: Petition of board of managers of Sons of the Revolution, of New York State, for appropriation to print and preserve certain papers and documents of the American Revolution—to the Committee on Printing.

By Mr. DUNWELL: Petition of American Newspaper Publishers' Association, for repeal of duty on white paper and wood pulp—to the Committee on Ways and Means.

Also, petition of Association of American Directory Publishers, against the Currler copyright bill—to the Committee on Patents.

Also, petition of Munson Steamship Line, of New York, for the Gallinger amendment to the shipping bill—to the Committee on the Merchant Marine and Fisheries.

Also, petition of Western Pine Manufacturers' Association, for H. R. 16096, relative to timber preservation—to the Committee on Agriculture.

Also, petition of R. J. Caldwell, of New York City, for H. R. 186, relative to Medical Department in the Army—to the Committee on Military Affairs.

By Mr. EDWARDS of Kentucky: Paper to accompany bill for relief of Charles W. Gilbert (previously referred to the Committee on Invalid Pensions)—to the Committee on Pensions.

By Mr. ELLIS of Oregon: Paper to accompany bill for relief of John W. Boals—to the Committee on Invalid Pensions.

By Mr. FLOOD: Petition of Central Trades and Labor Council of Roanoke, Va., for an eight-hour law—to the Committee on Labor.

Also, petition of Central Trades and Labor Council of Roanoke, Va., for legislation to regulate restraining orders and injunctions and procedure thereon, and to limit meaning of conspiracy in certain cases—to the Committee on the Judiciary.

By Mr. FOCHT: Paper to accompany bill for relief of James K. Snyder—to the Committee on Invalid Pensions.

By Mr. FORNES: Petition of Local Union No. 11, Amalgamated Sheet Metal Workers' International Alliance, of New York City, for battle-ship building at Brooklyn Navy-Yard—to the Committee on Naval Affairs.

Also, petition of New York Chapter, American Institute of Architects, against change of site of the Grant Memorial—to the Committee on the Library.

Also, petition of National Association of Clothiers, of New York, against the Aldrich bill and in favor of the Fowler currency bill—to the Committee on Banking and Currency.

By Mr. FULLER: Petition of United Mine Workers of America, against disfranchisement of citizens of United States on account of sex—to the Committee on the Judiciary.

Also, petition of H. A. Riedel Investment Company, for post-office savings banks—to the Committee on the Post-Office and Post-Roads.

By Mr. FULTON: Petition of Oklahoma State Federation of Labor, for the Rodenberg anti-injunction bill (H. R. 17137) and for Sterling employers' liability bill (H. R. 17036)—to the Committee on the Judiciary.

Also, paper to accompany bill for relief of Ephraim Lamborn—to the Committee on Military Affairs.

Also, petition of George H. Dand and others, against the Penrose amendment—to the Committee on the Post-Office and Post-Roads.

Also, petition of citizens of Caddo County, Okla., for a bureau of mines and mining—to the Committee on Mines and Mining.

By Mr. GAINES of Tennessee: Paper to accompany bill for relief of Granville Sevier—to the Committee on Pensions.

By Mr. GOLDFOGLE: Petition of North Side Board of Trade, for an annual appropriation bill for rivers and harbors—to the Committee on Rivers and Harbors.

By Mr. GOULDEN: Petition of United Mine Workers of America, for the Pearre bill—to the Committee on the Judiciary.

Also, petition of United Mine Workers of America, against the Dayton decision—to the Committee on the Judiciary.

Also, petition of United Mine Workers of America, for the McHenry bill, relative to a school of mines—to the Committee on Mines and Mining.

By Mr. GRAHAM: Petition of J. W. Welch, for H. R. 10457, for forest reservations in White Mountains and Southern Appalachian Mountains—to the Committee on Agriculture.

By Mr. GRONNA: Petition of Local Union No. 4700, American Society of Equity, of Valley City, N. Dak., for passage of the McCumber bill, for Federal grain inspection and prohibition of trade options—to the Committee on Interstate and Foreign Commerce.

Also, petition of Energetic Lodge, No. 3, Brotherhood of Locomotive Firemen and Engineers, of Jamestown, N. Dak., for La Follette-Sterling liability bill, the Clapp free-pass amendment, and the Rodenberg anti-injunction bill—to the Committee on the Judiciary.

Also, petition of citizens of Olsen, N. Dak., against Penrose bill (S. 1518)—to the Committee on the Post-Office and Post-Roads.

By Mr. HAMILTON of Iowa: Paper to accompany bill for relief of Sylvester Hendrix—to the Committee on Invalid Pensions.

By Mr. HENRY of Texas: Petition of A. C. Hall and others, for H. R. 15123 and 15267 and S. 4395, for control of telegraph companies—to the Committee on Interstate and Foreign Commerce.

By Mr. HILL of Connecticut: Petition of citizens of Thomaston, Conn., for Littlefield original-package bill—to the Committee on the Judiciary.

Also, petition of Central Labor Union of Meriden, Conn., for battle ship building in navy-yards—to the Committee on Naval Affairs.

Also, petition of A. W. Burritt and others, of Bridgeport, Conn., for forest reservations in White Mountains and Southern Appalachian Mountains—to the Committee on Agriculture.

Also, petitions of Schwaebischer Maennerchor, Germania Singing Society, M. G. V. Society "Arion," German-American Association, Bavarian S. B. Society, St. Joseph's K. B. Society, and St. Michael S. B. Society, all of Bridgeport, Conn., against interstate liquor legislation—to the Committee on the Judiciary.

By Mr. HOWELL of New Jersey: Petition of William Smith, of Sayersville, N. J., for amendment of copyright laws to protect composers—to the Committee on Patents.

Also, petition of Brotherhood of Engineers and Firemen of Phillipsburg, N. J., for the La Follette employers' liability bill—to the Committee on the Judiciary.

Also, petition of Painters, Decorators, and Paperhangers' Union of Fair Haven, N. J., against prohibition in the District of Columbia—to the Committee on the District of Columbia.

Also, petition of Anchor Grange, of Cassville, N. J., for national highway commission—to the Committee on Agriculture.

Also petition of Liberty Grange, of New Jersey, for national highway commission—to the Committee on Agriculture.

By Mr. HOWELL of Utah: Petition of Local Union No. 8, of Salt Lake City, for repeal of duty on paper and pulp—to the Committee on Ways and Means.

Also, petition of Al Hanson, James Plymate, and others, against S. 1518—to the Committee on the Post-Office and Post-Roads.

Also, petition of Wasatch Lodge, No. 388, Brotherhood of Railway Trainmen, for H. R. 17036 (La Follette-Sterling liability bill)—to the Committee on the Judiciary.

Also, petition of Bingham Canyon Industrial Union, No. 93, against S. 1518—to the Committee on the Post-Office and Post-Roads.

By Mr. HUBBARD of Iowa: Petition of officers and men of Company H, Fifty-sixth Iowa National Guard, for S. 4316 and H. R. 14783, promoting efficiency of militia—to the Committee on Militia.

By Mr. HUMPHREY of Washington: Petition of Free Methodist Church of Arlington, against sale of intoxicants in Government buildings or on Government grounds—to the Committee on Alcoholic Liquor Traffic.

Also, petition of Free Methodist Church, for Sunday closing of the Alaska-Yukon-Pacific Exposition at Seattle in 1909—to the Committee on Industrial Arts and Expositions.

By Mr. LAFEAN: Petition of citizens of Red Lion, Pa., against amendment to section 3803 of the Revised Statutes (Penrose amendment)—to the Committee on the Post-Office and Post-Roads.

By Mr. LINDBERGH: Petition of citizens of Grey Eagle, Minn., against S. 1518, relating to second-class mail matter exclusion from mails, etc.—to the Committee on the Post-Office and Post-Roads.

By Mr. LINDSAY: Petition of New York Chapter of American Institute of Architects, against change in site of Grant Memorial—to the Committee on the Library.

Also, petition of Logan Iron Works, of Brooklyn, N. Y., for Gallinger amendment to shipping bill—to the Committee on the Merchant Marine and Fisheries.

Also, petition of Music Engravers' Union, for amendments to both Kittredge and Currier copyright bills—to the Committee on Patents.

Also, petition of A. H. De Haven, against the Hepburn bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of American Musical Copyright League, for the Currier bill—to the Committee on Patents.

Also, petition of Travelers and Merchants' Association of Baltimore, against the Aldrich and for the Fowler currency bill—to the Committee on Banking and Currency.

Also, petition of Munson Steamship Line, of New York City, for the Gallinger amendment to the shipping bill—to the Committee on the Merchant Marine and Fisheries.

Also, petition of board of managers of the Sons of the Revolution of New York, for appropriation to print and preserve certain documents of the American Revolution—to the Committee on Printing.

Also, petition of Association of American Directory Publishers, against the Currier copyright bill—to the Committee on Patents.

Also, petition of Joseph Hart, for the Kittredge and Barchfeld copyright bill—to the Committee on Patents.

By Mr. LOWDEN: Petition of National Business League of America, for widening and deepening of Pearl Harbor—to the Committee on Rivers and Harbors.

By Mr. MOORE of Pennsylvania: Petition of Travelers and Merchants' Association of Baltimore, for the Fowler currency bill—to the Committee on Banking and Currency.

Also, petition of Lodge No. 511, Brotherhood of Railway Trainmen, of Philadelphia, Pa., for S. 5307 and H. R. 17036 (La Follette-Sterling bill)—to the Committee on the Judiciary.

Also, petition of Lodge No. 511, Brotherhood of Railway Trainmen, of Philadelphia, Pa., for S. 4260 (Clapp free-pass amendment)—to the Committee on Interstate and Foreign Commerce.

Also, petition of Lodge No. 511, Brotherhood of Railway Trainmen, of Philadelphia, Pa., for H. R. 17137 (Rodenberg anti-injunction bill)—to the Committee on the Judiciary.

By Mr. NORRIS: Petition of sundry citizens of the United States, against religious legislation in the District of Columbia—to the Committee on the District of Columbia.

By Mr. OLCOTT: Petition of United Brotherhood of Carpenters and Joiners of America, of New York State, for battle-ship building in navy-yards of the country—to the Committee on Naval Affairs.

By Mr. PUJO: Paper to accompany bill for relief of Paul Sullivan—to the Committee on Invalid Pensions.

By Mr. RHINOCK: Petition of Golden Grange, of Union, Boone County, Ky., for a national highway commission—to the Committee on Agriculture.

Also, petition of citizens of Cincinnati and Covington, for battle-ship building in navy-yards—to the Committee on Naval Affairs.

Also, paper to accompany bill for relief of John McKibben—to the Committee on War Claims.

By Mr. RIORDAN: Petition of National Association of Clothiers, against the Aldrich and for the Fowler currency bill—to the Committee on Banking and Currency.

Also, petition of Andrew Carnegie and other citizens of New York, against extravagance in battle-ship building—to the Committee on Naval Affairs.

By Mr. SMITH of Michigan: Paper to accompany bill for relief of Harriet C. Mercur—to the Committee on Pensions.

By Mr. SULZER: Petitions of Munson Steamship Line of New York and the Herring and Hall and Marvin Safe Company, for the Gallinger amendment to shipping act of March 3, 1891—to the Committee on the Merchant Marine and Fisheries.

By Mr. TIRRELL: Paper to accompany bill for relief of Paul Butler—to the Committee on Claims.

By Mr. TOWNSEND: Petition of Brotherhood of Railway Trainmen of Gladstone, Mich., for Sterling-La Follette liability bill—to the Committee on the Judiciary.

Also, petition of Brotherhood of Locomotive Engineers, Division No. 2, of Jackson, Mich., for H. R. 17137 and S. 4260 (enlargement of powers of Interstate Commerce Commission)—to the Committee on Interstate and Foreign Commerce.

SENATE.

THURSDAY, March 12, 1908.

Prayer by the Chaplain, Rev. EDWARD E. HALE.

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

The VICE-PRESIDENT. The Journal stands approved.

CHOCTAW AND CHICKASAW CITIZENSHIP COURT.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting, by direction of the President and in response to a resolution of the 2d instant, certain information relative to the charge that certain members of the Choctaw and Chickasaw court were bribed in connection with certain decisions rendered by them, etc., which was referred to the Committee on Indian Affairs and ordered to be printed.

JAMES BIGLER V. UNITED STATES.

The VICE-PRESIDENT laid before the Senate a communication from the assistant clerk of the Court of Claims, with an accompanying order of the court, requesting the return of the findings in the cause of James Bigler *v.* United States, No. 10432, Congressional, certified under date of December 3, 1904, which, with the accompanying paper, was referred to the Committee on Claims and ordered to be printed.

FRENCH SPOILIATION CLAIMS.

The VICE-PRESIDENT laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting the findings of fact and conclusions of law filed under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings by the court relating to the vessel schooner *Hazard*, Barnabus Young, master, which, with the accompanying papers, was referred to the Committee on Claims and ordered to be printed.

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 James Davison *v.* United States;

In the cause of the Trustees of the Mount Olivet Primitive Baptist Church, of Phillipi, W. Va., *v.* United States;

In the cause of the Secretary and Treasurer of Harrison Masonic Lodge, No. 122, of Brandenberg, Ky., *v.* United States;

In the cause of the Trustees of the Baptist Church of Brandenberg, Ky., *v.* United States; and

In the cause of the Missionary Baptist Church of Antioch, Tenn., *v.* United States.

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

ENROLLED BILLS SIGNED.

A message from the House of Representatives, by Mr. C. R. MCKENNEY, its enrolling clerk, announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the Vice-President:

H. R. 9205. An act to make the provisions of an act of Congress approved February 28, 1891 (26 Stats., p. 796), applicable to the Territory of New Mexico; and

H. R. 16860. An act to establish a United States land district in the Territory of New Mexico to be known as the Tucumeari land district.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a petition of the Retail Lumber Dealers' Association of Indiana, praying that an appropriation be made for the improvement of the inland waterways of the country, which was referred to the Committee on Commerce.

He also presented a petition of the town council of Guttenberg, Iowa, and a petition of the town council of Stillwater, Minn., praying that an appropriation be made for the improvement of the upper Mississippi River, which were referred to the Committee on Commerce.

He also presented a petition of the Eastern States Retail Lumber Dealers' Association, praying for the enactment of legislation providing for the taking of the census of the standing timber, which was referred to the Committee on the Census.

He also presented a petition of the Eastern States Retail Lumber Dealers' Association, praying for the enactment of legislation to establish a national forest reserve in the Southern Appalachian and White Mountains, which was referred to the Committee on Forest Reservations and the Protection of Game.