John W. McClaren,
Alexander Macomb,
Moses K. Goodridge,
William F. Callaway,
Frederick Balzly,
William C. Barnes,
Wells E. Goodhue,
Wallace B. Phillips,
Solon E. Rose,
Franz B. Melendy,
Frederick L. Riefkohl,
Joseph R. Mann, jr.,
Daniel S. McQuarrie,
Harry D. McHenry,
John F. Meigs, jr.,
John W. Gates,
Van Leer Kirkman, jr.,
Philip R. Baker,
Harvey S. Haislip,
Harrison R. Glennon,
Ralph E. Dennett,
George F. Parrott, jr.,
Charles G. McCord,
Alfred S. Wolfe,
Ralph C. Lawder,
Andes H. Butler,
Eugene T. Oates,
Harry W. Stark,
Roy W. Lewis,
Marion C. Cheek,
Richard S. Field,
Robert P. Molten, jr.,
Harry R. Bogusch,
Eugene C. Sweeney,
Samuel G. Strickland,
Jay K. Esler,
William J. Butler,
Robert H. English,
George C. Fuller,
Lambert Lamberton,
Bushrod B. Howard,
George D. Murray,
Carroll Q. Wright, jr.,
Oliver M. Read, jr.,
Joseph M. B. Smith,
George J. McMillin,
William H. O'Brien,
Howard F. Kingman,
John A. Baird,
John T. Melvin,
Howard S. Keep,
James G. B. Gromer,
William M. Quigley,
Rivers J. Carstarphen,
Albert R. Mack,
John A. L. Zenor,
Calvin H. Cobb,
Henry S. M. Clay,
William D. Ford,
Robert B. Simons,
Lee C. Carey,
John H. Holt, jr.,
Norman Scott,
Glenn A. Smith,
Conrad Ridgely,
Donald C. Godwin,
Richard P. Myers,
Webb C. Hayes,
Howard Bode,
Jay L. Kerley,
Harold E. Snow,
Robert M. Doyle, jr.,
Richard H. Booth,
Morton L. Deyo,
Harold T. Bartlett, and
Robert M. Hinckley.

POSTMASTERS.

MISSOURI.

John W. S. Dillon, Grant City.

PENNSYLVANIA.

Frank E. Hartz, Palmyra.
Dallas J. Smith, Parsons.
William Williams, Great Bend.

HOUSE OF REPRESENTATIVES.

MONDAY, *March 18, 1912.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Father in heaven, our hearts go out in gratitude to Thee for all the great, the pure, the strong, the noble, self-sacrificing men whom Thou hast raised up in every age to be the bearers of righteousness, truth, and justice, and to-day we join our hearts in thanksgiving and praise with the thousands who are celebrating the birth of Ireland's patron saint. We thank Thee for his life and character, which have lived through the ages and become the inspiration of thousands to do the work of the good Samaritan under the spiritual leadership of the Master. Help us to emulate his virtues and to do the work Thou hast given us to do with the same courage and fortitude which characterized his life, and Thine be the praise through Jesus Christ our Lord. Amen.

The Journal of the proceedings of Saturday, March 16, 1912, was read and approved.

Mr. BOEHNE assumed the chair as Speaker pro tempore.

HYDRO-ELECTRIC CO. (H. DOC. NO. 714).

Mr. RAKER. Mr. Speaker, on Calendar Wednesday last, March 13, 1912, we had up for consideration the so-called hydro-electric bill, H. R. 12572. In my argument I used the testimony and record before the circuit court upon that bill. It is an important matter to me and an important matter to my district. I ask unanimous consent that I may have the opportunity to print that record as a House document. The subject is not yet settled, and I desire to have it so that it may be used later by the Members of Congress.

The SPEAKER. What is the record?

Mr. RAKER. It is the record before the United States Circuit Court of the Ninth Judicial Circuit, Northern District of California—the case of United States of America *v.* Hydro-Electric Co.

The SPEAKER. The gentleman from California asks unanimous consent to have the record in the matter referred to in the United States Circuit Court, Ninth Judicial Circuit, Northern District of California, printed as a public document. Is there objection?

Mr. MANN. Mr. Speaker, reserving the right to object, does the gentleman wish to have the entire record printed?

Mr. RAKER. Yes; the complaint and answer and the testimony, with the affidavits, maps, and exhibits.

Mr. MANN. That is the testimony taken before the master in chancery?

Mr. RAKER. Yes.

Mr. MANN. How long will it be?

Mr. RAKER. From 150 to 250 pages of printed matter. It might be longer, but I do not believe so.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none, and it is so ordered.

BURIAL OF REMAINS OF SAILORS, U. S. S. "MAINE" (H. DOC. NO. 630).

The SPEAKER laid before the House the following letter from the President of the United States:

THE WHITE HOUSE,
Washington, March 16, 1912.

Hon. CHAMP CLARK,
Speaker of the House of Representatives.

MY DEAR MR. SPEAKER: A memorial service for the dead of the (old) U. S. S. *Maine* will be held at the south front of the State, War, and Navy Department Building, Washington, at 2.30 o'clock p. m., Saturday, March 23, 1912, and immediately thereafter the remains of the men lately recovered from the wreck of that vessel at Habana will be interred with full military honors at Arlington National Cemetery.

I deem it desirable and fitting that the proposed ceremonies should be regarded as a national tribute to the ill-fated *Maine* and to the officers and enlisted men of her crew who lost their lives in the service of our country; and I have the honor to suggest that the Congress take such action as it may deem appropriate with a view to attending the memorial service and to making formal recognition of the occasion.

Sincerely, yours,

WM. H. TAFT.

The SPEAKER. This will be ordered printed and referred to the Committee on Naval Affairs.

LEVEES, EAST SIDE OF MISSISSIPPI RIVER.

Mr. HUMPHREYS of Mississippi. Mr. Speaker, I ask unanimous consent to take from the House Calendar Senate concurrent resolution 18 and consider it at this time.

The SPEAKER. The Clerk will report the resolution.

The Clerk read as follows:

Senate concurrent resolution 18.

Resolved by the Senate (the House of Representatives concurring), That the Secretary of War be requested to make a supplemental or additional report or estimate concerning the work of levee construction in

the improvement of the navigability of the Mississippi River on the east bank thereof from Vicksburg to Bayou Sara for use in connection with S. 4353, being a bill to aid in construction of levees and embankments on the east side of the Mississippi River.

The SPEAKER. Is there objection?

Mr. MANN. Mr. Speaker, reserving the right to object, I would like to inquire why this should be passed at this time?

Mr. HUMPHREYS of Mississippi. Mr. Speaker, in answer to the inquiry of the gentleman from Illinois, I will state that this is an exceptional case, and one that I think can not be cited hereafter as a precedent for any violation of the rule in taking it up except upon the day when the Unanimous Consent Calendar is in order. There is a bill now pending before the Commerce Committee in the Senate, which looks to making an appropriation for building a levee on the Mississippi River south of Vicksburg, in front of a narrow strip of territory. The strip is so narrow, although there are contained within it about 500,000 acres, and the levee therefore so long that the people who are behind the levee have not themselves been able to raise the money with which to build it. The result is that this land has been overflowed to a very great depth by reason of the construction of the levees elsewhere. It is the insistence of those people that their lands have been "taken" within the purview of the Constitution. That bill has been introduced in the Senate, and the Senate Commerce Committee called upon the War Department for additional information upon the subject, but under the law the Chief of Engineers can not make any supplementary or additional report after he has once made his report upon a project, except in response to a concurrent resolution. So, when the Commerce Committee passed a resolution and sent it to the Secretary of War asking him for this additional information the request was returned with a citation to the statute. Therefore a concurrent resolution was then introduced in the Senate and passed. The reason why it is necessary to pass the resolution to-day is this: A hearing has been arranged for next Thursday before the Committee on Commerce of the Senate upon this particular matter. Gentlemen from a distance who are interested in the matter will be here upon that day, and the Senate Commerce Committee is anxious to have this additional information on hand when that hearing takes place. The matter was sent over here and referred to the Committee on Rivers and Harbors, and they have reported this resolution.

I expected to get it passed to-day when the Unanimous Consent Calendar was called, but that, as the gentleman knows, has been put over until Thursday, and if we wait until Thursday to get up the Unanimous Consent Calendar it will then be too late to obtain the information for the Senate.

Mr. MANN. The gentleman will notice that if the Unanimous Consent Calendar were being called to-day this resolution would not be in order.

Mr. HUMPHREYS of Mississippi. Because it was not put there in time?

Mr. MANN. It has not been on the calendar long enough. As I understand, the gentleman's request is for the purpose of getting information to be used by the Senate, by their request, for the hearing on Thursday before the Commerce Committee?

Mr. HUMPHREYS of Mississippi. And just as courtesy to the Senate I ask that the rule be suspended.

Mr. MANN. Is this information now in the hands of the War Department so that they can come and make a report?

Mr. HUMPHREYS of Mississippi. Yes. The engineers state that they have the information and they could give it to the committee, except for the fact that the law forbids it.

Mr. MANN. And there is no expense?

Mr. HUMPHREYS of Mississippi. None.

The SPEAKER. Is there objection to the consideration of the resolution? [After a pause.] The Chair hears none.

The question is on agreeing to the Senate concurrent resolution.

The question was taken, and the resolution was agreed to.

THE EXCISE-TAX BILL.

Mr. UNDERWOOD. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 21214) to extend the special excise tax now levied with respect to doing business by corporations to persons, and to provide revenue for the Government by levying a special excise tax with respect to doing business by individuals and copartnerships.

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 bill H. R. 21214, with Mr. MOON of Tennessee in the chair.

Mr. UNDERWOOD. Mr. Chairman, I yield to the gentleman from Alabama [Mr. CLAYTON].

[Mr. CLAYTON addressed the committee. See Appendix.]

Mr. UNDERWOOD. Mr. Chairman, I yield one hour to the gentleman from New York [Mr. LITTLETON]. [Applause.]

Mr. LITTLETON. Mr. Chairman, I have been so profoundly impressed with my own limitations and the well-nigh boundless extent of the general subject involved that I have been in doubt, as I have attempted to investigate the subject from day to day, as to whether I should attempt to present my views to the House at all. And yet I have felt, as no doubt most of my colleagues feel, that we are taking a very important step and that we are dealing with a subject which goes to the roots of the powers of the Federal Government as outlined in the Constitution. I have felt, under such circumstances, that however well or ill a Member may make his contribution to the discussion, however incomplete his argument, however unsatisfactory his research, however inadequate the support he gives to his argument, he owes it to his brothers, to the country, and to himself to take some position and to present his views.

The taxing power of the Federal Government, as it is familiarly known to us all, is found in section 8 of Article I of the Constitution. About this section there has for more than a hundred years revolved a controversy of construction and disputation which has found its reflection in the action of political factions and in the trend of judicial decision. And yet, if I can, I intend to disassociate from the discussion which I am about to enter upon anything of a partisan, political nature, in an effort to ascertain the meaning, bearing, and effect of this bill as it relates to section 8 of Article I of the Constitution. It is as follows:

> SEC. 8. The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

If you turn to section 2 of Article I, which has been, of course, affected by the fourteenth amendment, we find:

> Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons. * * *

If you turn to section 9, you find:

> No capitation or other direct tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken.

In these sections, Mr. Chairman, is embodied the grant and the limitations of the grant made to the Federal Government for the levying and collecting of taxes. But in order to understand the impotency of the Articles of Confederation, in order to understand that there was to be erected on the ruins of that old Confederation a great constitutional Government, in order to understand that we were now to abandon, if you please, the fatuous policy of some Æchean league and to establish in the heart of a nation a great organic instrument, we must recur to the provisions of the Articles of Confederation and discover, if we may, the kinship between some of these sections of the Constitution to which I have referred and the old provisions of the Articles of Confederation regarding the requisition for taxes.

In Article VIII of the Articles of Confederation it was provided that—

> All charges of war and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled shall from time to time direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Of course the history of the efforts to collect taxes under Article VIII is common history. Requisition would be made upon the members of the Confederation, and it would not be met. The provision seemed ample in terms, but in execution it was impotent and fruitless, and it was because of the impotency and fruitlessness of section 8, coupled with the desire to eliminate the embarrassments which resulted from the checks and counterchecks in the commerce of the country that led to the establishment of the Constitution. These two reasons were the dominant and commanding reasons which dictated to the wise makers of the Constitution the necessity of abandoning the Articles of Confederation and lodging in the bosom of the Federal Government, first, the power to regulate commerce, and, second, the power to tax every dollars' worth of wealth beneath the flag, if necessary, in the common defense and for the general welfare. [Applause on the Democratic side.]

In order that you may understand why I have thus stated, and do intend for some little time to consider, the origin of the

opinions of the statesmen of the time, let me say that I conceive the questions now before this body to be these:

Two contentions are made concerning the pending bill. One is that it is lamentably defective, in that it taxes none but the thrifty and those engaged in productive enterprise, and the second is that if this is not true and it does reach the larger incomes of the country, it is violative of the Constitution as applied by the Supreme Court in its majority opinion in the Pollock case. Therefore it is proper to consider whether, in the light of judicial and political history, the Pollock decision is the last word upon the subject of direct taxation. And on that subject I direct the attention of my colleagues to the fact that the Supreme Court, in the consideration of the Pollock case, was dealing not with the question of property rights, was dealing not with a rule for the adjustment of personal rights, but was dealing with a great power vested in a great political sovereignty, without which we would be thrown back upon the impotency of the Articles of Confederation. In other words, it was the fixing of a great political policy, in the larger use of that term; it was the restricting of a great taxing power which had become necessary because of our experience under the Confederation, and I claim humbly that we have the right every day in the year and every year in the century to continue to contend that this political right or political power which was stricken down by the decision in the Pollock case should be restored, in order that the full power to legislate in reference to taxation may still be in the hands of Congress unimpaired. [Applause on the Democratic side.]

Now, what was exactly the history of the discussion as to direct taxation? If you take the economic situation pure and simple as it existed at the time of the adoption of the Constitution, you have to refer for definitions to the volumes of the Physiocrats on economy; to Adam Smith, in his Wealth of Nations, and to John Stuart Mill. And if you are trying to determine what is a direct and what is an indirect tax in a purely economic sense, if you contend that it was in its economic sense that it was used in the Constitution, you will find little or no comfort in investigating the sources which the statesmen of that day had as the foundation of their learning.

It has been contended by some writers that in the libraries of the makers of our Constitution you would find Adam Smith and the volumes of the Physiocrats, in which it was said that a direct tax was one which could not be shifted and that an indirect tax was one which could be shifted, and that, therefore, they wrote these articles in the Constitution with those economic definitions in mind. So far as my investigations go and so far as I have been able to come to any conclusion, I have no doubt that the influence upon the members of the Constitutional Convention which caused them to write "direct" and "indirect" into the Constitution came from the old Articles of Confederation; came more from the shibboleth of the Revolution, "Taxation without representation will not be suffered by a free people"; and they wrote first that taxation and representation should go hand in hand, and then that no capitation or land tax or direct tax should be levied except by "apportionment," because that had been the description of tax in Article VIII of the Confederation, and was the only one that could have been levied at a time when nine-tenths of all the population of the country were farmers and owned agricultural lands.

I know that there have been learned discussions about the meaning of "direct" and "indirect," but I prefer to refer you to one single circumstance as being almost conclusive of what the meaning of the term was in the Constitution. It is this: Mr. Hamilton, after the Constitution had been adopted, committed to the keeping of Mr. Madison a document which he called the constitution which he would have adopted if he had been allowed full power. I do not think anyone can claim that Mr. Hamilton did not know as much about the Constitution, about the purposes of it, about the design of it, about the failure of the Confederation, and about the impotency of the Confederation, as anyone who sat in the Constitutional Convention.

In Elliott's Debates there is a document which reads:

A copy of a paper communicated to James Madison by Col. Hamilton about the close of the convention in Philadelphia, in 1787, which he said delineated the constitution which he would have wished to be proposed by the convention.

He had stated the principles of it in the course of the deliberations of the convention. He then drafted a complete constitution according as he would have proposed it, and turned it over to Mr. Madison, and in the section corresponding to the one in the Constitution, about which we have had so much discussion and judicial controversy—in that section which we find in our Constitution to be that "No capitation or other direct tax shall be laid" without apportionment—we find that Mr. Hamilton wrote out in full what undoubtedly was the meaning of "direct" and "indirect" in the minds of the gentlemen in the Constitutional Convention. In Mr. Hamilton's draft of the Constitution, this section read:

SEC. 4. Taxes on land, houses, and other real estate, and capitation taxes, shall be proportioned in each State by the whole number of free persons, except Indians not taxed, and by three-fifths of all other persons.

Plainly he wrote into his section what was intended to have been written in section 9. That is, taxes on land, houses, or other real estate and capitation taxes were the only taxes that were conceived of by the makers of the Constitution to be apportioned according to the population at the last census.

I may add that Mr. Hamilton followed that by a long course of construction in after years, which only bore out the contention that he was writing in section 4 of his proposed constitution what was intended to be written in section 9 of the Constitution as adopted. And I repeat, for the sake of clearness, that the purpose was that by direct taxes were to be understood such taxes as were levied upon lands and other improvements and poll taxes, and none other.

Well, you say, is there anything in support of that? I direct your attention to Elliott's Debates on the Federal Constitution, volume 5, page 302, where appears the record of proceedings on Thursday, July 12, 1787:

In convention—Mr. Gouverneur Morris moved to add to the clause empowering the legislature to vary the representation according to the principles of wealth and number of inhabitants, a proviso "that taxation shall be in proportion of representation."

Mr. Butler contended again that representation should be according to the full number of inhabitants, including all the blacks, admitting the justice of Mr. Gouverneur Morris's motion.

Mr. Mason also admitted the justness of the principle, but was afraid embarrassments might be occasioned to the legislature by it. It might drive the legislature to the plan of requisitions.

Mr. Gouverneur Morris admitted that some objections lay against his motion, but supposed they would be removed by restraining the rule to direct taxation. With regard to indirect taxes on exports and imports and on consumption, the rule would be inapplicable. Notwithstanding what had been said to the contrary, he was persuaded that the imports and consumption were pretty nearly equal throughout the Union.

From this it would appear that the word "direct," as used in the Constitution, was first suggested to distinguish between a tax levied upon the people and their property directly and a requisition made upon a colony or State by the Federal Government.

Let me say, from my own point of view, that I regard those terms wherever you see them in the literature of that day as a substantial shibboleth of the Revolution. You can not find anything anywhere about taxation in the days of the Articles of Confederation and preceding the Constitution in which the words "taxation and representation" do not occur together in the literature of the time. I am almost persuaded to say, after a hundred years from that time, that we are willing to say: "Whereas in those days the cry was 'no taxation without representation,' the cry to-day ought to be 'no representation without taxation.'" [Applause.]

Scarcely had the Constitution been adopted and the powers of taxation committed to the hands of the Federal Government when a tax was levied in what was known as the carriage act, which may be familiar to most of you, an act laying duties on carriages for the conveyance of persons. The tax was $10 on each carriage. It was not apportioned. It was simply levied under the doctrine of uniformity.

Mr. Daniel Hylton lived in Virginia, and, curiously enough, it is revealed by the record that he had 125 chariots, as they called them. The act said $10 a carriage upon carriages for private use or for hire, and the agreed state of facts in that case was that Mr. Daniel Hylton owned 125 chariots for private use and not for hire. Under this state of facts the first case—and I am sure I impose on some of you when I refer to it—came up for the consideration of the Supreme Court at the February term, 1796. On that morning Mr. Oliver Ellsworth was sworn in as the Chief Justice of the United States, and it is recited on the face of the report that he took his seat that morning in the court, although as a matter of fact he did not share in the opinion.

Curiously enough, Mr. Hamilton, who had been Secretary of the Treasury, appeared, more or less ill in health, as the counsel for the Government and argued the case in support of the power of the Federal Government to levy this tax upon carriages without apportionment; and in order that his views of the whole subject may be before you, I submit a fragment of his brief, which has been preserved among his works. This is found in volume 7, Works of Alexander Hamilton, page 328, and is as follows:

What is the distinction between direct and indirect taxes? It is a matter of regret that terms so uncertain and vague in so important a point are to be found in the Constitution. We shall seek in vain for any antecedent settled legal meaning to the respective terms; there is none.

We shall be as much at a loss to find any disposition of either which can satisfactorily determine the point.

Shall we call an indirect tax, a tax which is ultimately paid by a person, different from the one who pays it in the first instance?

Truly speaking, there is no such tax—those on imported articles best claim the character. But in many instances the merchant can not transfer the tax to the buyer; in numerous cases it falls on himself, partly or wholly. Besides, if the same article which is imported by a merchant for sale is imported by a merchant for his own use, or by a lawyer, a physician, or mechanic, for his own use, there can be no question about the transfer of the tax. It remains upon him who pays it.

According to that rule, then, the same tax may be both a direct and an indirect tax, which is an absurdity. To urge that a man may either buy an article already imported or import it himself amounts to nothing; sometimes he could not have that option.

But the option of an individual can not alter the nature of a thing. In like manner he might avoid the tax on carriages by hiring occasionally instead of buying.

The subject of taxation, not the contingent optional conduct of individuals, must be the criterion of direct or indirect taxation. Shall it be said that an indirect tax is that of which a man is not conscious when he pays? Neither is there any such tax. The ignorant may not see the tax in the enhanced price of the commodity, but the man of reflection knows it is there. Besides, when any but a merchant pays, as in the case of the lawyer, etc., who imports for himself, he can not but be conscious that it falls upon himself.

By this rule also, then a tax would be both direct and indirect—and it will be equally impracticable to find any other precise or satisfactory criterion.

In such a case no construction ought to prevail calculated to defeat the express and necessary authority of the Government. It would be contrary to reason, and to every rule of sound construction, to adopt a principle for regulating the exercise of a clear constitutional power which would defeat the exercise of the power.

It can not be contested that a duty on carriages specifically is as much within the authority of the Government as a duty on lands or buildings.

Now, if a duty on carriages is to be considered as a direct tax, to be apportioned according to the rates of representation, very absurd consequences must ensue.

'Tis possible that a particular State may have no carriages of the description intended to be taxed or a very small number.

But each State would have to pay a proportion of the sum to be laid, according to its relative numbers; yet while the State would have to pay a quota, it might have no carriages upon which its quota could be assessed, or so few as to render it ruinous to the owners to pay the tax. To consider, then, a duty on carriages as a direct tax may be to defeat the power of laying such a duty. This is a consequence which ought to ensue from construction.

Further: If the tax on carriages be a direct tax, that on ships, according to their tonnage, must be so likewise. Here is not a consumable article. Here the tax is paid by the owner of the thing taxed from time to time, as would be the tax on carriages.

If it be said that the tax is indirect because it is alternately paid by the freighter of the vessel, the answer is that sometimes the owner is himself the freighter and at other times the tonnage accrues when there is no freight and is a dead charge on the owner of the vessel.

Moreover, a tax on a hackney or stagecoach or other carriage, or on a dray or cart employed in transporting commodities for hire, would be as much a charge on the freight as a tax upon vessels, so that if the latter be an indirect tax the former can not be a direct tax.

And it would be too great a refinement for a rule of practice in government to say that a tax on a hackney or stagecoach and upon a dray or cart is an indirect one, and yet a tax upon a coach or wagon ordinarily used for the purposes of its owner is a direct one.

The only known source of the distinction between direct and indirect taxes is in the doctrine of the French economists—Locke and other speculative writers—who affirm that all taxes fall ultimately upon land, and are paid out of its produce, whether laid immediately upon itself or upon any other thing. Hence taxes upon lands are in that system called direct taxes; those on all other articles indirect taxes.

According to this, land taxes only would be direct taxes, but it is apparent that something more was intended by the Constitution. In one case a capitation is spoken of as a direct tax.

But how is the meaning of the Constitution to be determined? It has been affirmed, and so it will be found, that there is no general principle which can indicate the boundary between the two. That boundary, then, must be fixed by a species of arbitration, and ought to be such as will involve neither absurdity nor inconvenience.

The following are presumed to be the only direct taxes:

Capitation or poll taxes.

Taxes on lands and buildings.

General assessments, whether on the whole property of individuals or on their whole real or personal estate; all else must of necessity be considered as indirect taxes.

To apply a rule of apportionment according to numbers to taxes of the above description has some rationale in it; but to extend an apportionment of that kind to other cases would in many instances produce, as has been seen, preposterous consequences, and would greatly embarrass the operations of the Government. Nothing could be more capricious or outré than the application of quotas in such cases.

The Constitution gives power to Congress to lay and collect the taxes, duties, imposts, and excises, requiring that all duties, imposts, and excises shall be uniform throughout the United States.

Here duties, imposts, and excises appear to be contradistinguished from taxes, and while the latter is left to apportionment the former are enjoined to be left uniform.

But, unfortunately, there is equally here a want of criterion to distinguish duties, imposts, and excises from taxes.

If the meaning of the word "excise" is to be sought in the British statutes, it will be found to include duty on carriages, which is there considered as an excise, and then must necessarily be uniform and liable to apportionment; consequently not a direct tax.

An argument results from this, though not perhaps a conclusive one; yet where so important a distinction in the Constitution is to be realized it is fair to seek the meaning of terms in the statutory language of that country from which our jurisprudence is derived.

Still more curiously, Mr. Madison made it convenient, according to his own papers, to have published a letter written by a distinguished lawyer, challenging the constitutionality of the act, at just about the time the opinion of the court was to be rendered. The Chief Justice stated the case in substance. If you will permit me, I will refer to this discussion of the act.

Chase, Justice:

By the case stated only one question is submitted to the opinion of this court—whether the law of Congress of the 5th of June, 1794, entitled "An act to lay duties upon carriages for the conveyance of persons," is unconstitutional and void.

The principles laid down to prove the above law void are these: That a tax on carriages is a direct tax, and therefore by the Constitution must be laid according to the census, directed by the Constitution to be taken, to ascertain the number of Representatives from each State, and that the tax in question on carriages is not laid by the rule of apportionment, but by the rule of uniformity prescribed by the Constitution in the case of duties, imposts, and excises; and a tax on carriages is not within either of those descriptions.

By the second section of the first article of the Constitution it is provided that direct taxes shall be apportioned among the several States according to their numbers, to be determined by the rule prescribed.

By the ninth section of the same article it is further provided that no capitation or other direct tax shall be laid unless in proportion to the census, or enumeration, before directed.

By the eighth section of the same article it was declared that Congress shall have power to lay and collect taxes, duties, imposts, and excises, but all duties, imposts, and excises shall be uniform throughout the United States.

As it was incumbent on the plaintiff's counsel in error, so they took great pains to prove that the tax on carriages was a direct tax; but they did not satisfy my mind. I think, at least, it may be doubted, and if I only doubted I should affirm the judgment of the circuit court. The deliberate decision of the National Legislature (who did not consider a tax on carriages a direct tax, but thought it was within the description of a duty) would determine me, if the case was doubtful, to receive the construction of the legislature; but I am inclined to think that a tax on carriages is not a direct tax within the letter or meaning of the Constitution.

The great object of the Constitution was to give Congress a power to lay taxes adequate to the exigencies of government, but they were to observe two rules in imposing them, namely, the rule of uniformity when they laid duties, imposts, or excises and the rule of apportionment, according to the census, when they laid any direct tax.

If there are any other species of taxes that are not direct and not included within the word "duties, imposts, or excises," they may be laid by the rule of uniformity or not, as Congress shall think proper and reasonable. If the framers of the Constitution did not contemplate other taxes than direct taxes and duties, imposts, and excises, there is great inaccuracy in their language. If these four species of taxes were all that were meditated the general power to lay taxes was unnecessary. If it was intended that Congress should have authority to lay only one of the four above enumerated, to wit, direct taxes by the rule of apportionment and the other three by the rule of uniformity, the expressions would have run thus: "Congress shall have power to lay and collect direct taxes and duties, imposts, and excises; the first shall be laid according to the census, and the three last shall be uniform throughout the United States." The power in the eighth section of the first article, to lay and collect taxes, included a power to lay direct taxes, whether capitation or any other, and also duties, imposts, and excises, and every other species or kind of tax whatsoever and called by any other name. Duties, imposts, and excises were enumerated after the general term taxes only for the purposes of declaring that they were to be laid by the rule of uniformity. I consider the Constitution to stand in this manner. A general power is given to Congress to lay and collect taxes of every kind or nature without any restraint, except only on exports, but two rules are prescribed for their government, namely, uniformity and apportionment; three kinds of taxes, to wit, duties, imposts, and excises by the first rule and capitation or other direct taxes by the second rule.

I believe some taxes may be both direct and indirect at the same time. If so, would Congress be prohibited from laying such a tax because it is partly a direct tax?

The Constitution evidently contemplated no taxes as direct taxes, but only such as Congress could lay in proportion to the census. The rule of apportionment is only to be adopted in such cases where it can reasonably apply, and the subject taxed must ever determine the application of the rule.

If it is proposed to tax any specific article by the rule of apportionment, and it would evidently create great inequality and injustice, it is unreasonable to say that the Constitution intended such tax should be laid by that rule.

It appears to me that a tax on carriages can not be laid by the rule of apportionment without very great inequality and injustice. For example, suppose two States, equal in census, to pay $80,000 each by a tax on carriages, of $8 on every carriage, and in one State there are 100 carriages and in the other 1,000. The owners of carriages in one State would pay 10 times the tax of owners in the other. A in one State would pay for his carriage $8, but B in the other State would pay for his carriage $80.

It was argued that a tax on carriages was a direct tax and might be laid according to the rule of apportionment, and, as I understood, in this manner: Congress, after determining on the gross sum to be raised, was to apportion it according to the census and then lay it in one State on carriages, in another on horses, in a third on tobacco, in a fourth on rice, and so on. I admit that this mode might be adopted, to raise a certain sum in each State, according to the census, but it would not be a tax on carriages, but on a number of specific articles; and it seems to me that it would be liable to the same objection of abuse and oppression as a selection of any one article in all the States.

I think an annual tax on carriages for the conveyance of persons may be considered as within the power granted to Congress to lay duties. The term duty is the most comprehensive next to the generical term tax; and practically in Great Britain, whence we take our general ideas of taxes, duties, imposts, excises, customs, etc., embraces taxes on stamps, tolls for passage, etc., and is not confined to taxes on importation only.

It seems to me that a tax on expense is an indirect tax; and I think an annual tax on a carriage for the conveyance of persons is of that kind, because a carriage is a consumable commodity, and such annual tax on it is on the expense of the owner.

I am inclined to think, but of this I do not give a judicial opinion, that the direct taxes contemplated by the Constitution are only two, to wit, a capitation or poll tax, simply with regard to property, profes-

sion, or any other circumstance, and a tax on land. I doubt whether a tax by a general assessment of personal property within the United States is included within the term direct taxes.

Paterson, Justice.—By the second section of the first article of the Constitution of the United States it is ordained that Representatives and direct taxes shall be apportioned among the States, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

The eighth section of the said article declares that Congress shall have power to lay and collect taxes, duties, imposts, and excises; but all duties, imposts, and excises shall be uniform throughout the United States.

The ninth section of the same article provides that no capitation or other direct tax shall be laid unless in proportion to the census or enumeration before directed to be taken.

Congress passed a law on the 5th of June, 1794, entitled "An act laying duties upon carriages for the conveyance of persons."

Daniel Lawrence Hilton, on the 5th of June, 1794, and therefrom to the last day of September next following, owned, possessed, and kept 125 chariots for the conveyance of persons, but exclusively for his own separate use, and not to let out to hire, or for the conveyance of persons for hire.

The question is whether a tax upon carriages be a direct tax. If it be a direct tax, it is unconstitutional, because it has been laid pursuant to the rule of uniformity and not to the rule of apportionment. In behalf of the plaintiff in error it has been urged that a tax on carriages does not come within the description of a duty, impost, or excise and therefore is a direct tax. It has, on the other hand, been contended that as a tax on carriages is not a direct tax it must fall within one of the classifications just enumerated, and particularly must be a duty or excise. The argument on both sides turns in a circle; it is not a duty, impost, or excise, and therefore must be a direct tax; it is not a tax, therefore it must be a duty or excise. What is the natural and common or technical or appropriate meaning of the words "duty" and "excise"? It is not easy to ascertain. They present no clear and precise idea to the mind. Different persons will annex different significations to the terms. It was, however, obviously the intention of the framers of the Constitution that Congress should possess full power over every species of taxable property except exports. The term taxes is generical and was made use of to vest in Congress plenary authority in all cases of taxations. The general division of taxes is into direct and indirect. Although the latter term is not to be found in the Constitution, yet the former necessarily implies it. Indirect stands opposed to direct. There may perhaps be an indirect tax on a particular article that can not be comprehended within the description of duties or imposts, or excises; in such case it will be comprised under the general denomination of taxes. For the term tax is the genus and includes—

1. Direct taxes.
2. Duties, imposts, and excises.
3. All other classes of an indirect kind and not within any of the classifications enumerated under the preceding heads.

The question occurs, How is such a tax to be laid, uniformly or apportionately? The rule of uniformity will apply, because it is an indirect tax, and direct taxes only are to be apportioned. What are direct taxes within the meaning of the Constitution? The Constitution declares that a capitation tax is a direct tax, and both in theory and practice a tax on land is deemed to be a direct tax. In this way the terms "direct taxes" and "capitation and other direct taxes" are satisfied. It is not necessary to determine whether a tax on the product of land be a direct or indirect tax. Perhaps the immediate product of land, in its original and crude state, ought to be considered as the land itself—it makes a part of it—or else the provision made against taxing exports would be easily eluded. Land independently of its produce is of no value. When the produce is converted into a manufacture it assumes a new shape, its nature is altered, its original state is changed, it becomes quite another subject, and will be differently considered. Whether direct taxes in the sense of the Constitution comprehend any other tax than a capitation tax and tax on land is a questionable point. If Congress, for instance, should tax in the aggregate or mass things that generally pervade all the States in the Union, then perhaps the rule of apportionment would be the most proper, especially if an assessment was to intervene. This appears by the practice of some of the States to have been considered as a direct tax. Whether it be so under the Constitution of the United States is a matter of some difficulty; but as it is not before the court it would be improper to give any decisive opinion upon it. I never entertained a doubt that the principal—I will not say the only—objects that the framers of the Constitution contemplated as falling within the rule of apportionment were a capitation tax and a tax on land. Local considerations and the particular circumstances and relative situation of the States naturally lead to this view of the subject. The provision was made in favor of the Southern States. They possessed a large number of slaves; they had extensive tracts of territory, thinly settled, and not very productive. A majority of the States had but few slaves, and several of them a limited territory, well settled, and in a high state of cultivation. The Southern States, if no provision had been introduced in the Constitution, would have been wholly at the mercy of the other States. Congress in such case might tax slaves at discretion or arbitrarily, and land in every part of the Union after the same rate or measure—so much a head in the first instance and so much an acre in the second. To guard them against imposition in these particulars was the reason of introducing the clause in the Constitution, which directs that Representatives and direct taxes shall be apportioned among the States according to their respective numbers.

On the part of the plaintiff in error it has been contended that the rule of apportionment is to be favored rather than the rule of uniformity; and, of course, that the instrument is to receive such a construction as will extend the former and restrict the latter. I am not of that opinion. The Constitution has been considered as an accommodating system; it was the effect of mutual sacrifices and concessions; it was the work of compromise. The rule of apportionment is of this nature; it is radically wrong; it can not be supported by any solid reasoning. Why should slaves, who are a species of property, be represented more than any other property? The rule, therefore, ought not to be extended by construction.

Again, numbers do not afford a just estimate or rule of wealth. It is, indeed, a very uncertain and incompetent sign of opulence. There is another reason against the extension of the principle laid down in the Constitution.

The counsel on the part of the plaintiff in error have further urged that an equal participation of the expense or burden by the several States in the Union was the primary object which the framers of the Constitution had in view, and that this object will be effected by the principle of apportionment, which is an operation upon States and not on individuals, for each State will be debited for the amount of its quota of the tax and credited for its payments. This brings it to the old system of requisitions. An equal rule is doubtless the best. But how is this to be applied to States or to individuals? The latter are the objects of taxation, without reference to the States, except in the case of direct taxes. The fiscal power is exerted certainly, equally, and effectually on individuals; it can not be exerted on States. The history of the United Netherlands and of our own country will evince the truth of this position. The Government of the United States could not go on under the Confederation, because Congress were obliged to proceed in the line of requisition. Congress could not under the old Confederation raise money by taxes, be the public exigencies ever so pressing and great. They had no coercive authority; if they had, it must have been exercised against the delinquent States, which would be ineffectual or terminate in separation. Requisitions were a dead letter unless the State legislatures could be brought into action, and when they were the sums raised were very disproportional. Unequal contributions or payments engendered discontent and fomented State jealousy. Whenever it shall be thought necessary or expedient to lay a direct tax on land, where the object is one and the same, it is to be apprehended that it will be a fund not much more productive than that of requisition under the former Government. Let us put the case: A given sum is to be raised from the landed property in the United States. It is easy to apportion this sum or to assign to each State its quota. The Constitution gives the rule. Suppose the proportion of North Carolina to be $80,000. This sum is to be laid on the landed property in the State. But by what rule and by whom? Shall every acre pay the same sum, without regard to its quality, value, situation, or productiveness? This would be manifestly unjust. Do the laws of the different States furnish sufficient data for the purpose of forming one common rule, comprehending the quality, situation, and value of the lands? In some of the States there has been no land tax for several years, and where there has been the mode of laying the tax is so various and the diversity in the land is so great that no common principle can be deduced and carried into practice. Do the laws of each State furnish data from whence to extract a rule whose operation shall be equal and certain in the same State? Even this is doubtful. Besides, subdivisions will be necessary; the apportionment of the State, and perhaps of a particular part of the State, is again to be apportioned among counties, townships, parishes, or districts. If the lands be classed, then a specific value must be annexed to each class. And there a question arises, How often are classifications and assessments to be made—annually, triennially, septennially? The oftener they are made the greater will be the expense, and the seldomer they are made the greater will be the inequality and injustice. In the process of the operation a number of persons will be necessary to class, to value, and to assess the land, and after all the guards and provisions that can be devised we must ultimately rely upon the discretion of the officers in the exercise of their functions. Tribunals of appeal must also be instituted to hear and decide upon unjust valuations, or the assessors will act ad libitum, without check or control. The work, it is to be feared, will be operose and unproductive, and full of inequality, injustice, and oppression. Let us, however, hope that a system of land taxation may be so corrected and matured by practice as to become easy and equal in its operation and productive and beneficial in its effects. But to return. A tax on carriages, if apportioned, would be oppressive and pernicious. How would it work? In some States there are many carriages and in others but few. Shall the whole sum fall on one or two individuals in a State who may happen to own and possess carriages? The thing would be absurd and inequitable. In answer to this objection it has been observed that the sum and not the tax is to be apportioned, and that Congress may select in the different States different articles or objects from whence to raise the apportioned sum. The idea is novel. What, shall land be taxed in one State, slaves in another, carriages in a third, and horses in a fourth, or shall several of these be thrown together in order to levy and make the quotaed sum? The scheme is fanciful. It would not work well, and, perhaps, is utterly impracticable. It is easy to discern that great and perhaps insurmountable obstacles must arise in forming the subordinate arrangements necessary to carry the system into effect; when formed the operation would be slow and expensive, unequal, and unjust. If a tax upon land, where the object is simple and uniform throughout the States, is scarcely practicable, what shall we say of a tax attempted to be apportioned among and raised and collected from a number of dissimilar objects? The difficulty will increase with the number and variety of the things proposed for taxation. We shall be obliged to resort to intricate and endless valuations and assessments, in which everything will be arbitrary and nothing certain. There will be no rule to walk by. The rule of uniformity, on the contrary, implies certainty and leaves nothing to the will and pleasure of the assessor. In such case the object and the sum coincide, the rule and the thing unite, and, of course, there can be no imposition. The truth is that the articles taxed in one State should be taxed in another; in this way the spirit of jealousy is appeased and tranquillity preserved; in this way the pressure on industry will be equal in the several States and the relation between the different subjects of taxation duly preserved. Apportionment is an operation on States, and involves valuations and assessments, which are arbitrary and should not be resorted to but in case of necessity. Uniformity is an instant operation on individuals, without the intervention of assessments or any regard to States, and is at once easy, certain, and efficacious. All taxes on expenses or consumption are indirect taxes. A tax on carriages is of this kind, and, of course, is not a direct tax. Indirect taxes are circuitous modes of reaching the revenues of individuals who generally live according to their income. In many cases of this nature the individual may be said to tax himself. I shall close the discourse with reading a passage or two from Smith's Wealth of Nations:

"The impossibility of taxing people in proportion to their revenue by any capitation seems to have given occasion to the invention of taxes upon consumable commodities; the State not knowing how to tax directly and proportionally the revenue of its subjects, endeavors to tax it indirectly by taxing their expense, which is supposed in most cases will be nearly in proportion to their revenue. Their expense is taxed by taxing the consumable commodities upon which it is laid out. (Vol. 3, p. 331.)

"Consumable commodities, whether necessaries or luxuries, may be taxed in two different ways—the consumer may either pay an annual sum on account of his using or consuming goods of a certain kind, or the goods may be taxed while they remain in the hands of the dealer and before they are delivered to the consumer. The consumable goods which last a considerable time before they are consumed altogether are

most properly taxed in the one way; those of which the consumption is immediate or more speedy, in the other; the coach tax and plate tax are examples of the former method of imposing; the greater part of the other duties of excise and customs of the latter." (Vol. 3, p. 341.)

Iredell, Justice: I agree in opinion with my brothers, who have already expressed theirs, that the tax in question is agreeable to the Constitution; and the reasons which have satisfied me can be delivered in a very few words, since I think the Constitution itself affords a clear guide to decide the controversy.

The Congress possesses the power of taxing all taxable objects without limitation, with the particular exception of a duty on exports.

There are two restrictions only on the exercise of this authority:

1. All direct taxes must be apportioned.

2. All duties, imports, and excises must be uniform.

If the carriage tax be a direct tax within the meaning of the Constitution, it must be apportioned.

If it be a duty, impost, or excise within the meaning of the Constitution, it must be uniform.

If it can be considered as a tax neither direct within the meaning of the Constitution nor comprehended within the term "duty, impost, or excise," there is no provision in the Constitution on way or another, and then it must be left to such an operation of the power as if the authority to lay taxes had been given generally in all instances without saying whether they should be apportioned or uniform; and in that case, I should presume, the tax ought to be uniform, because the present Constitution was particularly intended to affect individuals and not States, except in particular cases specified. And this is the leading distinction between the Articles of Confederation and the present Constitution.

As all direct taxes must be apportioned, it is evident that the Constitution contemplated none as direct but such as could be apportioned.

If this can not be apportioned, it is therefore not a direct tax in the sense of the Constitution.

That this tax can not be apportioned is evident. Suppose $10 contemplated as a tax on each chariot or post chaise in the United States and the number of both in all the United States be computed at 105, the number of Representatives in Congress.

This would produce in the whole $1,050.

The share of Virginia, being $\frac{19}{105}$ parts, would be $190.

The share of Connecticut, being $\frac{7}{105}$ parts, would be $70.

Then suppose Virginia had 50 carriages, Connecticut 2.

The share of Virginia being $190, this must, of course, be collected from the owners of carriages, and there would therefore be collected from each carriage $3.80. The share of Connecticut being $70, each carriage would pay $35.

If any State had no carriages, there could be no apportionment at all. This mode is too manifestly absurd to be supported and has not even been attempted in debate.

But two expedients have been proposed of a very extraordinary nature to evade the difficulty.

1. To raise the money a tax on carriages would produce not by levying a tax on each carriage uniformly, but by selecting different articles in different States, so that the amount paid in each State may be equal to the sum due upon a principle of apportionment. One State might pay by a tax on carriages, another by a tax on slaves, etc.

I should have thought this merely an exercise of ingenuity, if it had not been pressed with some earnestness; and as this was done by gentlemen of high respectability in their profession, it deserves a serious answer, though it is very difficult to give such a one.

1. This is not an opportionment of a tax on carriages, but of the money a tax on carriages might be supposed to produce, which is quite a different thing.

2. It admits that Congress can not lay a uniform tax on all carriages in the Union in any mode, but that they may on carriages in one or more States. They may therefore lay a tax on carriages in 14 States, but not in the fifteenth.

3. If Congress, according to this new decree, may select carriages as a proper object in one or more States, but omit them in others, I presume they may omit them in all and select other articles. Suppose, then, a tax on carriages would produce $100,000 and a tax on horses a like sum—$100,000—and a hundred thousand dollars were to be apportioned according to that mode. Gentlemen might amuse themselves with calling this a tax on carriages or a tax on horses, while not a single carriage nor a single horse was taxed throughout the Union.

4. Such an arbitrary method of taxing different States differently is a suggestion altogether new, and would lead, if practiced, to such dangerous consequences that it will require very powerful arguments to show that that method of taxing would be in any manner compatible with the Constitution, with which at present I deem it utterly irreconcilable, it being altogether destructive of the notion of a common interest, upon which the very principles of the Constitution are founded so far as the condition of the United States will admit.

The second expedient proposed was that of taxing carriages, among other things, in a general assessment. This amounts to saying that Congress may lay a tax on carriages, but that they may not do it unless they blend it with other subjects of taxation. For this no reason or authority has been given, and in addition to other suggestions offered by the counsel on that side, affords an irrefragable proof that when positions plainly so untenable are offered to counteract the principle contended for by the opposite counsel the principle itself is a right one, for no one can doubt that if better reasons could have been offered they would not have escaped the sagacity and learning of the gentlemen who offered them.

There is no necessity or propriety in determining what is or is not a direct or indirect tax in all cases.

Some difficulties may occur which we do not at present foresee. Perhaps a direct tax in the sense of the Constitution can mean nothing but a tax on something inseparably annexed to the soil—something capable of apportionment under all such circumstances.

A land or a poll tax may be considered of this description.

The latter is to be considered so particularly under the present Constitution on account of the slaves in the Southern States who give a ratio in the representation in the proportion of 3 to 5.

Either of these is capable of apportionment.

In regard to other articles there may possibly be considerable doubt.

It is sufficient on the present occasion for the court to be satisfied that this is not a direct tax contemplated by the Constitution in order to affirm the present judgment, since if it can not be apportioned it must necessarily be uniform.

I am clearly of opinion this is not a direct tax in the sense of the Constitution and therefore that the judgment ought to be affirmed.

Wilson, justice:

As there were only four judges, including myself, who attended the argument in this cause, I should have thought it proper to join in the decision, though I had before expressed a judicial opinion on the subject in the circuit court of Virginia, did not the unanimity of the other three judges relieve me from the necessity? I shall now, however, only add that my sentiments in favor of the constitutionality of the tax in question have not been changed.

That decision was the beginning of the judicial history of the construction of this language, and it was a direct holding that it was an indirect tax within the meaning of the Constitution; and that a direct tax within the meaning of the Constitution was either a capitation or a land tax.

At about the same time legislative construction of this section began. Now, if you have a contemporaneous discussion of the period, and that shows that by a direct tax was meant only a tax on land or a poll tax; if you have conclusive judicial utterances and that branch of the Government declares unequivocally that by a direct tax was meant a tax on land or a poll tax; if you consult still further the legislative branch of the Government to discover the meaning of the term there, and you find that it held that a direct tax was a land or poll tax, you have brought to bear on the subject all the information, all of the lights, all of the standards by which interpretation can be safely followed.

Congress in 1798 levied the first direct tax. It exercised the power impliedly and negatively conferred by section 9 of Article I for the first time in 1798.

Quoting now from Mr. Charles F. Dunbar, in the Quarterly Journal of Economics, 1888–89:

The acts of 1798 established the general plan on which all succeeding direct taxes have been levied. These acts apportioned the total sum of $2,000,000 among the States, divided them all into convenient subdivisions, placed every division under a commissioner, and provided the requisite array of principal and assistant assessors, collectors, supervisors, and inspectors. The quota of every State was to be assessed upon houses, lands, dwelling houses, and slaves. Houses were to be assessed according to a classified valuation at rates fixed for the whole Union, and slaves were to be assessed 50 cents per head if between 12 and 50 years of age; and so much of the quota of any State as was not covered by the levy upon houses and slaves was to be assessed upon lands and improvements at such rates as might be required to make up the deficiency. The tax was to be a lien upon the real estate and slaves of the person assessed for two years from the date when it became payable, and collection could be enforced by distraint and sale of personal effects. Wolcott had suggested, but had also disapproved, a plan for fixing a time at which a State might pay its quota into the Treasury and for prescribing collection by the authority of the United States "in cases of delinquency." But no trace of any such plan is to be found in the acts of 1798. Beyond the bare apportionment the States are not recognized, except as mere geographical divisions. The acts provide solely for levy by the Federal Government upon its citizens, the individual taxpayer is the only party responsible, and no authority stands or can interpose between him and his Government.

The framers of the direct-tax acts of 1813 followed in general the lines laid down in 1798. Comparison of the acts will show revision and rearrangement and perhaps simplification of the system, but no serious change of theory. The tax of three millions is apportioned to the counties in every State, and it is provided that the State legislature may by act vary the county quotas, provided such alterations are duly certified to the Secretary of the Treasury; but the levy according to such alterations is made by virtue of the act of Congress and not under the act of the State legislature. The tax is to be levied on the value of lands, houses, and slaves "at the rate each of them is worth in money," abandoning the peculiar method of a residual assessment upon land, adopted in 1798; and the provisions as to enforcement by lien and distress remain as before. In short, the theory of the acts of 1813 continues to be that of a levy by the General Government upon the individual citizen, in no way different in principle from any case of national internal taxation. With a wise regard to convenience, however, the apportioning act provided that any State "may pay its quota into the Treasury of the United States," and thus secure a deduction of 15 per cent by paying before February 10, 1814, or of 10 per cent by paying before May 1, "and no further proceedings shall thereafter be had under this act in such State." The option thus allowed to the States did not, however, change the character of the tax as a tax upon individuals or make it a tax upon States. Seven States assumed the payment of their quotas, but the other 11, in which the collection by Federal officers was made as originally provided, were not for that reason in any sense delinquent as States, nor did they thereby fail in any obligation to be found in the acts of Congress or elsewhere.

The act of 1815, which provided for an annual tax of $6,000,000, is to a considerable extent a literal transcript from the two acts of 1813, with such amendments in detail as experience or the proposed permanency of the tax required, but with no change in theory or in general procedure. And no change was made by the act of 1816, which simply repealed the provision for an annual tax and laid instead a tax of three millions for the current year. In 1815, and also in 1816, 4 States assumed the payment of their quotas, and the collection was made by the United States in the other 14.

When the levy of direct taxation by apportionment was resorted to for the fifth time, in 1861, Congress found most of the work of legislation done for it in advance. The first revenue measure of the war provided for an annual direct tax of twenty millions to be laid on the value of lands with their improvements and dwelling houses "at the rate each of them is worth in money." In its general scheme and in its details the act of 1861 was a revised transcript of the acts of 1813 and 1815. The theory enunciated in Hylton *v.* United States was unfamiliar to many Members, and the Committee on Ways and Means had to labor in debate with Representatives who wished to include personal estate, or incomes, among the objects of taxation. The committee itself at first treated slaves as taxable property, as was done in the earlier acts. But, in its careful provision for dealing directly with

the individual citizen of the United States and for enforcing a direct lien upon his property, the law of 1861 follows the earlier legislation, section by section.

I need not say that the returns which are given here following each of these levies show how utterly futile and fruitless have been the levy of these five taxes by direct apportionment.

What is the significance of these five levies? The significance is that from 1798 until 1861 this branch of the Government, the revenue-raising branch of the Government, which by tradition and by history and by constitutional provision is compelled to give its attention to the raising of revenue, had uniformly construed the Constitution to be that direct taxes meant land taxes and capitation taxes, and nothing more and nothing less. [Applause on the Democratic side.]

We do not have to rely upon this collateral stream of interpretation coming from the Congress of the United States. We can go to the other acts or decisions of the courts as they come along down from the foundation of the Hylton case. I do not intend, nor would I have the time, to read these cases as they come down, because most or many, if not all, of you know what the judicial determination has been, but following the Hylton case came the case of the Pacific Insurance Co. versus Soule, reported in 7 Wallace, page 433. This was an income tax or duty laid by sections 105 and 120 of the act of June 30, 1864, and the amendment thereto of July 13, 1866, upon the amounts insured, renewed, or continued by insurance companies, upon the gross amounts of premiums received and assessments made by them, and also upon dividends, undistributed sums, and income. It reached the Supreme Court of the United States on a certificate of division from the circuit court of California. The second question certified was whether the taxes paid by the plaintiff and sought to be recovered back in this action are not direct taxes within the meaning of the Constitution. Mr. Justice Swayne delivered the opinion of the court, and in doing so, on this branch of the subject, said:

In considering this subject it is proper to advert to the several provisions of the Constitution relating to taxation by Congress.

"Representatives shall be apportioned among the several States which shall be included in this Union according to their respective numbers, etc.

"Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

"No capitation or other direct tax shall be laid unless in proportion to the census of enumeration hereinbefore directed to be taken.

"No tax or duty shall be laid on articles exported from any State."

These clauses contain the entire grant of the taxing power by the organic law, with the limitations which that instrument imposes.

The National Government, though supreme within its own sphere, is one of limited jurisdiction and specific functions. It has no faculties but such as the Constitution has given it, either expressly or incidentally by necessary intendment.

Whenever any act done under its authority is challenged, the proper sanction must be found in its charter or the act is ultra vires and void. This test must be applied in the examination of the question before us. If the tax to which it refers is a "direct tax," it is clear that it has not been laid in conformity to the requirements of the Constitution. It is therefore necessary to ascertain to which of the categories named in the eighth section of the first article it belongs.

What are direct taxes was elaborately argued and considered by this court in Hylton *v.* United States, decided in the year 1796. One of the members of the court, Justice Wilson, had been a distinguished member of the convention which framed the Constitution. It was unanimously held by the four justices who heard the argument that a tax upon carriages kept by the owner for his own use was not a direct tax. Justice Chase said:

"I am inclined to think—but of this I do not give a judicial opinion—that the direct taxes contemplated by the Constitution are only two, to wit, a capitation of poll tax simply, without regard to property, profession, or any other circumstances, and a tax on land."

Patterson, Justice, followed in the same line of remark. He said:

"I never entertained a doubt that the principal—I will not say the only—object the framers of the Constitution contemplated as falling within the rule of apportionment was a capitation tax and a tax on land. The Constitution declares that a capitation tax is a direct tax, and both in theory and practice a tax on land is deemed to be a direct tax. In this way the terms 'direct taxes' and 'capitation and other direct tax' are satisfied."

The views expressed in this case are adopted by Chancellor Kent and Justice Story in their examination of the subject.

Duties are defined by Tomlin to be things due and recoverable by law. The term, in its widest significance, is hardly less comprehensive than "taxes." It is applied, in its most restricted meaning, to customs, and in that sense is nearly the synonym of "imposts."

Impost is a duty on imported goods and merchandise. In a larger sense it is any tax or imposition. Cowell says it is distinguished from custom "because custom is rather the profit which the prince makes on goods shipped out." Mr. Madison considered the terms "duties" and "imposts" in these clauses as synonymous. Judge Tucker thought "they were probably intended to comprehend every species of tax or contribution not included under the ordinary terms "taxes and excises."

Excise is defined to be an inland imposition, sometimes upon the consumption of the commodity and sometimes upon the retail sale; sometimes upon the manufacturer and sometimes upon the vendor.

The taxing power is given in the most comprehensive terms. The only limitations imposed are: That direct taxes, including the capitation tax, shall be apportioned; that duties, imposts, and excises shall be uniform; and that no duties shall be imposed upon articles exported from any State. With these exceptions the exercise of the power is, in all respects, unfettered.

If a tax upon carriages kept for his own use by the owner is not a direct tax we can see no ground upon which a tax upon the business of an insurance company can be held to belong to that class of revenue charges.

It has been held that Congress may require direct taxes to be laid and collected in the Territories as well as in the States.

The consequences which would follow the apportionment of the tax in question among the States and Territories of the Union in the manner prescribed by the Constitution must not be overlooked. They are very obvious. Where such corporations are numerous and rich it might be light, where none exists it could not be collected, where they are few and poor it would fall upon them with such weight as to involve annihilation. It can not be supposed that the framers of the Constitution intended that any tax should be apportioned, the collection of which on that principle would be attended with such results. The consequences are fatal to the proposition.

To the question under consideration it must be answered that the tax to which it relates is not a direct tax, but a duty or excise; that it was obligatory on the plaintiff to pay it.

The other questions certified up are deemed to be sufficiently answered by the answers given to the first and sixth questions.

The next case is that of Veazie Bank *v.* Fenno, in Eighth Wallace, page 533. This case arose under the act of July 13, 1866. The second clause of the ninth section of which enacts:

That every national banking association, State bank, or State banking association shall pay a tax of 10 per cent on the amount of notes of any person, State bank, or State banking association used for circulation and paid out by them after the 1st day of August, 1866, and such tax shall be assessed and paid in such manner as shall be prescribed by the Commissioner of Internal Revenue.

The Veazie Bank was a corporation chartered by the State of Maine with authority to issue bank notes for circulation, and the notes upon which the tax imposed by the act was collected were issued under this authority. There was nothing in the case showing that the bank sustained any relation to the State as a financial agent or that its authority to issue notes was conferred or exercised with any special reference to other than private interests. The case was presented to the court upon an agreed statement of facts and, upon a prayer for instructions to the jury, the judges found themselves opposed in opinion on three questions, the first of which—the two others differing from it in form only and not needing to be cited—was this:

Whether the second clause of the ninth section of the act of Congress of the 13th of July, 1866, under which the tax in this case was levied and collected, is a valid and constitutional law.

Mr. Chief Justice Chase, delivering the opinion of the court, said:

The general intent of the Constitution, however, seems plain. The General Government, administered by the Congress of the Confederation, has been reduced to the verge of impotency by the necessity of relying for revenue upon requisitions on the States, and it was a leading object in the adoption of the Constitution to relieve the Government to be organized under it from this necessity and to confer upon it ample power to provide revenue by the taxation of persons and property. And nothing is clearer, from the discussions in the convention and the discussions which preceded final ratification by the necessary number of States, than the purpose to give this power to Congress, as to the taxation of everything, except exports, in its fullest extent.

This purpose is apparent, also, from the terms in which the taxing power is granted. The power is "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States." More comprehensive words could not have been used. Exports only are, by another provision, excluded from its application.

There are, indeed, certain virtual limitations arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the States, or if exercised for ends inconsistent with the limited grants of power in the Constitution.

And there are directions as to the mode of exercising the power. If Congress sees fit to impose a capitation or other direct tax, it must be laid in proportion to the census; if Congress determines to impose duties, imposts, and excises, they must be uniform throughout the United States. These are not strictly limitations of power. They are rules prescribing the mode in which it shall be exercised. It still extends to every object of taxation except exports, and may be applied to every object of taxation to which it extends in such measure as Congress may determine.

The comprehensiveness of the power thus given to Congress may serve to explain, at least, the absence of any attempt by members of the convention to define, even in debate, the terms of the grant. The words used certainly describe the whole power, and it was the intention of the convention that the whole power should be conferred. The definition of particular words, therefore, became unimportant.

It may be said, indeed, that this observation, however just in its application to the general grant of power, can not be applied to the rules by which different descriptions of taxes are directed to be laid and collected.

Direct taxes must be laid and collected by the rule of apportionment; duties, imposts, and excises must be laid and collected under the rule of uniformity.

Much diversity of opinion has always prevailed upon the question, What are direct taxes? Attempts to answer it by reference to the definitions of political economists have been frequently made, but without satisfactory results. The enumeration of the different kinds of taxes which Congress was authorized to impose was probably made with very little reference to their speculations. The great work of Adam Smith, the first comprehensive treatise on political economy in the English language, had then been recently published; but in this work, though there are passages which refer to the characterstic difference between direct and indirect taxation, there is nothing which affords any valuable light on the use of the words "direct taxes" in the Constitution.

We are obliged, therefore, to resort to historical evidence, and to seek the meaning of the words in the use and in the opinion of those

whose relations to the Government and means of knowledge warranted them in speaking with authority.

And considered in this light the meaning and application of the rule as to direct taxes appears to us quite clear.

It is, as we think, distinctly shown in every act of Congress on the subject.

In each of these acts a gross sum was laid upon the United States, and the total amount was apportioned to the several States according to their respective numbers of inhabitants as ascertained by the last preceding census. Having been apportioned, provision was made for the imposition of the tax upon the subjects specified in the act, fixing its total sum.

In 1798 when the first direct tax was imposed the total amount was fixed at $2,000,000; in 1813 the amount of the second direct tax was fixed at three millions; in 1815 the amount of the third, say, six millions, and it was made an annual tax; in 1816 the provision making the tax annual was repealed by the repeal of the first section of the act of 1815, and the total amount was fixed for that year at $3,000,000. No other direct tax was imposed until 1861, when a direct tax of $20,000,000 was laid and made annual, but the provision making it annual was suspended and no tax except that first laid was ever apportioned. In each instance the total sum was apportioned among the States by the constitutional rule, and was assessed at prescribed rates on the subjects of the tax. These subjects in 1798, 1813, 1815, and 1816 were lands, improvements, dwelling houses, and slaves; and in 1861, lands, improvements, and dwelling houses only. Under the act of 1798 slaves were assessed at fifty on each; under the other acts according to valuation by assessors.

This review shows that personal property, contracts, occupations, and the like, have never been regarded by Congress as proper subjects of direct tax. It has been supposed that slaves must be considered as an exception to this observation, but the exception is rather apparent than real. As persons slaves were proper subjects of a capitation tax, which is described in the Constitution as a direct tax; as property they were by the laws of some, if not most of the States, classed as real property descendible to heirs. Under the first view they would be subject to the tax of 1798 as a capitation tax; under the latter they would be subject to the taxation of other years as realty. That the latter view was that taken by the framers of the acts after 1798 becomes highly probable when it is considered that in the States where slaves were held much of the value which would otherwise have attached to land passed into the slaves. If, indeed, the land only had been valued without the slaves, the land would have been subject to much heavier proportional imposition in those States than in States where there were no slaves, for the proportion of tax imposed on each State was determined by population without reference to the subjects on which it was to be assessed.

The fact, then, that slaves were valued under the acts referred to, far from showing, as some have supposed, that Congress regarded personal property as a proper object of direct taxation under the Constitution, shows only that Congress after 1798 regarded slaves for the purpose of taxation as realty.

It may be rightly affirmed, therefore, that in the practical construction of the Constitution by Congress direct taxes have been limited to taxes on land and appurtenances and taxes on polls or capitation taxes.

And this construction is entitled to great consideration, especially in the absence of anything adverse to it in the discussions of the convention which framed, and of the conventions which ratified, the Constitution.

What does appear in those discussions, on the contrary, supports the construction. Mr. Madison informs us that Mr. King asked what was the precise meaning of direct taxation and no one answered. On another day, when the question of proportioning representation to taxation, and both to the white and three-fifths of the slave inhabitants, was under consideration, Mr. Ellsworth said, "In case of a poll tax there would be no difficulty," and, speaking doubtless of direct taxation, he went on to observe, "The sum allotted to a State may be levied without difficulty, according to the plan used in the State for raising its own supplies." All this doubtless shows uncertainty as to the true meaning of the term direct tax, but it indicates, also, an understanding that direct taxes were such as may be levied by capitation, and on lands and appurtenances, or, perhaps, by valuation and assessment of personal property upon general lists. For these were the subjects from which the States at that time usually raised their principal supplies.

This view received the sanction of this court two years before the enactment of the first law imposing direct taxes eo nomine.

During the February term, 1796, the constitutionality of the act of 1794, imposing a duty on carriages, came under consideration in the case of Hylton *v.* The United States. Suit was brought by the United States against Daniel Hylton to recover the penalty imposed by the act for not returning and paying duty on a number of carriages, for the conveyance of persons, kept by the defendant for his own use. The law did not provide for the apportionment of the tax, and if it was a direct tax the law was confessedly unwarranted by the Constitution. The only question in the case, therefore, was whether or not the tax was a direct tax.

The case was one of great expectation, and a general interest was felt in its determination. It was argued, in support of the tax, by Lee, Attorney General, and Hamilton, recently Secretary of the Treasury; in opposition to the tax, by Campbell, attorney for the Virginia district, and Ingersoll, attorney general of Pennsylvania.

Of the justices who then filled the bench, Ellsworth, Patterson, and Wilson had been members and conspicuous members of the Constitutional Convention, and each of the three had taken part in the discussions relating to direct taxation. Ellsworth, the Chief Justice, sworn into office that morning, not having heard the whole argument, declined taking part in the decision. Cushing, senior Associate Justice, having been prevented by indisposition from attending to the argument, also refrained from expressing an opinion. The other judges delivered their opinions in succession, the youngest in commission delivering the first and the oldest the last.

They all held that the tax on carriages was not a direct tax within the meaning of the Constitution. Chase, Justice, was inclined to think that the direct taxes contemplated by the Constitution are only two—a capitation or poll tax and a tax on land. He doubted whether a tax by a general assessment of personal property can be included within the term direct tax. Patterson, who had taken a leading part in the Constitutional Convention, went more fully into the sense in which the words giving the power of taxation were used by that body. In the course of this examination he said:

"Whether direct taxes, in the sense of the Constitution, comprehend any other tax than a capitation tax and tax on land is a questionable point. If Congress, for instance, should tax, in the aggregate or mass, things that generally pervade all the States in the Union, then, perhaps, the rule of apportionment would be the most proper, especially if an assessment was to intervene. This appears from the practice of some of the States to have been considered as a direct tax. Whether it be so under the Constitution of the United States is a matter of some difficulty, but as it is not before the court it would be improper to give any decisive opinion upon it. I never entertained a doubt that the principal—I will not say the only—objects that the framers of the Constitution contemplated as falling within the rule of apportionment were a capitation tax and a tax on land."

Iredell, J., delivering his opinion at length, concurred generally in the views of Justices Chase and Patterson. Wilson had expressed his opinion to the same general effect when giving the decision upon the circuit, and did not now repeat them. Neither Chief Justice Ellsworth nor Justice Cushing expressed any dissent, and it can not be supposed, if in a case so important their judgments had differed from those announced, that an opportunity would not have been given them by an order for reargument to participate in the decision.

It may be safely assumed, therefore, as the unanimous judgment of the court that a tax on carriages is not a direct tax, and it may be further taken as established upon the testimony of Patterson that the words "direct taxes," as used in the Constitution, comprehended only capitation taxes and taxes on land, and perhaps taxes on personal property, by general valuation and assessment of the various descriptions possessed within the several States.

It follows, necessarily, that the power to tax without apportionment extends to all other objects. Taxes on other objects are included under the heads of taxes not direct, duties, imposts, and excises, and must be laid and collected by the rule of uniformity. The tax under consideration is a tax on bank circulation and may very well be classed under the head of duties. Certainly it is not, in the sense of the Constitution, a direct tax. It may be said to come within the same category of taxation as the tax on income of insurance companies, which this court at the last term, in the case of Pacific Insurance Co. *v.* Soule, held not to be a direct tax.

The next case which arose, to which I will invite your attention, was Scholey *v.* Rew, reported in 23 Wallace, page 331. The facts were that Scholey sued Rew, who was a collector of internal revenue, to recover the amount of a succession tax which Rew, as collector, had collected and which Scholey had paid on compulsion and under protest. Mr. Justice Clifford, writing the opinion of the court, says:

Questions of importance were discussed at the bar, some of which it can not be admitted are properly presented for decision. Such questions only as are specified in the assignment of errors are in general to be regarded as open to the plaintiff, and it is very doubtful whether an assignment that the decision of the circuit court is for the wrong party is sufficient to present any questions for decision, but inasmuch as the findings of the court in this case are in their nature a special finding the better opinion is that their sufficiency to support the judgment is open to reexamination.

Enough has already appeared to show that the plaintiff took under his wife's will an equitable interest in one-third of the estate in question, and the United States contend that in view of those facts he is liable to pay a succession tax or duty in respect of the same by virtue of the act passed to levy such taxes, as it applies to every past or future disposition of real estate by will, deed, or laws of descent, by reason whereof any person shall become beneficially entitled in possession or expectancy to any real estate or the income thereof upon the death of any person dying after the passage of that act.

Apply the rule to be deduced from that enactment to the facts found by the court and it must follow that the argument of the United States is well founded, unless some one or more of the special objections to the tax set up by the plaintiff are sufficient to exonerate him from such liability. Those objections are as follows: (1) That the act imposing the duty is unconstitutional and void. (2) That the case is not one within the act imposing the tax or duty. (3) That the plaintiff being an alien, the devise to him is absolutely void.

1. Support to the first objection is attempted to be drawn from the case of the Constitution, which provides that direct taxes shall be apportioned among the several States which may be included within the Union, according to their respective numbers; and also from the clause which provides that no capitation or other direct tax shall be laid unless in proportion to the census or amended enumeration; but it is clear that the tax or duty levied by the act under consideration is not a direct tax within the meaning of either of those provisions. Instead of that it is plainly an excise tax or duty, authorized by section 8 of Article I, which vests the power in Congress to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare.

Such a tax or duty is neither a tax on land nor a capitation exaction, as subsequently appears from the language of the section imposing the tax or duty, as well as from the preceding section, which provides that the term "succession" shall denote the devolution of real estate; and the section which imposes the tax or duty also contains a corresponding clause which provides that the term "successor" shall denote the person so entitled, and that the term "predecessor" shall denote the grantor, testator, ancestor, or other person from whom the interest of the successor has been or shall be derived.

Successor is employed in the act as the correlative to predecessor, and the succession or devolution of the real estate is the subject matter of the tax or duty, or, in other words, it is the right to become the successor of real estate upon the death of the predecessor, whether the devolution or disposition of the same is effected by will, deed, or laws of descent, from a grantor, testator, ancestor, or other person from whom the interest of the successor has been or shall be derived; nor is the question affected in the least by the fact that the tax or duty is made a lien upon the land, as the lien is merely an appropriate regulation to secure the collection of the exaction.

Indirect taxes, such as duties of imposts and excises and every other description of the same, must be uniform, and direct taxes must be laid in proportion to the census or enumeration as remodeled in the fourteenth amendment. Taxes on lands, houses, and other permanent real estate have always been deemed to be direct taxes, and capitation taxes, by the express words of the Constitution, are within the same category, but it never has been decided that any other legal exactions for the support of the Federal Government fall within the condition that unless laid in proportion to numbers that the assessment is invalid.

Whether direct taxes in the sense of the Constitution comprehend any other tax than a capitation tax and a tax on land is a question not absolutely decided, nor is it necessary to determine it in the present case, as it is expressly decided that the term does not include the tax

on income, which can not be distinguished in principle from a succession tax such as the one involved in the present controversy.

Neither duties nor excises were regarded as direct taxes by the authors of the Federalist. Objection was made to the power to impose such taxes, and in answering that objection Mr. Hamilton said that the proportion of these taxes is not to be left to the discretion of the National Legislature, but it is to be determined by the numbers of each State, as described in the second section of the first article. An actual census or enumeration of the people must furnish the rule, a circumstance which shuts the door to partiality or oppression. In addition to the precaution just mentioned, said he, there is a provision that all duties of imposts and excises shall be uniform throughout the United States.

Exactions for the support of the Government may assume the form of duties, imposts, or excises, or they may also assume the form of license fees for permission to carry on particular occupations or to enjoy special franchises, or they may be specific in form, as when levied upon corporations in reference to the amount of capital stock or to the business done or profits earned by the individual or corporation.

In other words, whether the descriptions of direct taxes were limited to land or capitation, he said, was not expressly decided, but it is expressly decided that the term does not include a tax on income, and that income can not be distinguished from a succession tax, such as was sustained in this particular case.

Now, you have the carriage tax, the tax on bank circulation, the tax on income, the tax on successions, each sustained in order in 1796, in 1861, in 1864, and in 1874. All of these are different in character. What could be closer to real estate than a tax on the right to take under the devolution of title, with a lien upon the property, to secure the payment of the tax? If a direct tax is a tax on land, how much nearer can you come to a tax upon real estate than to say, "I will tax the passage of the title, and I will make a lien on the property to secure payment of the tax"? Justice Clifford in this case said that while he would not contend that it was clearly settled that land and capitation were the only direct taxes, it was settled that an income tax was an indirect tax, and he sustained the succession tax on the ground that it was not different from an income tax.

You all recall the Springer case, he having been a Member of Congress, and recall that he refused to pay an income tax assessed against him under the act of June 30, 1864 (13 Stat., 218), as amended by the act of March 3, 1865 (Id., 469), he having no goods or chattels known to the proper officers out of which the tax and penalty could have been made. The United States levied upon his homestead, which was sold and bought in by the United States, and an action in ejectment was brought against him. Mr. Justice Swayne, delivering the opinion of the court in this case, said:

The central and controlling question in this case is whether the tax which was levied on the income, gains, and profits of the plaintiff in error, as set forth in the record, and by pretended virtue of the acts of Congress and parts of acts therein mentioned, is a direct tax. It is fundamental with respect to the rights of the parties and the result of the case. It will be last considered. Many of the other points made by the plaintiff in error reproduce the same thing in different forms of language. They will all be responded to without formally restating any of them. This will conduce to brevity without sacrificing clearness and will not involve the necessary omission of anything proper to be said.

The plaintiff in error advises us by his elaborate brief "that on the trial of the case below the proceedings were merely formal" and that "no arguments or briefs were submitted, and only such proceedings were had as were necessary to prepare the case for the Supreme Court."

This accounts for the numerous defects in the record as a whole. It was doubtless intended that only the question presented in the first of the assignments of error should be considered here. In that respect the record is full and sufficient. Other alleged errors, however, have been pressed upon our attention and we must dispose of them.

There is clearly a misrecital in the deed of one of the acts of Congress to which it refers. By the act of the 30th of March, 1864, was clearly meant the act of the 30th of June, in the same year. There is no act relating to internal revenue of the former date.

But the plaintiff in error can not avail himself of this fact, for several reasons.

The point was not brought to the attention of the court below and can not, therefore, be insisted upon. It comes within the rule falsa demonstratio non nocet. It was the act of June 30, 1864, as amended by the act of March 3, 1864, that was in force when the tax was assessed. The latter act took effect April 1, 1865, and declared that "the duty herein provided for shall be assessed, collected, and paid upon the gains, profits, and income for the year ending the 31st day of December next preceding the time for levying, collecting, and paying said duties."

The tax was assessed for the year 1865 in the spring of 1866, under the act of 1865, according to the requirements of that act; and we find upon examination that the assessment was in all things correct. (13 Stat., pp. 469, 479.) The criticism of the plaintiff in error in this regard is, therefore, without foundation.

The proceedings of the collector were not in conflict with the amendment to the Constitution which declares that "no person shall be deprived of life, liberty, or property without due process of law." The power to distrain personal property for the payment of taxes is almost as old as the common law. (Cooley, Taxation, p. 302.) The Constitution gives to Congress the power "to lay and collect taxes, duties, imposts, and excises." Except as to exports, no limit to the exercise of power is prescribed. In McCulloch *v.* Maryland (4 Wheat., p. 316), Mr. Chief Justice Marshall said: "The power to tax involves the power to destroy." Why is it not competent for Congress to apply to realty as well as to personalty the power to distrain and sell when necessary to enforce the payment of a tax? It is only the further legitimate exercise of the same power for the same purpose. In Murray's Lessee *v.* Hoboken Land & Improvement Co. (18 How., p. 274) this court held that an act of Congress authorizing a warrant to issue, without oath, against a public debtor, for the seizure of his property was valid; that the warrant was conclusive evidence of the fact is cited in it, and that the proceeding was "due process of law" in that case. (See also De Treville *v.* Smalls, 98 U. S., p. 517; Sherry *v.* McKinley, 99 id., p. 419; Miller *v.* United States, 11 Wall., p. 216; Tyler *v.* Defrees, id., p. 331.)

The prompt payment of taxes is always important to the public welfare. It may be vital to the existence of a government. The idea that every taxpayer is entitled to the delays of litigation is unreasonable. If the law here in question involved any wrong or unnecessary harshness, it was for Congress, or the people who make Congresses, to see that the evil was corrected. The remedy does not lie with the judicial branch of the Government.

The statute of Illinois had no application to the point whether the premises should be sold by the collector en masse or in two or more parcels. The fact that the house was on one lot and the barn on the other, that the whole was surrounded by a common inclosure, and that the entire property was occupied as a single homestead rendered it not improper for the collector to make the sale as it was made. No suspicion of bad faith attaches to him. He was clothed with a discretion, and it is to be presumed that he exercised it both fairly and well. (Olcott *v.* Bynum, 17 Wall., 44.)

Certainly the contrary does not appear. If the tax was not a direct tax, the instructions given by the court, brief as they were, covered the whole case and submitted it properly to the jury.

The plaintiff in error was entitled to nothing more. The fourth instruction which he asked for was liable to several fatal objections. It was too general and indefinite. It left for the jury to decide what were the "indispensable preliminaries" required by the law and Constitution in the numerous particulars specified. It referred to matters which the attention of the court below does not appear to have been called, and in regard to which, if this had been done, the requisite proof would doubtless have been supplied. It falls within the principle of the rule so often applied by this court—that where instructions are asked in a mass, if one of them be wrong the whole may be rejected. The record does not purport to give all the testimony, and its defects are doubtless largely due to the mode in which the case was tried and the single object, already stated, which the parties then had in view. The instruction was properly refused.

To grant or refuse a new trial was a matter within the discretion of the court. That it was refused and can not be assigned for error here.

Several other minor points have been earnestly argued by the learned plaintiff in error, but as they are all within the category of not having been taken in the court below, we need not more particularly advert to them.

This brings us to the examination of the main question in the case.

The clauses of the Constitution bearing on the subject are as follows:

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number those bound to service for a term of years and, excluding Indians not taxed, three-fifths of all other persons. * * * No capitation or other direct tax shall be laid unless in proportion to the census hereinbefore directed to be taken."

Was the tax here in question a direct tax? If it was, not having been laid according to the requirements of the Constitution, it must be admitted that the laws imposing it and the proceedings taken under them by the assessor and collector for its imposition and collection were all void.

Many of the provisions of the Articles of Confederation of 1777 were embodied in the existing organic law. They provided for a common treasury and the mode of supplying it with funds. The latter was by requisitions upon the several States. The delays and difficulties in procuring the compliance of the States, it is known, was one of the causes that led to the adoption of the present Constitution. This clause of the articles throws no light on the question we are called upon to consider, nor does the journal of the proceedings of the constitutional convention of 1787 contain anything of much value relating to the subject.

It appears that on the 11th of July in that year there was a debate of some warmth involving the topic of slavery. On the day following Gouverneur Morris, of New York, submitted a proposition "that taxation shall be in proportion to representation." It is further recorded in this day's proceedings that Mr. Morris, having so varied his motion by inserting the word "direct," it passed nem. con., as follows: "*Provided always*, That direct taxes ought to be proportioned to representation." (2 Madison Papers, by Gilpin, pp. 1079–1081.)

On the 24th of the same month M. Morris said that "he hoped the committee would strike out the whole clause. * * * He had only meant it as a bridge to assist us over a gulf; having passed the gulf, the bridge may be removed. He thought the principle laid down with so much strictness liable to strong objections." (Id., 1197.) The gulf was the share of representation claimed by the Southern States on account of their slave population. But the bridge remained. The builder could not remove it, much as he desired to do so. All parties seemed thereafter to have avoided the subject. With one or two immaterial exceptions not necessary to be noted it does not appear that it was again adverted to in any way. It was silently incorporated into the draft of the Constitution as that instrument was finally adopted.

It does not appear that an attempt was made by anyone to define the exact meaning of the language employed.

In the twenty-first number of the Federalist, Alexander Hamilton, speaking of taxes generally, said: "Those of the direct kind which principally relate to land and buildings may admit of a rule of apportionment. Either the value of the land or the number of the people may serve as a standard." The thirty-sixth number of that work, by the same author, is devoted to the subject of internal taxes. It is there said: "They may be subdivided into those of the direct and those of the indirect kind." In this connection the land taxes and poll taxes are discussed. The former are commended and the latter are condemned. Nothing is said of any other direct tax. In neither case is there a definition given or attempted of the phrase "direct tax."

The very elaborate researches of the plaintiff in error have furnished us with nothing from the debates of State conventions, by whom the Constitution was adopted, which gives us any aid. Hence, we may safely assume that no such material exists in that direction, though it is known that Virginia proposed to Congress an amendment relating to the subject, and that Massachusetts, South Carolina, New York, and North Carolina expressed strong disapprobation of the power given to impose such burdens. (1 Tucker's Blackstone, pt. 1, app. 235.)

Perhaps the two most authoritative persons in the convention touching the Constitution were Hamilton and Madison. The latter, in a letter of May 11, 1794, speaking of the tax which was adjudicated upon in Hylton *v.* United States (3 Dall., 171), said: "The tax on carriages

succeeded in spite of the Constitution by a majority of 20, the advocates of the principle being reenforced by the adversaries of luxury." (2 Madison's Writings (pub. by Cong.), p. 14.) In another letter of the 7th of February, 1796, referring to the case of Hylton *v.* United States, then pending, he remarked: "There never was a question on which my mind was better satisfied, and yet I have very little expectation that it will be viewed in the same light by the court that it is by me." (Id., 77.) Whence the despondency thus expressed is unexplained.

Hamilton left behind him a series of legal briefs, and among them one entitled "Carriage Tax." (See vol. 7, p. 848, of his works.) This paper was evidently prepared with a view to the Hylton case, in which he appeared as one of the counsel for the United States. In it he says: "What is the distinction between direct and indirect taxes? It is a matter of regret that terms so uncertain and vague in so important a point are to be found in the Constitution. We shall seek in vain for any antecedent settled legal meaning to the respective terms. There is none. We shall be as much at loss to find any disposition of either which can satisfactorily determine the point." There being many carriages in some of the States and very few in others, he points out the preposterous consequences if such a tax be laid and collected on the principle of apportionment instead of the rule of uniformity. He insists that if the tax there in question was a direct tax, so would be a tax on ships according to their tonnage. He suggests that the boundary line between direct and indirect taxes be settled by "a series of arbitrations" and that direct taxes be held to be only "capitation or poll taxes, and taxes on lands and buildings and general assessments, whether on the whole property of individuals or on their whole real or personal estate. All else must of necessity be considered as indirect taxes."

The tax here in question falls within neither of these categories. It is not a tax on the whole * * * personal estate of the individual, but only on his income, gains, and profits during the year, which may have been but a small part of his personal estate, and in most cases would have been so. This classification lends no support to the argument of the plaintiff in error.

The Constitution went into operation on the 4th of March, 1789.

It is important to look into the legislation of Congress touching the subject since that time. The following summary will suffice for our purpose. We shall refer to the several acts of Congress, to be examined according to their sequence in dates. In all of them the aggregate amount required to be collected was apportioned among the several States:

The act of July 14, 1798 (ch. 75, 1 Stat., 53). This act imposed a tax upon real estate and a capitation tax upon slaves.

The act of August 2, 1813 (ch. 37, 3 id., 53). By this act the tax was imposed upon real estate and slaves, according to their respective values in money.

The act of January 19, 1815 (ch. 21, id. 164). This act imposed a tax upon the same descriptions of property and in like manner as the preceding act.

The act of February 27, 1815 (ch. 60, id. 216), applied to the District of Columbia the provisions of the act of January 19, 1815.

The act of March 5, 1816 (ch. 24, id. 255), repealed the two preceding acts and reenacted their provisions to enforce the collection of the smaller amount of tax thereby prescribed.

The act of August 5, 1861 (chs. 45, 12, id. 294), required the tax to be levied wholly on real estate.

The act of June 7, 1862 (ch. 98, id. 422), and the act of February 6, 1863 (ch. 21, id. 640), both relate only to the collection in insurrectionary districts of the direct tax imposed by the act of August 5, 1861, and need not therefore be more particularly noticed.

It will thus be seen that whenever the Government has imposed a tax which is recognized as a direct tax it has never been applied to any objects but real estate and slaves. The latter application may be accounted for upon two grounds: First, in some of the States slaves were regarded as real estate (1 Hurd. Slavery, 239; Veazie Bank *v.* Fenno, 8 Wall., 533); and, second, such an extension of the tax lessened the burden upon the real estate where slavery existed, while the result to the National Treasury was the same, whether the slaves were omitted or included. The wishes of the South were, therefore, allowed to prevail. We are not aware that the question of the validity of such a tax was ever presented for adjudication. Slavery having passed away, it can not hereafter arise. It does not appear that any tax like the one here in question was ever regarded or treated by Congress as a direct tax. This uniform practical construction of the Constitution, touching so important a point, through so long a period, by the legislative and executive departments of the Government, though not conclusive, is a consideration of great weight.

There are four adjudications by this court to be considered. They have an important, if not a conclusive, application to the case in hand. In Hylton *v.* United States (supra) a tax had been laid upon pleasure carriages. The plaintiff in error insisted that the tax was void, because it was a direct tax and had not been apportioned among the States, as required by the Constitution, where such taxes are imposed. The case was argued on both sides by counsel of eminence and ability. It was heard and determined by four judges—Wilson, Paterson, Chase, and Iredell. The three first named had been distinguished members of the Constitutional Convention. Wilson was on the committee that reported the completed draft of the instrument and warmly advocated its adoption in the State convention of Pennsylvania. The fourth was a member of the convention of North Carolina that adopted the Constitution. The case was decided in 1795. The judges were unanimous. The tax was held not to be a direct tax. Each judge delivered a separate opinion. Their judgment stood on the ground indicated by Mr. Justice Chase in the following extract from his opinion:

"It appears to me that a tax on carriages can not be laid by the rule of apportionment without very great inequality and injustice. For example, suppose two States, equal in census, to pay $80,000 each by a tax on carriages of $8 on every carriage, and in one State there are 100 carriages and in the other 1,000, the owners of carriages in one State would pay 10 times the tax of owners in the other. A, in one State, would pay for his carriage $8; but B, in the other State, would pay for his carriage $80."

It was well held that where such evils would attend the apportionment of a tax the Constitution could not have intended that an apportionment should be made. This view applies with even greater force to the tax in question in this case. Where the population is large and the incomes are few and small, it would be intolerably oppressive.

The difference in the ability of communities, without reference to numbers, to pay any taxes is forceably remarked upon by McCulloh in his article on taxation in the Encyclopedia Brittanica, volume 21 (old ed.), page 75.

Mr. Justice Chase said, further, that he would give no judicial opinion upon the subject, but that he was inclined to think that the direct taxes contemplated by the Constitution were only two—a capitation tax and a tax on land.

Mr. Justice Iredell said: "Perhaps a direct tax, in the sense of the Constitution, can mean nothing but a tax on something inseparably annexed to the soil. * * * A land or poll tax may be considered of this description. The latter is to be so considered, particularly under the present Constitution, on account of the slaves in the Southern States, who give a ratio in the representation in the proportion of three to five."

Mr. Justice Paterson said he never entertained a doubt that the principal, he would not say the only, object contemplated by the Constitution as falling within the rule of apportionment were a capitation tax and a tax on land. From these views the other judges expressed no dissent.

"Ellsworth, the Chief Justice, sworn into office that morning, not having heard the whole argument, declined taking part in the decision." (8 Wall., 545.) Cushing, from ill health, did not sit in the case. It has been remarked that if they had been dissatisfied with the result, the question involved being so important, doubtless a reargument would have been had.

In Pacific Insurance Co. *v.* Soule (7 Wall., 433) the taxes in question were upon the receipts of such companies from premiums and assessments and from all sums made or added during the year to their surplus or contingent fund. This court held unanimously that the taxes were not direct taxes, and that they were valid.

In the Veazie Bank *v.* Fenno (supra) the tax which came under consideration was one of 10 per cent upon the notes of State banks paid out by other banks, State or national. The same conclusions were reached by the court as in the preceding case. Mr. Chief Justice Chase delivered the opinion of the court. In the course of his elaborate examination of the subject he said: "It may be rightly affirmed that, in the practical construction of the Constitution by Congress, direct taxes have been limited to taxes on land and appurtenances, and taxes on polls, or capitation taxes."

In Scholey *v.* Rew (23 Wall., 331) the tax involved was a succession tax, imposed by the acts of Congress of June 30, 1864, and July 13, 1866. It was held that the tax was not a direct tax, and that it was constitutional and valid. In delivering the opinion of the court Mr. Justice Clifford, after remarking that the tax there in question was not a direct tax, said: "Instead of that it is plainly an excise tax or duty, authorized by section 8 of Article I of the Constitution, which vests the power in Congress to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and public welfare."

He said further: "Taxes on houses, lands, and other permanent real estate have always been deemed to be direct taxes, and capitation taxes, by the express words of the Constitution, are within the same category; but it has never been decided that any other legal exactions for the support of the Federal Government fall within the condition that unless laid in proportion to numbers the assessment is invalid."

All these cases are indistinguishable in principle from the case now before us, and they are decisive against the plaintiff in error.

The question, What is a direct tax? is one exclusively in American jurisprudence. The text writers of the country are in entire accord on the subject.

Mr. Justice Story says all taxes are usually divided into two classes, those which are direct and those which are indirect, and that "under the former denomination are included taxes on land or real property and under the latter taxes on consumption." (1 Const., sec. 950.)

Chancellor Kent, speaking of the case of Hylton *v.* United States, says: "The better opinion seemed to be that the direct taxes contemplated by the Constitution were only two, viz, a capitation or poll tax and a tax upon land." (1 Com., 257. See also Cooley, Taxation, p. 5, note 2; Pomeroy, Const. Law, 157; Sharswood's Blackstone, 308, note; Rawle, Const., 30; Sergeant, Const., 305.)

We are not aware that any writer since Hylton *v.* United States was decided has expressed a view of the subject different from that of these authors.

Our conclusions are that direct taxes within the meaning of the Constitution are only capitation taxes as expressed in that instrument and taxes on real estate, and that the tax of which the plaintiff in error complains is within the category of an excise or duty. (Pomeroy, Con. Lad, 177; Pac. Ins. Co. *v.* Soule and Scholey *v.* Rew, supra.)

Against the considerations in one scale in favor of these propositions what has been placed in the other as a counterpoise? Our answer is, Certainly nothing of such weight, in our judgment, as to require any special reply.

The numerous citations from the writing of foreign political economists made by the plaintiff in error are sufficiently answered by Hamilton in his brief before referred to.

This decision, rendered in October, 1880, was a little less than a hundred years after the decision in the case of Hylton *v.* United States. It was incontestible from the authority in the Springer case that a tax levied upon an income was constitutional, and this decision is supported by a hundred years of judicial and legislative construction. No man dreamed that any differentiation could be made as to the Springer case until one was made in the Pollock case in 1894. And what was the differentiation? It was to the effect that a tax had always been justified upon professions and that the particular tax in question was an occupation tax so far as Springer was concerned, and that therefore the real thing decided by Mr. Justice Swayne in the case which I have just read ought to have been that as Springer was pursuing an occupation, and as the tax of 1861 was also an occupation tax, the extent of this authority, and the sole extent, was to justify the levying of an occupation tax. That is how the Supreme Court in the Pollock case got rid of the Springer case, which I have just submitted to you. [Applause.]

I refer you to one other case, that of Nichol *v.* Ames (173 U. S., 508), as indicating what the courts are determined to do one of these days with the Pollock case. I do not wish to be understood as claiming the right to rail at the judiciary, but I do wish to be understood as claiming the right here, in a case where three-fourths of the taxing power of the Federal Govern-

ment has been struck down by one decision, where a great political sovereignty is involved, and where the question of whether the wealth of the Nation shall come under the taxing power of the United States—I do wish to be understood as saying that so far as my humble research goes there never was a suggestion that an income tax could not be sustained until 1894, and there has never been a reaffirmance of that, but, on the contrary, a limitation upon it since 1894, so far as the decisions go. [Applause.]

We have now traveled over a period of more than 100 years of judicial and legislative construction. We have inquired into the sources of contemporaneous interpretation. We have turned over the pages of the debates in the Constitutional Convention. We have witnessed the exercise of the taxing power by the Government directly upon carriages, as personal property, upon incomes of insurance companies, upon the circulation of State banks, upon the devolution of real estate under a succession tax, and finally we have witnessed the full and undisturbed power of section 8, Article I, of the Constitution, exerted directly upon the incomes covered by the acts of 1861. We have witnessed the laborious research of a long line of brilliant and distinguished judges, beginning in the case of Hilton against United States and ending with the case of Springer against United States. We have gone to the pages of the text writers. We have had a glimpse of the abstruse theories of the economist, and from all of these sources, gathering together all of the light which breaks out from any and all of these interpretations and letting it shine directly upon the provisions of the Constitution and the history of its meaning, we are unable to find a single challenge or question as to the power of the Government to tax incomes under the rule of uniformity until we come across the now celebrated case of Pollock against Farmers' Loan & Trust Co. That case, as all are now well aware, arose under sections 27 to 37, inclusive, of the act of Congress entitled "An act to reduce taxation and provide revenue for the Government, and for other purposes," which became a law in August, 1894, by which it was provided:

> There shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, a tax of 2 per cent on the amount so derived over and above $4,000, and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing without the United States.

This case was most exhaustively presented to the Supreme Court of the United States on behalf of the Government, as well as on behalf of the contestant. Participating on the presentation of that great case were such leaders of the bar as the late James C. Carter, who held the primacy of the bar of New York and whose arguments in favor of the validity of the income tax have not yet and will not be surpassed for solid and unanswerable reasoning.

Joseph H. Choate appeared as a contestant of the validity of the law, and all of the ability and brilliant qualities which have marked his illustrious career at the bar were drawn upon on this occasion. Mr. Guthrie, then a very young man at the bar, gave his clear and unclouded mind for weeks and months to the study of the questions involved in an effort to prove the invalidity of the statute. The Attorney General of the United States, Mr. Olney, brought to the presentation of the Government's case the wealth of learning and restraint of culture and the simplicity of utterance which had put him at the front of American advocates. It is a significant fact, which ought not to be overlooked, that Mr. James C. Carter, undoubtedly the most accomplished of advocates in that great legal struggle, called attention to the fact that its adversaries had no hope of persuading the Supreme Court of the United States to reverse the long and unvarying line of decisions of 100 years; called attention also to the fact that they had no hope of having the great court hold that direct taxes were any other than taxes on land and capitation, and pointed out that what his adversaries wished to have the court determine was that, although the income tax was indirect, it did not comply with the rule of uniformity as used in the Constitution and meant personal uniformity and equality and not geographical uniformity. If we could restore the scene and explore the minds of the actors in that great struggle and could reestablish the atmosphere we would see that Mr. Carter's analysis of the real contention of the other side was the true one, and that the whole problem, as he conceived it, was to be determined upon the rule of uniformity.

After the case had been so exhaustively argued, Chief Justice Fuller delivered the opinion of the court, reviewing at great length and with particular pains the debates in the Constitutional Convention and adverted to the various authorities, state papers, and public documents bearing on the question involved, and finally concluded with a statement of the decision of the court as follows:

> We are of opinion that the law in question, so far as it levies a tax on the rents or income of real estate, is in violation of the Constitution and is invalid.

He then discussed the validity of the law in so far as it lays a tax on incomes derived upon municipal bonds, and in this connection said:

> As the States can not tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentality or the property of a State.

He then quoted from the opinion of Chief Justice Marshall in the case of Weston *v.* Charleston (2 Pet., 449, 468):

> The tax on Government stock is thought by this court to be a tax on the contract, a tax on the power to borrow money on the credit of the United States, and consequently repugnant to the United States.

Applying this language to these municipal securities the court said:

> It is obvious that taxation on the interest therefrom would operate on the power to borrow before it is exercised, and would have a sensible influence on the contract, and that the tax in question is a tax on the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution.

Finally the Chief Justice states the decision of the court on the remaining questions as follows:

> Upon each of the other questions argued at the bar, to wit: 1. Whether the void provisions as to rents and incomes from real estate invalidated the whole act? 2. Whether, as to the income from personal property as such, the act is unconstitutional as laying direct taxes? 3. Whether any part of the tax, if not considered as a direct tax, is invalid for want of uniformity on either of the grounds suggested?—the justices who heard the argument are equally divided, and, therefore, no opinion is expressed.

From this opinion Mr. Justice White, with whom Mr. Justice Harlan concurred, dissented in an opinion now notable in the literature of the law.

Thus, after the decision in the first Pollock case the Supreme Court of the United States stood equally divided on the meaning, intent, and purpose of section 8, Article I of the Constitution, as well as section 9 of the same article, except in so far as it related to the income from real estate and from municipal bonds. The question of whether personal property could be taxed, or the income from personal property, and the question of uniformity were left unsettled.

Thereafter, on April 15, 1895, all of the counsel for appellants joined in a petition to the Supreme Court for a rehearing of the case, and this was supported by a separate petition presented by the Attorney General of the United States, Mr. Richard Olney, which differed only in that the Attorney General asked that the rehearing be had in such a way as to embrace all of the questions involved in the case. Thereafter, on May 6, 1895, the Chief Justice ordered that a rehearing should be had, and accordingly counsel for all parties again and with much elaboration and detail presented to the court their views. The Chief Justice again delivered the opinion of the court on the rehearing, and concluded that opinion as follows:

> First. We adhere to the opinion already announced, that taxes on real estate, being indisputably direct taxes, taxes on the rents or income of real estate are equally direct taxes.
>
> Second. We are of opinion that taxes on personal property or on the income of personal property are likewise direct taxes.
>
> Third. The tax imposed by sections 27 to 37, inclusive, of the act of 1894, so far as it falls on the income of real estate and of personal property, being a direct tax within the meaning of the Constitution, and, therefore, unconstitutional and void because not apportioned according to representation, all of those sections, constituting one entire scheme of taxation, are necessarily invalid.

It is worth remembering in connection with the pending bill that the Chief Justice said in the course of his opinion that the court had considered the act only in respect to the tax on income derived on real estate and invested personal property and did not comment on so much of it as bears on gains or profits from business, privileges, or employments, in view of the circumstances in which taxation on business, privileges, or employments have assumed the guise of an excise tax and been sustained as such.

From the prevailing opinion of the court Mr. Justice Harlan in a very vigorous decision dissented; Mr. Justice White dissented; Mr. Justice Jackson dissented; and Mr. Justice Brown dissented. And I believe I am well within the limits of moderation when I say that the entire bar of this country, viewing the question as a constitutional and legal one solely, are practically unanimous—where they have investigated the subject—that the four dissenting opinions presented the better side of the controversy, were more in accord with authority, more supported by reason, more sustained by history, and represented the true

exposition of the meaning of the Constitution. So far as the political effects of this decision are concerned—what its fruits were in the heat and friction of the public forum, what effect it has had in shaping our economic policies, what disturbance, if any, it has brought in the minds of the people generally I shall not undertake to discuss.

As reflecting the views of the Supreme Court after the decision of the Pollock case, I wish to refer you to the case of Nichol *v.* Ames in One hundred and seventy-third United States, which contains language the significance of which can not escape your observation. The case arose under the provisions of section 6 and a portion of Schedule A of an act of Congress approved June 13, 1898, chapter 448, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," which provided as follows:

That on and after the 1st day of July, 1898, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule. * * * Upon each sale, agreement of sale, or agreement to sell any products or merchandise at any exchange or board of trade or other similar place, either for present or future delivery, for each $100 in value of said sale or agreement of sale or agreement to sell, 1 cent; and for each additional $100 or fractional part thereof in excess of $100, 1 cent.

The question arose out of transactions upon the stock exchange, and Mr. Justice Peckham, after stating the facts, delivered the opinion of the court, which was as follows:

The objections to the validity of the act are stated generally that it is a direct tax, and is illegal because not apportioned as required by the Constitution. If an indirect tax, it is a stamp tax on documents not required to be made under State law in order to render the sale valid, and Congress has no power to require a written memorandum to be made of transactions within the State for the purpose of placing a stamp thereon. It is not a privilege tax within the meaning of that term, because there is no privilege other than that which every man has to transact his own business in his own house or in his own office under such regulations as he may choose to adopt, and such a choice can not be in any fair use of the term a privilege which is subject to taxation.

These questions are involved in each case, while in the last one it is further objected that the sales of the stockyards are not included in the terms of the act, and evidence was adduced upon the trial as to the nature of the business conducted at the stockyards and the manner in which it was performed. It will be adverted to hereafter when we come to a discussion of the meaning and proper construction of the act.

It is always an exceedingly grave and delicate duty to decide upon the constitutionality of an act of the Congress of the United States. The presumption, as has frequently been said, is in favor of the validity of the act, and it is only when the question is free from any reasonable doubt that the court should hold an act of the lawmaking power of the Nation to be in violation of that fundamental instrument upon which all the powers of the Government rest. This is particularly true of a revenue act of Congress. The provisions of such an act should not be lightly or unadvisedly set aside, although if they be plainly antagonistic to the Constitution, it is the duty of the court to so declare. The power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy, but it is also the power to keep alive.

This necessary authority is given to Congress by the Constitution. It has power from that instrument to lay and collect taxes, duties, imposts, and excises in order to pay the debts and provide for the common defense and general welfare, and the only constitutional restraint upon the power is that all duties, imposts, and excises shall be uniform throughout the United States, and that no capitation or other direct tax shall be laid unless in proportion to the census or enumeration directed to be taken, and no tax or duty can be laid on articles exported from any State. (Constitution, Art. I, secs. 8 and 9, subdivs. 4 and 5.) As thus guarded, the whole power of taxation rests with Congress.

The commands of the Constitution in this as in all other respects must be obeyed; direct taxes must be apportioned, while indirect taxes must be uniform throughout the United States. But while yielding implicit obedience to these constitutional requirements it is no part of the duty of this court to lessen, impede, or obstruct the exercise of the taxing power by merely abstruse and subtle distinctions as to the particular nature of a specified tax, where such distinction rests more upon the differing theories of political economists than upon the practical nature of the tax itself.

In deciding upon the validity of a tax, with reference to these requirements, no miscroscopic examination as to the purely economic or theoretical nature of the tax should be indulged in for the purpose of placing it in a category which would invalidate the tax. As a mere abstract scientific or economical problem a particular tax might possibly be regarded as a direct tax, when as a practical matter pertaining to the actual operation of the tax it might quite plainly appear to be indirect. Under such circumstances, and while varying and disputable theories might be indulged as to the real nature of the tax, a court would not be justified, for the purpose of invalidating the tax, in placing it in a class different from that to which its practical results would consign it. Taxation is eminently practical, and is in fact brought to every man's door, and for the purpose of deciding upon its validity a tax should be regarded in its actual, practical results rather than with reference to those theoretical or abstract ideas whose correctness is the subject of dispute and contradiction among those who are experts in the science of political economy.

In searching for proper subjects of taxation to raise moneys for the support of the Government Congress must have the right to recognize the manner in which the business of the country is actually transacted, how among other things the exchange of commodities is affected, what facilities for the conduct of business exist, what is their nature, and how they operate, and what, if any, practical and recognizable distinctions there may be between a transaction which is effected by means of using certain facilities and one where such facilities are not availed of by the parties to the same kind of a transaction. Having the power to recognize these various facts, it must also follow that Congress is justified, if not compelled in framing a statute relating to taxation, to legislate with direct reference to the existing conditions of trade and business throughout the whole country, and to the manner in which they are carried on.

Coming to a consideration of the objections raised to this statute it is well to first consider the nature of an exchange or board of trade, and then to inquire more in detail as to the validity of the act with reference to sales at such places. The Chicago Board of Trade may be taken as a type of the others in existence throughout the country because the same features exist in all of them, while the size and importance of the Chicago instituitons serve only to make such features more prominent and their effect more easily discernible. We say the same features exist in all of the exchanges or boards of trade because we have the right to consider facts without particular proof to them which are universally recognized and which relate to the common and ordinary way of doing business throughout the country, and while we could not take notice without proof, as to any particular constitution or by-law of a body of this description, yet we are not thereby cut off from knowledge of the general nature of those bodies and of the manner generally in which business therein is conducted.

It appears in this record that the Chicago Board of Trade is a voluntary association of individuals who meet together at a certain building owned by the association for the purpose of there transacting business. This particular board is incorporated under an act of the Legislature of Illinois, though its corporate character does not, in our judgment, form a material consideration in the inquiry. The members of the association meet daily, between certain business hours, for the purpose of buying and selling flour, wheat, corn, oats, and other articles of food products, and for the transaction of such other business as is incident thereto. Among its members are some whose business it is to purchase in the country or to receive on consignment from persons in the country some or all of the articles which are dealt in on the floor of the exchange, and there are other members whose business it is to buy such articles upon the exchange, either for themselves or on commission, and to deliver or ship the same to consumers or distributers throughout the country and in Europe.

It is common knowledge that these exchanges encourage and promote honest and fair dealing among their members; that they provide penalties for the violation of their rules in that regard; and that contracts between members relating to business on the exchange have the advantage of the sanction provided by the exchange for such purposes. They furnish a meeting place for those engaged in the purchase and sale of commodities or other things to be sold, and in that way they offer facilities for market for them. Dealings among members so engaged tend to establish the market price of the articles they deal in, and that price is very apt to be the price for the same article when bought or sold outside. The price is arrived at by offers to sell on the one side and to purchase on the other, until, by what has frequently been termed the "higgling" of the market, a price is agreed upon and the sales are accomplished. In arriving at this price of course the great law of the cost of production and also that of supply and demand enter into the problem, and it is upon a consideration of all matters regarded as material that the agreement to buy and sell is made. The prices thus fixed are usually followed when the transaction occurs outside, and the market price means really the exchange price. That an enormous amount of the business of the country which is engaged in the distribution of the commodities grown or produced therein is transacted and takes place through the medium of the boards of trade or exchanges can not be doubted. Nor is there any doubt that these exchanges facilitate transactions of purchase and sale, and it would seem that such facilities or privileges, even though not granted by the Government or by a State, ought nevertheless to be recognized as existing facts and to be subject to the judgment of Congress as fit matters for taxation.

We will now examine the several objections that have been offered to this statute.

It may be stated, of course, that if the tax herein is a direct tax within the meaning of the Constitution it is void, for there is no apportionment as required by that instrument.

It is asserted to be a direct tax because it is a tax upon the sale of property measured by the value of the thing sold, and such a tax is a direct tax upon the property itself, and therefore subject to the rule of apportionment. Various cases are cited, from Brown *v.* Maryland (12 Wheat., 419) down to those involving the validity of the income tax (157 U. S., 429; 158 U. S., 601), for the purpose of proving the correctness of this proposition. All the cases involve the question whether the taxes to which objection was taken amounted to practically a tax on the property. If this tax is not on the property or on the sale thereof, then these cases do not apply.

We think the tax is in effect a duty or excise laid upon the privilege, opportunity, or facility offered at boards of trade or exchanges for the transaction of the business mentioned in the act. It is not a tax upon the business itself which is so transacted, but it is a duty upon the facilities made use of and actually employed in the transaction of the business, and separate and apart from the business itself. It is not a tax upon the members of the exchange nor upon membership therein, nor is it a tax upon sales generally. The act limits the tax to sales at any exchange or board of trade or similar place, and its fair meaning is to impose a duty upon those privileges or facilities which are there found and made use of in the sale at such place of any product or merchandise. Whether this facility or privilege is such a thing as can be legally taxed while leaving untaxed all other sales made outside of such places will be discussed further on. At present it is enough to say that the tax is not upon the property sold and can not on that ground be found to be direct. The tax laid in the same act upon a broker's note or memorandum of sale is a separate tax, although it may have reference to the same transaction. It is a tax on the note or memorandum itself where made by a broker, while in the other case the tax, although measured in amount by reference to the value of the thing sold, is in reality upon the privilege or facility used in the transaction or sale. The tax is not a direct tax within the meaning of the Constitution, but is, as already stated, in the nature of a duty or an excise. The amount of such a tax when imposed in a case like this may be increased or diminished by the extent to which the privilege or facility is used, and it is measured in this act by the value of the property transferred by means of using such privilege or facility, but this does not make the tax a direct one. A tax on professional receipts was recognized by the present Chief Justice in delivering the opinion of the court on the first hearing of the Income Tax case (157 U. S., 429, 579) as an excise or duty and therefore indirect, while a tax on the income of per-

sonalty, he thought, might be regarded as direct. And upon the rehearing (158 U. S., 601) it was distinctly held that the tax on personal property or on the income thereof was a direct tax. This tax is neither a tax on the personal property sold nor upon the income thereof, although its amount is measured by the value of the property that is sold at the exchange or board of trade.

It is also said that the tax is direct because it can not be added to the price of the thing sold and therefore ultimately paid by the consumer. In other words, that it is direct because the owner can not shift the payment of the amount of the tax to someone else. This, however, assumes that the tax is not in the nature of a duty or an excise, but that it is laid directly upon the property sold, which we hold is not the case. It is not laid upon the property at all, nor upon the profits of the sale thereof, nor upon the sale itself, considered separate and apart from the place and the circumstances of the sale.

We do not see that any material difference exists when the sale is for future delivery. The thing agreed to be sold is the same, whether for immediate or future delivery, and the fact that the sale for future delivery may subsequently be carried out by the actual payment of the difference between the agreed and the market price at the time agreed upon for such delivery does not affect the case. The privilege used is the same whether for immediate or future delivery, and the same rule applies to both.

Passing these grounds of objection, it is urged that if this is an indirect tax it is not uniform throughout the United States as required by the Constitution. Sales at an exchange or board of trade, it is said, are singled out for taxation under this act, although they differ in no substantial respect from sales at other places, and there is therefore no just ground for segregating or classifying such sales from those made elsewhere. A sale at an exchange or board of trade, it is claimed, is not a privilege or facility which can justly or ought to be taxed while all other sales at all other places are exempted from taxation, and there is no reasonable ground, therefore, for the assertion that such a tax is uniform within the meaning of the Constitution. It is said not to be uniform because it is unequal, taxing sales at exchanges and exempting all other sales, while at the same time there is no natural basis for any distinction between such sales, the distinction made being purely arbitrary and unreasonable.

This general objection on the ground of want of uniformity is not, in our judgment, well founded. Whether the word "uniform" is to be understood in what has been termed its "geographical" sense, or as meaning uniformity as to all the taxpayers similarly situated with regard to the subject matter of the tax, we think this tax is valid within either meaning of the term. In our judgment a sale and an exchange does form a proper basis for a classification which excludes all sales made elsewhere from taxation.

If it were to be assumed that taxes upon corporate franchises or privileges may be imposed only by the authority that created them, it does not follow that no privilege or facility can be taxed which is not created by the government of a State or by Congress. In order to tax it the privilege or facility must exist in fact, but it is not necessary that it should be created by the Government. The question always is, when a classification is made, whether there is any reasonable ground for it or whether it is only and simply arbitrary, based upon no real distinction and entirely unnatural. (Gulf, Colorado, etc., Railway *v.* Ellis, 165 U. S., 150–155; Magoun *v.* Illinois Trust and Savings Bank, 170 U. S., 283, 294.) If the classification be proper and legal, then there is the requisite uniformity in that respect.

A tax upon the privilege of selling property at the exchange and of thus using the facilities there offered in accomplishing the sale differs radically from a tax upon every sale made in any place. The latter tax is really and practically upon property. It takes no notice of any kind of privilege or facility, and the fact of a sale is alone regarded. Although not created by government, this privilege or facility in affecting a sale at an exchange is so distinct and definite in its character and constitutes so clear and plain a difference from a sale elsewhere as to create a reasonable and substantial ground for classification and for taxation when similar sales at other places are untaxed. A sale at an exchange differs from a sale made at a man's private office or on his farm or by a partnership, because, although the subject matter of the sale may be the same in each case, there are at an exchange certain advantages in the way of finding a market, obtaining a price, the saving of time, and in the security of payment and other matters which are more easily obtained there than at an office or upon a farm. To accomplish a sale at one's farm or house or office might and probably would occupy a great deal of time in finding a customer, bringing him to the spot, and agreeing on a price. All this can be done at an exchange in the very shortest time and at the least inconvenience. The market is there, and all that is necessary is to send the commodity. Although a sale is the result in each case and the thing sold may be of the same kind, the difference exists in the means and facilities for accomplishing such sale, and those means and facilities there is no reason for saying may not be taxed, unless all sales are taxed, whether the facilities be used or not.

In this case there is that uniformity which the Constitution requires. The tax or duty is uniform throughout the United States, and it is uniform or, in other words, equal upon all who avail themselves of the privileges or facilities offered at the exchanges, and it is not necessary in order to be uniform that the tax should be levied upon all who make sales of the same kind of things whether at an exchange or elsewhere.

Another objection taken is that Congress taxes only those who make sales and not those who make purchases, and those who sell products or merchandise and not those who sell bonds, stocks, etc. These are discriminations, it is said, which do not follow the rule of uniformity, and hence render the tax void.

A purchase occurs whenever a sale is effected, and to say that a purchaser at an exchange sale must be taxed for the facilities made use of in making the purchase, or else that the tax on the seller is void, is simply to insist upon doubling the tax.

Nor is it necessary to tax the use of the privilege under all circumstances in order to render the tax valid upon its use in particular cases. We see no reason why it should be necessary to tax a privilege whenever it is used for any purpose, or else not to tax it at all. It is not indivisible. A tax upon the privilege when used for one purpose does not require for its validity that the same privilege should also be taxed when used for another and a totally distinct purpose. It may be the same privilege, but when it is used in different cases to accomplish sales of wholly different things, between which there is no relation whatever, one use may be taxed and the other not, and no rule of uniformity will thereby be violated.

It is also objected that there is no power in Congress to require a party selling personal property in the course of commerce within the State to make a written note or memorandum of the contract and to punish him by fine and imprisonment for a failure to do so. If the State does not require a memorandum on a sale, Congress can not in the exercise of the taxing power compel a citizen to make one in order that it may be taxed by the United States.

In holding that the tax under consideration is a tax on the privilege used in making sales at an exchange we thereby hold that it is not a tax upon the memorandum required by the statute upon which the stamp is to be placed. The act does not assume to in any manner interfere with the laws of the State in relation to the contract of sale. The memorandum required does not contain all the essentials of a contract to sell. It need not be signed, and it need not contain the name of the vendee or the terms of payment. The statute does not render a sale void without the memorandum or stamp, which by the laws of the State would otherwise be valid. It does not assume to enact anything in opposition to the law of any State upon the subject of sales. It provides for a written memorandum containing the matters mentioned simply as a means of identifying the sale and for collecting the tax by means of the required stamp, and for that purpose it secures by proper penalties the making of the memorandum. Instead of a memorandum, Congress might have required a sworn report with the proper amount of stamps thereon to be made at certain regular intervals of all sales made subject to the tax. Other means might have been resorted to for the same purpose. Whether the means adopted were the best and most convenient to accomplish that purpose was a question for the judgment of Congress, and its decision must be conclusive in that respect.

The means actually adopted do not illegally interfere with or obstruct the internal commerce of the States, nor are such means a restraint upon that commerce so far as to render the means adopted illegal. That Congress might have adopted some other means for collecting the tax which would prove less troublesome or annoying to the taxpayer can surely be no reason for holding that the method set forth in the act renders the tax invalid. As it has the power to impose the tax, the means to be adopted for its collection within reasonable and rational limits must be a question for Congress alone.

I think no one can read the language of Mr. Justice Peckham in his general observation upon the duty of the court in construing an act of Congress and upon the various objects of taxation without feeling that he had in mind as he wrote these words what can be regarded as nothing less than the judicial misfortune of the opinion in the Pollock case.

Can you not discern in the juridical illumination from the pen of Justice Peckham reference to the Pollock case? Can you see the beginning of the time and the place when the court will begin to write the literature out of which ultimately will come a rearrangement and readjustment of the doctrines of the Pollock case and restore us to the place we occupied for more than a hundred years? [Applause.]

Mr. LONGWORTH. What year was that?

Mr. LITTLETON. Eighteen hundred and ninety-eight. This decision, interesting to a degree, finally justified the levying of a tax on the transactions which took place on the exchange and justified it first upon the broad ground that I have already read, and second, on the ground that Congress had the power to select the particular manner in which business was done, and if it chose to take the exchange and to make the levy, it had that right and rested upon that.

In the course of judicial history there arose the case of Knowlton *v.* Moore, reported in One hundred and seventy-eighth United States, page 41. It was under an act of Congress approved June 13, 1898, which is known as the "war-revenue act," sections 29 and 30 of which provide for the assessment and collection of the particular taxes which are there described. Mr. Justice White, in delivering the opinion of the court, said:

To determine the issues which arise on this record it is necessary to decide whether the taxes imposed are void because repugnant to the Constitution of the United States, and if they will be valid to ascertain and define their true import.

The controversy was thus engendered: Edwin F. Knowlton died in October, 1898, in the borough of Brooklyn, State of New York, where he was domiciled. His will was probated, and the executors named therein were duly qualified. As a preliminary to the assessment of the taxes imposed by the provisions of the statute, the collector of internal revenue demanded of the executors that they make a return showing the amount of the personal estate of the deceased and disclosing the legatees and distributees thereof. The executors, asserting that they were not obliged to make the return because of the unconstitutionality of sections 29 and 30 of the statute, nevertheless complied under protest. The report disclosed that the personal estate was appraised at $2,624,029.63, and afforded full information as to those entitled to take the same. The amount of the tax assessed was the sum of $42,084.67.

* * * * * * *

1. The provisions of the act of Congress under which it is sought to impose, assess, and collect the said tax or duty are in violation of the provisions of Article I, sections 8 and 9, of the Constitution of the United States, and are therefore void.

2. The legacies to George W. Knowlton, Charlotte A. Batchelor, the Unitarian Church of West Upton, Mass., each amount to less than $10,000 and are not subject to any tax or duty under the said provisions of the said act of Congress, even if such provisions be not unconstitutional and void.

3. The legacy to Eben J. Knowlton, a brother of the testator, amounts to only $100,000, and under the said provisions of the said act should be taxed at the rate of $1.12½ per $100, and not at the rate of $2.25 per $100, even if said act be not unconstitutional and void.

In discussing the question of the direct character of the tax Mr. Justice White made the following observations concerning the Pollock case:

In the statute of August 27, 1894 (28 Stat., 509, c. 349), what was in effect a legacy tax was imposed by the provisions of section 28. (Ib., 553.) The tax was eo nomine an income tax, but was in one respect the legal equivalent of a legacy tax, since among the items going to make up the annual income which was taxed was "money and the value of all personal property acquired by gift or inheritance." This

law was not enforced. Its constitutionality was assailed on the ground that the income tax, in so far as it included the income from real estate and personal property, was a direct tax within the meaning of the Constitution, and was void because it had not been apportioned. The contention was twice considered by this court. On the first hearing in Pollock *v.* Farmers' Loan & Trust Co. (157 U. S., 429) it was decided that to the extent that the income taxes included the rentals from real estate the tax was a direct tax on the real estate and was therefore unconstitutional because not apportioned. Upon the question whether the unconstitutionality of the tax on income from real estate rendered it legally impossible to enforce all the other taxes provided by the statute the court was equally divided in opinion. (Ib., 586.) On a rehearing (158 U. S., 601) the previous opinion was adhered to, and it was moreover decided that the tax on income from personal property was likewise direct and that the law imposing such a tax was therefore void because not providing for apportionment. The court said (p. 637):

"Third. The tax imposed by sections 27 to 37, inclusive, of the act of 1894 so far as it falls on the income of real estate and of personal property being a direct tax within the meaning of the Constitution, and therefore unconstitutional and void because not apportioned according to representation, all those sections constituting one entire scheme of taxation are necessarily invalid."

The decision that the invalidity of the income tax in the particulars quoted carried with it the other different taxes which were included in income was not predicated upon the unconstitutionality of such other taxes, but solely upon the conclusion that by the statute there was such an inseparable union between the elements of income derived from the revenues of real estate and personal property and the other constituents of income provided in the statute that they could not be divided. The court said (p. 637):

"We do not mean to say that an act laying by apportionment a direct tax on all real estate and personal property, or the income thereof, might not also lay excise taxes on business, privileges, employments, and vocations. But this is not such an act, and the scheme must be considered as a whole. Being invalid as to the greater part, and falling, as the tax would, if any part were held valid, in a direction which could not have been contemplated except in connection with the taxation considered as an entirety, we are constrained to conclude that sections 27 to 37, inclusive, of the act, which may become a law without the signature of the President on August 28, 1894, are wholly inoperative and void."

Further on in his opinion Mr. Justice White discusses the question of whether the Pollock case overruled the case of Scholey *v.* Rew, and says:

The precise meaning of the law being thus determined, the question whether the tax which it imposes is direct, and hence subject to the requirement of apportionment, arises for consideration. That death duties, generally, have been from the beginning in all countries considered as different from taxes levied on property, real or personal, directly on account of the ownership and possession thereof, is demonstrated by the review which we have previously made. It has also been established by what we have heretofore said that in such taxes, almost from the beginning of our national life, have been treated as duties and not as direct taxes. Of course they concern the passing of property by death, for if there were no property to transmit there would be nothing upon which the tax levied on the occasion of death could be computed. This legislative and administrative view of such taxes has been directly upheld by this court. In Scholey *v.* Rew (23 Wall., 331, 349), to which we have heretofore referred, the question presented was the constitutionality of the provisions of the act of 1864, imposing a succession tax as to real estate. The assertion was that the duty was repugnant to the Constitution, because it was a direct tax and had not been apportioned. The tax was decided to be constitutional. The court said (p. 346):

"But it is clear that the tax or duty levied by the act under consideration is not a direct tax within the meaning of either of these provisions. Instead of that it is plainly an excise tax or duty, authorized by section 8 of Article I, which vests the power in Congress to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare.

* * * * * * *

"Whether direct taxes, in the sense of the Constitution, comprehend any other tax than a capitation tax and a tax on land is a question not absolutely decided, nor is it necessary to determine it in the present case, as it is expressly decided that the term does not include the tax on income, which can not be distinguished in principle from a succession tax such as the one involved in the present controversy."

This is decisive against the contrary contention here relied on, unless it be that the decision in Scholey *v.* Rew has been overruled, and therefore is no longer controlling.

The argument is that the decision in the Scholey *v.* Rew was overruled in Pollock *v.* Farmers' Loan & Trust Co. (157 U. S., 429; 158 U. S., 601). This contention is thus supported in argument.

As in the course of the opinion in Scholey *v.* Rew the court said that taxes on succession could not be distinguished in principle from an income tax, therefore the decision in the Pollock case, which held that an income tax was direct, it is argued, necessarily decided that an inheritance tax was also direct. But in the Pollock case the decision in Scholey *v.* Rew was not overruled. On the contrary, the correctness of the decision in the latter case as to the particular matter which it actually decided in effect was reaffirmed. In consequence of the statement made in Scholey *v.* Rew that an income tax and a succession tax could not be distinguished one from the other, that case was relied on in the Pollock case by counsel in argument and by the members of the court who dissented as establishing, for the reason stated, that the income tax was not direct. The court, however, treated Scholey *v.* Rew as inapplicable to an income tax, because it considered that whether an income tax was direct was not actually involved in the latter case, and hence the illustration which was used in Scholey *v.* Rew as to an income tax was held not to have been a decision on the question of whether or not an income tax was direct.

The court said (157 U. S., p. 577):

"Scholey *v.* Rew (23 Wall., p. 331) was the case of a succession tax, which the court held to be 'plainly an excise tax or duty' upon the devolution of the estate or the right to become beneficiary entitled to the same, or the income thereof, in possession or expectancy. It was like the succession tax of a State, held constitutional in Maher *v.* Grima (8 How., p. 490); and the distinction between the power of a State and the power of the United States to regulate the succession of property was not referred to and does not appear to have been in the mind of the court. The opinion stated that the act of Parliament, from which the particular provision under consideration was borrowed, had received substantially the same construction, and cases under that act hold that a succession duty is not a tax upon income or upon property, but on the actual benefit derived by the individual, determined as prescribed." (In re Elwes, 3 H. & N., p. 719; Attorney General *v.* Sefton, 2 H. & C., p. 362; S. C. (H. L.), 3 H. & C., p. 1023; 11 H. L. Cas., p. 257.)

The argument now made, therefore, comes to this: Although in the Pollock case the doctrine which the court considered as having been actually decided in Scholey *v.* Rew was not overruled, nevertheless, because an example which was made use of in the course of the opinion in Scholey *v.* Rew was disregarded, the Pollock case therefore overruled Scholey *v.* Rew. The issue presented in the Pollock case was whether an income tax was direct within the meaning of the Constitution. The contentions which the case involved were thus presented. On the one hand, it was argued that only capitation taxes and taxes on land as such were direct within the meaning of the Constitution, considered as a matter of first impression, and that previous adjudications had construed the Constitution as having that import. On the other hand, it was asserted that, in principle, direct taxes, in the constitutional sense, embraced not only taxes on land and capitation taxes, but all burdens laid on real or personal property because of its ownership, which were equivalent to a direct tax on such property, and it was affirmed that the previous adjudications of this court had settled nothing to the contrary. The issues which were thus presented in the Pollock case, it will be observed, had been expressly reserved in Scholey *v.* Rew, where it was said (23 Wall., p. 346):

"Whether direct taxes in the sense of the Constitution comprehend any other tax than a capitation tax and a tax on land is a question not absolutely decided, nor is it necessary to determine it in the present case."

The question which was thus reserved in Scholey *v.* Rew, and which was presented for decision in the Pollock case, was decided in the latter case, the court holding that taxes on the income of real and personal property were the legal equivalent of a direct levy on the property from which the income was derived, and therefore required apportionment. But there was no intimation in the Pollock case that inheritance taxes—which had been held in Scholey *v.* Rew not to be direct, which had from all time been considered as being imposed not on property, real or personal, as ordinarily understood, but as being levied on the transmission or receipt of property occasioned by death, and which had from the foundation of the Government been treated as a duty or excise—were direct taxes within the meaning of the Constitution. Undoubtedly, in the course of the opinion in the Pollock case, it was said that if a tax was direct within the constitutional sense the mere erroneous qualification of it as an excise or duty would not take it out of the constitutional requirement as to apportionment. But this language related to the subject matter under consideration and was but a statement that a tax which was in itself direct, because imposed upon property solely by reason of its ownership, could not be changed by affixing to it the qualification of excise or duty. Here we are asked to decide that a tax is a direct tax on property, which has at all times been considered as the antithesis of such a tax; that is, has ever been treated as a duty or excise, because of the particular occasion which gives rise to its levy.

But it is asserted that it was decided in the income-tax cases that, in order to determine whether a tax be direct within the meaning of the Constitution, it must be ascertained whether the one upon whom by law the burden of paying it is first cast can therefore shift it to another person. If he can not, the tax would then be direct in the constitutional sense, and hence, however obvious in other respects it might be a duty, impost, or excise, it can not be levied by the rule of uniformity and must be apportioned. From this assumed premise it is argued that death duties can not be shifted from the one on whom they first cast by law, and therefore they are direct taxes requiring apportionment.

The fallacy is in the premise. It is true that in the income-tax cases the theory of certain economists by which direct and indirect taxes are classified with reference to the ability to shift the same was adverted to. But this disputable theory was not the basis of the conclusion of the court. The constitutional meaning of the word "direct" was the matter decided. Considering that the constitutional rule of apportionment had its origin in the purpose to prevent taxes on persons solely because of their general ownership of property from being levied by any other rule than that of apportionment, two things were decided by the court: First, that no sound distinction existed between a tax levied on a person solely because of his general ownership of real property, and the same tax imposed solely because of his general ownership of personal property. Secondly, that the tax on the income derived from such property, real or personal, was the legal equivalent of a direct tax on the property from which said income was derived, and hence must be apportioned. These conclusions, however, lend no support to the contention that it was decided that duties, imposts, and excises, which are not the essential equivalent of a tax on property generally, real or personal, solely because of its ownership, must be converted into direct taxes, because it is conceived that it would be demonstrated by a close analysis that they could not be shifted from the person upon whom they first fall. The proposition now relied upon was considered and refuted in Nicol *v.* Ames (173 U. S., 509, 515), where the court said:

"The commands of the Constitution in this, as in all other respects, must be obeyed; direct taxes must be apportioned, while indirect taxes must be uniform throughout the United States. But while yielding implicit obedience to these constitutional requirements it is no part of the duty of this court to lessen, impede, or obstruct the exercise of the taxing power by merely abstruse and subtle distinctions as to the particular nature of a specified tax, where such distinction rests more upon the different theories of political economists than upon the practical nature of the tax itself.

"In deciding upon the validity of a tax with reference to these requirements, no microscopic examination as to the purely economic or theoretical nature of the tax should be indulged in for the purpose of placing it in a category which would invalidate the tax. As a mere abstract, scientific, or economical problem, a particular tax might possibly be regarded as a direct tax, when a practical matter pertaining to the actual operation of the tax it might quite plainly appear to be indirect. Under such circumstances and while varying and disputable theories might be indulged as to the real nature of a tax, a court would not be justified, for the purpose of invalidating the tax, in placing it in a class different from that to which its practical results would consign it. Taxation is eminently practical, and is, in fact, brought to every man's door, and for the purpose of deciding upon its validity a tax should be regarded in its actual, practical results, rather than with reference to those theoretical or abstract ideas whose correctness is the subject of dispute and contradiction among those who are experts in the science of political economy."

As further revealing the power of Congress under section 8 of Article I to levy and collect taxes, I shall make reference to the case of Spreckels Sugar Refining Co. *v.* McClain (192 U. S., 397). Under the twenty-seventh section of the act of June 13, 1898, entitled "An act to provide ways and means for war expenditures, and for other purposes," a tax was imposed on the gross annual receipts in excess of $250,000 of every person, firm, corporation, or company carrying on or doing the business of refining sugar. The Spreckels Sugar Refining Co. paid the taxes to the collector in Pennsylvania under protest and brought an action to recover the sum so paid. The validity of the statute was challenged on the ground that it was a direct tax and under the Constitution subject to the rule of apportionment. Mr. Justice Harlan delivered the opinion of the court, and in doing so said:

The contention of the Government is that the tax is not a direct tax, but only an excise imposed by Congress under its power to lay and collect excises which shall be uniform throughout the United States. (Art. I, sec. 8.) Clearly the tax is not imposed upon gross annual receipts as property, but only in respect of the carrying on or doing the business of refining sugar. It can not be otherwise regarded, because of the fact that the amount of the tax is measured by the amount of the gross annual receipts. The tax is defined in the act as "a special excise tax," and therefore it must be assumed, for it is worth, that Congress has no purpose to exceed its powers under the Constitution, but only to exercise the authority granted to it of laying and collecting excises.

This general question has been considered in so many cases heretofore decided that we do not deem it necessary to consider it anew upon principle. It was held in Pacific Insurance Co. *v.* Soule (7 Wall., 433) that the income tax imposed by the internal-revenue act of June 30, 1864, amended July 13, 1866 (13 Stat., 223; 14 Stat., 98), on the amounts insured, renewed, and continued by insurance companies, on the gross amounts of premiums received, on dividends, undistributed sums, and income, was not a direct tax, but an excise duty or tax within the meaning of the Constitution; in Veazie Bank *v.* Fenno (8 Wall., 553) that the statute then before the court which required national banking associations, State banks, or State banking associations to pay a tax of 10 per cent on the amount of State bank notes paid out by them after a named date, did not in the sense of the Constitution impose a direct tax, but was to be classed under the head of duties, which were to be sustained upon the principles announced in the case of Pacific Insurance Co. *v.* Soule, above cited; in Scholey *v.* Rew (23 Wall., 331) that the tax imposed on every devolution of title to real estate was not a direct tax, but an impost or excise, and was therefore constitutional; in Nicol *v.* Ames (173 U. S., 509) that the tax imposed (30 Stat., 448) upon each sale or agreement to sell any products or merchandise at an exchange, board of trade, or other similar place, either for present or future delivery, was not in the constitutional sense a direct tax upon the business itself, but in effect "a duty or excise law upon the privilege, opportunity, or facility offered at boards of trade or exchanges for the transaction of business mentioned in the act," which was "separate and apart from the business itself"; in Knowlton *v.* Moore (178 U. S., 41, 81) that an inheritance or succession tax was not a direct tax on property, as ordinarily understood, but an excise levied on the transmission or receipt of property occasioned by death; and in Patton *v.* Brady (184 U. S., 608) that the tax imposed by the act of June 13, 1898, upon tobacco, however prepared, manufactured, and sold for consumption or sale, was not a direct tax, but an excise tax, which Congress could impose; that it was not "a tax upon property as such, but upon certain kinds of property, having reference to their origin and intended use."

In view of these and other decided cases, we can not hold that the tax imposed on the plaintiff, expressly with reference to its "carrying on or doing the business of * * * refining sugar," and which was to be measured by its gross annual receipts in excess of a named sum, is other than is described in the act of Congress, a special excise tax, and not a direct one to be apportioned among the States according to their respective numbers. This conclusion is inevitable from the judgments in prior cases, in which the court has dealt with the distinctions often very difficult to be expressed in words between taxes that are direct and those which are to be regarded simply as excises. The grounds on which those judgments rested need not be restated or reexamined. It would subserve no useful purpose to do so. It must suffice now to say that they clearly negative the idea that the tax here involved is a direct one to be apportioned among the States according to numbers.

It is said that if regard be had to the decision in the income-tax cases, a different conclusion from that just stated must be reached. On the contrary, the precise question here was not intended to be decided in those cases. For, in the opinion of the rehearing of the income-tax cases, the Chief Justice said: "We have considered the act only in respect of the tax on income derived from real estate and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such." (158 U. S., 601.)

In the case of Flint *v.* Stone Tracy Co. (220 U. S., 107) the whole corporation tax was considered, and the court said:

This tax, it is expressly stated, is to be equivalent to 1 per cent of the entire net income over and above $5,000 received from all sources during the year—this is the measure of the tax explicitly adopted by the statute. The income is not limited to such as is received from property used in business, strictly speaking, but is expressly declared to be upon the entire net income above $5,000 from all sources, excluding the amounts received as dividends on stock in other corporations, joint stock companies or associations, or insurance companies also subject to the tax. In other words, the tax is imposed upon the doing of business of the character described, and the measure of the tax is to be the income, with the deduction stated, received not only from property used in business, but from every source. This view of the measure of the tax is strengthened when we note that as to organizations under the laws of foreign countries the amount of net income over and above $5,000 includes that received from business transacted and capital invested in the United States, the Territories, Alaska, and the District of Columbia.

It is further strengthened when the subsequent sections are considered as to deductions in ascertaining net income and requiring returns from those subject to the act. Under the second paragraph the net income is to be ascertained by certain deductions from the gross amount of income received within the year "from all sources;" and the return to be made to the collector of internal revenue under the third section is required to show the gross amount of the income received during the year "from all sources." The evident purpose is to secure a return of the entire income, with certain allowances and deductions which do not suggest a restriction to income derived from property actively engaged in the business. This interpretation of the act, as resting upon the doing of business, is sustained by the reasoning in Spreckels Sugar Refining Co. *v.* McClain (192 U. S., 397), in which a special tax measured by the gross receipts of the business of refining oil and sugar was sustained as an excise in respect to the carrying on or doing of such business.

Having thus interpreted the statute in conformity, as we believe, with the intention of Congress in passing it, we proceed to consider whether, as thus construed, the statute is constitutional.

It is contended that it is not, certainly so far as the tax is measured by the income of bonds nontaxable under Federal statutes, and of municipal and State bonds beyond the Federal power of taxation. And so of real and personal estates, because as to such estates the tax is direct, and so required to be apportioned according to population among the States. It is insisted that such must be the holding unless this court is prepared to reverse the income-tax cases decided under the act of 1894. (Pollock *v.* Farmers' Loan & Trust Co., 157 U. S., 429; S. C., 158 U. S., 601.)

The applicable provisions of the Constitution of the United States in this connection are found in Article I, section 8, clause 1, and in Article I, section 2, clause 3, and Article I, section 9, clause 4.

It was under the latter requirement as to apportionment of direct taxes according to population that this court in the Pollock case held the statute of 1894 to be unconstitutional. Upon the rehearing of the case Mr. Chief Justice Fuller, who spoke for the court, summarizing the effect of the decision, said:

"We have considered the act only in respect of the tax on income derived from real estate and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and has been sustained as such." (158 U. S., 635.)

And as to excise taxes, the Chief Justice said:

"We do not mean to say that an act laying by apportionment a direct tax on real estate or personal property, or the income thereof, might not also lay excise taxes on business, privileges, employments, and vocations" (p. 637).

The Pollock case was before this court in Knowlton *v.* Moore. (178 U. S., 41, 80.) In that case this court sustained an excise tax upon the transmission of property by inheritance. It was contended there, as here, that the case was ruled by the Pollock case, and of that case this court, speaking by the present Chief Justice, said:

"The issue presented in the Pollock case was whether an income tax was direct within the meaning of the Constitution. The contentions which the case involved were thus presented. On the one hand, it was argued that only capitation taxes and taxes on land as such were direct, within the meaning of the Constitution, considered as a matter of first impression, and that previous adjudications had construed the Constitution as having that import. On the other hand, it was asserted that in principle direct taxes, in the constitutional sense, embraced not only taxes, but all burdens laid on real or personal property because of its ownership, which were equivalent to a direct tax on such property, and it was affirmed that the previous adjudications of this court had settled nothing to the contrary.

* * * * * * * *

"Undoubtedly, in the course of the opinion in the Pollock case it was said that if a tax was direct within the constitutional sense the mere erroneous qualification of it as an excise or duty would not take it out of the constitutional requirement as to apportionment. But this language related to the subject matter under consideration, and was but a statement that a tax which was in itself direct, because imposed upon property solely by reason of its ownership, could not be changed by affixing to it the qualifications of excise or duty. Here we are asked to decide that a tax is a direct tax on property which has at all times been considered as the antithesis of such a tax; that is, has ever been treated as a duty or excise, because of the particular occasion which gives rise to its levy. * * *

"Considering that the constitutional rule of apportionment had its origin in the purpose to prevent taxes on persons solely because of their general ownership of property from being levied by any other rule than that of apportionment, two things were decided by the court: First, that no sound distinction existed between a tax levied on a person solely because of his general ownership of real property and the same tax imposed solely because of his general ownership of personal property. Secondly, that the tax on the income derived from such property, real or personal, was the legal equivalent of a direct tax on the property from which said income was derived, and hence must be apportioned. These conclusions, however, lend no support to the contention that it was decided that duties, imposts, and excises, which are not the essential equivalent of a tax on property generally, real or personal, solely because of its ownership must be converted into direct taxes, because it is conceded that it would be demonstrated by a close analysis that they could not be shifted from the person upon whom they first fell."

The same view was taken of the Pollock case in the subsequent case of Spreckels Sugar Refining Co. *v.* McClain (192 U. S., 397).

The act now under consideration does not impose direct taxation upon property solely because of its ownership, but the tax is within the class which Congress is authorized to lay and collect under Article I, section 8, clause 1, of the Constitution, and described generally as taxes, duties, imposts, and excises, upon which the limitation is that they shall be uniform throughout the United States.

Within the category of indirect taxation, as we shall have further occasion to show, is embraced a tax upon business done in a corporate capacity, which is the subject matter of the tax imposed in the act under consideration. The Pollock case construed the tax there levied as direct, because it was imposed upon property simply because of its ownership. In the present case the tax is not payable unless there be a carrying on or doing of business in the designated capacity, and this is made the occasion for the tax, measured by the standard prescribed. The difference between the acts is not merely nominal, but rests upon substantial differences between the mere ownership of property and the actual doing of business in a certain way.

It is unnecessary to enter upon an extended consideration of the technical meaning of the term "excise." It has been the subject matter of considerable discussion—the terms duties, imposts, and excises are generally treated as embracing the indirect forms of taxation contemplated by the Constitution. As Mr. Chief Justice Fuller said in the Pollock case (157 U. S., 557):

"Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words 'duties, imposts, and excises,' such a tax for more than 100 years of national existence has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue."

And in the same connection the late Chief Justice delivering the opinion of the court in Thomas *v.* United States (192 U. S., 363), in speaking of the words "duties, imposts, and excises," said:

"We think that they were used comprehensively to cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, particular business transactions, vocations, occupations, and the like."

Duties and imposts are terms commonly applied to levies laid by governments on the importations or exportations of commodities. Excises are "taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges." (Cooley, Const. Lim., 7th ed., 680.)

The tax under consideration, as we have construed the statute, may be described as an excise upon the particular privilege of doing business in a corporate capacity, i. e., with the advantages which arises from corporate or quasi corporate organization, or when applied to insurance companies for doing the business of such companies. As was said in the Thomas case (192 U. S., 363, supra), the requirement to pay such taxes involved the exercise of privileges, and the element of absolute and unavoidable demand is lacking. Its business is not done in the manner described in the statute; no tax is payable.

If we are correct in holding that this is an excise tax, there is nothing in the Constitution requiring such tax to be apportioned according to population. (Pacific Ins. Co. *v.* Soule, 7 Wall., 433; Springer *v.* United States, 102 U. S., 586; Spreckels Sugar Refining Co. *v.* McClain, 192 U. S., 397.)

From time to time attention has been called by judges and lawyers to the point that section 8 of Article I provided that Congress shall have power to levy and collect taxes, duties, imposts, and excises, to provide for the common defense and the general welfare; but all duties, imposts, and excises shall be uniform throughout the United States, particular attention being called to the fact that the limitation as to uniformity does not include the word "taxes." It has been intimated in some of the opinions that this left a third kind of tax which was not specifically limited to apportionment or uniformity. On the other hand, it has been argued—notably by Mr. Choate in the Pollock case—that the omission of the word "tax" as to uniformity indicated that there was only one kind of tax, and that was the direct tax referred to in section 9, which tax would have to be levied by apportionment. It appears from an examination of the debates that neither one of these contentions is supportable. On Saturday, August 25, Mr. McHenry and Gen. Pinckney made the following propositions:

Should it be judged expedient by the Legislature of the United States that one or more ports for collecting duties and imposts, other than those ports of entrance and clearance already established by the respective States, should be established, the Legislature of the United States shall signify the same to the executives of the respective States, ascertaining the number of such ports judged necessary, to be laid by the said executives before the legislatures of the States at their next session; and the Legislature of the United States shall not have the power of fixing or establishing the particular ports for collecting duties or imposts in any State, except the legislature of such State shall neglect to fix and establish the same during their first session to be held after such notification by the Legislature of the United States to the executive of such State.

All duties, imposts, and excises, prohibitions or restraints made or laid by the Legislature of the United States shall be uniform and equal throughout the United States.

These several propositions were referred to a committee composed of a member from each State. From this it would appear that the matter under consideration was not dealt with in connection with the power of Congress to levy taxes, but had reference more particularly to the preference between the States. On August 28 Mr. Sherman, from the committee to whom these propositions were referred, made the following report, which was ordered to lie on the table:

That there be inserted after the fourth clause of the seventh section, "Nor shall any regulation of commerce or revenue give preference to the ports of one State over those of another, or oblige vessels bound to or from any State to enter, clear, or pay duties in another, and all tonnage, duties, imposts, and excises laid by the legislature shall be uniform throughout the United States."

On August 31 the report of the grand committee of 11, made by Mr. Sherman, was taken up. On the question to agree to the following clause to be inserted after Article VII, section 4:

Nor shall any regulation of commerce or revenue give preference to the ports of one State over those of another.

This was agreed to nem. con.

On the clause, "Or oblige vessels bound to or from any State to enter, clear, or pay duties in another," Mr. Madison thought the restriction would be inconvenient as in the River Delaware a vessel can not be required to make entry below the jurisdiction of Pennsylvania. Mr. Fitzsimons admitted that it might be inconvenient, but thought it would be a greater inconvenience to require vessels bound to Philadelphia to enter below the jurisdiction of the State. Mr. Gorham and Mr. Langdon contended that the Government would be so fettered by this clause as to defeat the good purpose of the plan. They mentioned the situation of the trade of Massachusetts and New Hampshire, the case of Sandy Hook, which is in the State of New Jersey, but where precautions against smuggling into New York ought to be established by the General Government. Mr. McHenry said the clause would not screen a vessel from being obliged to take an officer on board as a security for due entry. Mr. Carroll was anxious that the clause should be agreed to. He assured the House that it was a tender point in Maryland. Mr. Jenifer urged the necessity of the clause in the same point of view. On the question of agreeing to it, the vote was 8 to 2 in favor it. The word "tonnage" was struck out as comprehended in "duties." On the question on the clause of the report "and all duties, imposts, and excises laid by the legislature shall be uniform throughout the United States," was agreed to nem. con.

On Tuesday, September 4, Mr. Brearly, from the committee of 11, made a partial report, as follows:

1. The first clause of article 7, section 1, to read as follows: "The legislature shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and the general welfare of the United States."

On Friday, September 14, the record of debate shows, as follows:

Article I, section 8. The words "but all such duties, imposts, and excises shall be uniform throughout the United States" were unanimously annexed to the power of taxation.

And thus there seems to have been merged in this one section the grant of the power to tax and the limitation, which limitation grew out of an entirely different purpose on the part of the framers of the Constitution than is commonly credited to them demonstrating to a certainty that the language "but all such duties, imposts, and excises shall be uniform throughout the United States" was purposely meant to exclude taxes. The language of the record, "were unanimously annexed to the power of taxation," I think, completely demolishes the contention made by Mr. Choate, and altogether answers the suggestion made in some of the opinions that there is a third kind of taxation not defined.

We come now to a definite consideration of the particular bill pending, the object of which is to make subject to taxation all individuals, partnerships, and firms with respect to their doing business. It must be understood at the outset that no tax is levied on the income or the amount of the income. This bill simply taxes the doing of business, and then, in a homely sort of way, says that the amount of the tax shall be equivalent to 1 per cent upon the entire net income over and above $5,000 received from all sources during each year. We need not disguise the proposition that it is formulated on the same basis as the corporation tax, section 38 of an act of Congress approved August 5, 1909, which reads:

SEC. 38. That every corporation, joint-stock company, or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or any State or Territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to carrying on or doing business by such corporation, joint-stock company, or association, or insurance company, equivalent to 1 per cent upon the entire net income over and above $5,000 received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint-stock companies or associations, or insurance companies subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above $5,000 received by it from business transacted and capital invested within the United States and its Territories, Alaska, and the District of Columbia during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint-stock companies or associations, or insurance companies subject to the tax hereby imposed.

The corporation tax did not attempt to say what was the doing of business by a corporation, because we all understand that a corporation, with a few unimportant exceptions, is not organized except for the purpose of doing business. In its application for a charter, wherever it is made, and in its grant it is always described as being incorporated for the doing of some certain business, and therefore evidence of the fact that it is doing business is incontestibly established by its corporate charter. We are all quite well aware of the fact that corporations, to a large extent, took the place of partnerships and firms. Indeed, we have only to recur to the fact that when the Constitution was adopted there were only four corporations in the United States, whereas now there are two hundred and seventy-odd thousand; so that the defense of the corporation tax was rather a defense of the exception than of the general rule.

This tax, it is expressly stated, is to be with respect to the carrying on or doing business by certain corporations and associations, and is to be equivalent to 1 per cent of the entire net income over and above $5,000 received by all persons during such year. This is the measure of the tax explicitly adopted by the law. The income is not limited to receipts from property as such, strictly speaking, but it is expressly declared that the tax shall be upon the entire net income above $5,000 from all sources, excluding the amount received from any firm or co-

partnership if the special excise tax of 1 per cent imposed by this act has been paid by any corporation, joint-stock company or association, or insurance company from which the income is received.

Under this act there arose the case of Flint *v.* Stone Tracy Co. (220 U. S., 107), in which, in a number of appeals, almost every phase of the law and its interpretation was presented. The case was elaborately briefed and argued by very eminent counsel for the Government and for the appellants. It is notable that in the brief of Mr. William D. Guthrie and Mr. Victor Morawitz, who were representing the appellee in No. 410, they had this to say, which is particularly pertinent to the validity of the pending bill:

A tax upon income derived from the carrying on or doing business is an excise and not a direct tax within the meaning of the Constitution.

Commenting further, Mr. Guthrie, who had had an intimate and close association with the Pollock case, made this significant statement, on the question of the constitutionality of the pending bill:

The constitutional provisions conferring upon Congress the power to impose taxes make no distinction between corporations and individuals. Indeed, corporations are not mentioned in the Constitution.

The distinguishing feature of the corporation-tax law as an exercise of the power to levy an excise upon the doing of business is this: In nearly all of the cases prior to that time, particularly in the Spreckels case, the gross receipts were necessarily the result of the carrying on of the business the doing of which was taxed, while in the corporation-tax act for the first time this language was employed. Leaving out unnecessary parts, the act says:

Every corporation, joint-stock company, or association organized for profit shall be subject to pay annually a special excise tax with respect to the carrying on or doing of business by such corporation, joint-stock company, or association or insurance company equivalent to 1 per cent upon the entire net income over and above $5,000 received by it from all sources during such year.

It was earnestly contended by the very able counsel in the case that the only way in which the constitutionality of the law could be sustained was to limit that portion of it to such income as was derived from the actual carrying on of the business taxed. That was one of the very sharp contentions in the case. Mr. Justice Day, who delivered the opinion of the court, disposes of that contention as follows:

This tax, it is expressly stated, is to be equivalent to 1 per cent of the entire net income over and above $5,000 received from all sources during the year. This is the measure of the tax explicitly adopted by the statute. The income is not limited to such as is received from property used in the business, strictly speaking, but is expressly declared to be upon the entire net income above $5,000 from all sources, excluding the amounts received as dividends on stock in other corporations, joint-stock companies, or associations or insurance companies, also subject to the tax. In other words, the tax is imposed upon the doing of business of the character described, and the measure of the tax is to be the income, with the deductions stated, received not only from the property used from business but from every source. This view of the measure of the tax is strengthened when we note that as to organizations under the laws of foreign countries the amount of the net income over and above $5,000 includes that received from business transacted and capital invested in the United States, the Territories, Alaska, and the District of Columbia.

It has been contended since the decision in this case of Flint *v.* Stone-Tracy Co. that the validity of the act was vindicated on the ground that it was a tax upon the doing of business through a corporate charter, and that therefore an act levying a similar tax on individuals can not be sustained. The error, however, in this construction of the Flint case is, I think, just here: In the case of a corporation it is almost a conclusive presumption that they are carrying on business because they would close up if they did not. They make their application, setting forth the fact that they wish to carry on business, receive a charter which empowers them to do this, and on the very face of the thing the proof is conclusive that they are doing business. The real meaning of the Flint case as to any distinctions between corporations and individuals was that Congress had a right to select a class such as corporate businesses and tax the doing of business and measure the tax by the net income from whatever source derived.

Now, coming to the provision of the pending bill, it is only necessary to say that it is in the precise terms and language of the corporation-tax act. Practically the only question raised on the face of the bill is the one as to what will be held to be "carrying on business," and the author of the bill in defining the word "business" adopted the definition which the Supreme Court in the case of Flint *v.* Stone-Tracy Co. used. Mr. Justice Day, writing for the court, said:

It remains to consider whether these corporations are engaged in business. "Business" is a very comprehensive term and embraces everything about which a person can be employed. (Black's Law Dictionary, 158, citing People *v.* Commissioner of Taxes, 23 N. Y., 242, 244.) "That which occupies the time, attention, and labor of men for the purpose of a livelihood or profit." (Bouvier's Law Dictionary, Vol. I, p. 273.)

We think it is clear that corporations organized for the purpose of doing business and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus are engaged in business within the meaning of this statute and in the capacity necessary to make such organizations subject to the law.

The word "business" is not an obscure one and not without meaning in the law. It has been the subject of adjudication and legislation for hundreds of years. Going for a moment to the English authorities, we find that in 15 Chancery Division Mr. Justice Jessel, master of rolls, gave an opinion in the case of Smith *v.* Anderson which rather learnedly discusses the meaning of the word "business":

As regards the only point which is not elaborately discussed in Sykes *v.* Beadon, the meaning of the word "business," I must say in a few words. In Sykes *v.* Beadon the only point I had to consider was whether it was an association formed for the purpose of gain. The supposed distinction between an association formed for the purpose of gain and an association formed for the purpose of taking upon itself a business having for its object the purpose of gain was not there argued, but it has been argued since, and I have given an opinion on it which I will repeat. First, what is the meaning of "any other business"? Now, "business" itself is a word of large and indefinite import. I have before me the last edition of Johnson's Dictionary, edited by Dr. Latham, and there the first meaning given of it is "employment, transaction of affairs"; the second, "an affair"; the third, "subject of business, affair, or object which engages the care." Then there are some other meanings, and the sixth is "something to be transacted." The seventh is "something required to be done." Then taking the last edition of the Imperial Dictionary, which is a very good dictionary, we find it a little more definite, but with a remark which is worth reading: "Business, employment, that which occupies the time and attention and labor of men for the purpose of profit or improvement." That is to say, anything which occupies the time and attention and labor of a man for the purpose of profit is business. It is a word of extensive use and indefinite signification. Then, "business is a particular occupation, as agriculture, trade, mechanics, art, or profession, and when used in connection with particular employments it admits of the plural—that is, businesses." Therefore the legislature could not well have used a larger word.

In addition to the two dictionaries, I have also looked at the case of Harris *v.* Amery, (1) in which 46 people hired some land to carry on a farm; that is, they carried on the farm between them. A single man carrying on a farm may farm his own land, but he is carrying on a business. Sometimes he is called a gentleman farmer, but he is still carrying on a business and, of course, these 46 persons were carrying on a business, and it was held that it was an illegal association under this very act of Parliament, because there were more than 20 of them. The passage I am about to read is from the judgment of that very eminent and lamented judge, Mr. Justice Willes (2): "It should seem, by 25 and 26 Vict., c. 89, s. 4, that the legislature, viewing the frauds which have been committed by large companies, and the great inconvenience which was found to arise by reason of the difficulty of enforcing claims and settling accounts between surviving members and executors of deceased members, and otherwise, have thought fit to determine that no company, association, or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company or its members, unless registered under the act. And I think it has done that by language which does not admit of any reasonable doubt. It is unnecessary to refer to authorities to show that 'business' has a more extensive signification than 'trade.' The earlier bankrupt acts did not embrace farms; but it was never doubted that farming was a 'business,' though not a 'trade.' Banking is not strictly a trade. Where land comes to a number of persons by operation of law they can not be said to be partners, and they may, consistently with the act, farm it. But when we find an association like this, which is rendered illegal by an act of Parliament, we can not take notice of the agreement under which they become tenants, for the purpose of establishing a right in a court of law, or hold that the occupation by one of their body is an occupation by all the members of the illegal association."

Now, knowing what "business" means, is there any distinction between a person carrying on any other business which has for its object the acquisition of gain and the words "formed for the purpose of the acquisition of gain"? It must be a business to acquire a gain, and really the words add nothing to it. "Formed for the purpose of gain," as I put it in Sykes *v.* Beadon (1), is the same thing. You can not acquire gain by means of a company except by carrying on some business or other, and I have no doubt if anyone formed a company or association for the purpose of acquiring gain he must form it for the purpose of carrying on a business by which gain is to be obtained. But whether that be so or not, I am clearly of opinion that where investment is made a business, or where the dealing in securities is made a business, it is a business within the purview of this act. There are many things which in common colloquial English would not be called a business, even when carried on by a single person, which would be so called when carried on by a number of persons. That is a distinction not to be forgotten, even if we were trying the question by the ordinary use of the English language. For instance, a man who is the owner of offices, that is, of a house divided into several floors and used for commercial purposes, would not be said to carry on a business because he let the offices as such; but suppose a company was formed for the purpose of buying a building, or leasing a house, to be divided into offices, and to be let out, should not we say, if that was the object of the company, that the company was carrying on business for the purpose of letting offices, or was an office-letting company, trying it by the use of ordinary colloquial language? The same observation may be made as regards a single individual buying or selling land, with this addition, that he may make it a business, and then it is a question of continuity. A man occasionally buys and sells land, as many landowners do, and nobody would say he was a land jobber or dealer in land, but if a man made it his particular business to buy and sell land to obtain profit, he would be designated as a land jobber or dealer in land.

When you come to an association or company formed for a purchase you say at once that it is a business, because there you have that from which you would infer continuity; it is formed to do that and nothing else, and, therefore, at once you would say that the company carried on a business. So, in the ordinary case of investments, a man who has money to invest invests his money, and he may occasionally sell the investments and buy others, but he is not carrying on a busi-

ness. But when you have an association formed or where an individual makes it his continuous occupation—the business of his life to buy and sell securities—he is called a stock jobber or share jobber, and nobody doubts for a moment that he is carrying on business. So, if a company is formed for doing the very same thing—that is, for investing money belonging to persons in the purchase of stocks and shares and changing them from time to time, either with limited or unlimited powers—I should say there can be no question that they are carrying on a business, whether you call it a business of investment or a business of dealing in securities, or, as in the case before me, both the business of investment and the business of dealing in securities.

In Ninth Blatchford, in the case of In re Alabama & Chattanooga Railroad Co. (p. 397), the court had occasion to consider the meaning of the term "carrying on business," and Justice Woodruff has this to say:

In its broadest sense the term "business" includes nearly all the affairs in which either an individual or a corporation can be actors. Indulgence in pleasure, participation in domestic enjoyment, and engagement in the offices of merely personal religion may be exceptions in the case of an individual. But the employment of means to secure or provide for these would, to him, be a business; and, to a corporation, these exceptions can have no application. The conduct of any and all of the affairs of a corporation is business. Does, then, the doing of any acts whatever pertaining to the affairs of a railroad corporation constitute "carrying on business," in the sense of the act? Has the term "carrying on business" the same meaning as "transacting any of its business"? If the necessities or interests of a railroad company require that an agent should be sent to a timber region to purchase or otherwise procure—e. g., by cutting, sawing, etc.—materials for its superstructure, is that carrying on business there? If it send an agent or agents to a city, the center of capital, to negotiate its bonds and raise money in aid of the construction of its road, and such agency be continued for that purpose and for receiving subsequent remittances and making payment of interest or other indebtedness at an office provided therefor, is that carrying on business in such city, within the meaning of the act? I am constrained, not only by considerations already suggested, but by what, upon the words themselves, should be deemed their proper interpretation, to answer these questions in the negative. There are in the carrying on of a business many affairs which are merely incidental and which may be, and often are, transacted elsewhere than at the place where the business—that which is the real design and purpose or object in view—is located, and such transactions may be of such frequent or even daily occurrence as to require an agency of considerable duration. It would seem to me greatly unjust and unreasonable to regard such transactions as carrying on a business in the sense of the law. "Carrying on business" looks to the scheme and purpose to which such transactions tend and not to the incidental transactions themselves. Thus the business of a railroad corporation is, by its charter, the construction, maintenance, and operation of a railroad. That is its business. In aid thereof it may be necessary or expedient to employ agents and agencies—since it can only act by agents—in other places than those in which its business of constructing, maintaining, and operating the road can be done. But the transactions of such agents are only collateral or incidental. They do not, in a just sense, constitute the business of the railroad company. That business can not be removed. The company itself can not transfer it. Agents, or officers who are agents, and only agents, may from a distance advise therein, give rules or directions to other agents for its management, but the business of the railroad company can only be done where the railroad company is, or is to be, constructed, maintained, and operated.

I do not undertake to determine, nor would I, to what extent the courts would construe the language of this bill or to say what activities would be sufficient to bring the conduct of an individual within the term "carrying on business." I could not give you a concrete illustration and say thus and so will be the standard, any more than I could if we had a bill pending which provided that no person should make fraudulent disposition of his property and you should give me a case and ask me whether or not that would come within the meaning of "fraudulent disposition of property." We are not employing new words. This word is as old as jurisprudence itself and has been used to measure the activities of each generation according to the exigencies and developments of that generation. I am not prepared to deny or affirm that Andrew Carnegie, standing, with his face all aglow, in front of his blast furnaces—the stocky little Scotchman, tense with uncontrollable ambition and energy—would be any different in the eyes of the law than Andrew Carnegie, his face white with the student's pallor, looking at the parchment which represents his four hundred millions of bonds. [Applause.] In other words, I am not prepared to say what this generation will fix as the standard of doing business. His bonds stand for the stupendous value of what is his property. He has a potential interest and a partial control over the destiny of a great and gigantic enterprise. Under the terms of the mortgage, I have no doubt, the bondholders, under certain exigencies, might meet and to a large extent extend or withdraw the power and influence of the company. In nearly all instances, the sale of shares of stock to a considerable extent went with the bonds. That share ownership, reaching from the sovereignty of the shareholder into the complicated machinery of the company, enables them to press the mainsprings of action and make the wheels go round. Will we say that this is doing business? Will we refuse to say that it is doing business because it is done with more ease and facility, and leaves more time for leisure, and represents economy in time and work? In the notable case of Hardware Co. *v.* Manufacturing Co. (86 Tex., 143), Mr. Justice Stayton had occasion to consider the meaning of the word "business," and said:

"Business" is defined to be "that which busies, or that which occupies the time, attention, or labor of one as his principal concern, whether for a longer or for a shorter time; employment; occupation."—Webster. "Business" is a word of large signification, and denotes the employment or occupation in which a person is engaged to procure a living. (Goddard *v.* Chaffee, 2 Allen, 395.)

It is the synonym of employment, signifying that which occupies the time, attention, and labor of men for the purpose of a livelihood or profit. (Martin *v.* The State, 59 Ala., 36.)

The corporation making the conveyance in question was a private trading corporation the business of which consisted in buying and selling for profit in the ordinary course of mercantile business. That was its business within the meaning of the statute, and when that ceased, without intent to resume, the business no longer existed, and no contract thereafter made could be essential to the transaction of—the doing of—that business.

The mere act of paying or securing an indebtedness can never become a business.

In the case of Brauetigam *v.* Edwards (38 N. J., Eq.) the court had occasion to consider the meaning of the term business, and in doing so spoke as follows:

Besides, business does not mean stock, or machinery, or capital and the like. While business can not be done without these, in commercial language it is as distinct from them as labor is from capital. In speaking of the business that may be done by a merchant, banker, or railroad company, the mind does not contemplate or dwell upon the character or quality of the means used, but of the operations, whether great or small, complex or simple, numerous or few, for one or the other of these conditions may arise from much or little stock or capital. In other words, "business" does not mean dry goods, nor cash, nor iron rails and coaches. Business is not these lifeless and dead things, but the activities in which they are employed. When in motion, then the owners are said to be in business, and then it is that merchants and others speak of the profits of the business.

In People *v.* The Commissioner of Taxes (123 N. Y., 244) the court considered briefly the meaning of the word "business," and used the following language:

The word "business" embraces everything about which a person can be employed, and the sum is "invested" whenever its amount is represented by anything but money. No conclusion can be arrived at in this case by following out the precise lexicographical meaning of these terms. The statute is to be interpreted, therefore, by the light to be obtained from its general scope and tenor, from other statutes in pari materia, and from a consideration of the evils and abuses at which it was aimed.

Reference has been made to the case of Zonne *v.* Minneapolis Syndicate (220 U. S.) as an authoritative definition of what would be considered by the court as the doing of business. In that case a statement of the facts will clear the question of any doubt. Mr. Justice Day said:

The case presents a peculiarity of corporate organization and purpose not involved in the case just decided. The Minneapolis Syndicate, as the allegations of the bill admitted by the demurrer show, was originally organized for and engaged in the business of letting stores and offices in a building owned by it, and collecting and receiving rents therefor. On the 27th of December, 1906, the corporation demised and let all of the tracts, lots, and parcels of land belonging to it, being the westerly half of block 87 in the city of Minneapolis, to Richard M. Bradley, Arthur Lyman, and Russell Tyson as trustees for the term of 130 years from January 1, 1907, at an annual rental of $61,000, to be paid by said lessees to said corporation. At that time the corporation caused its articles of incorporation, which had heretofore been those of a corporation organized for profit, to be so amended as to read:

"The sole purpose of the corporation shall be to hold the title to the westerly one-half of block 87 of the town of Minneapolis, now vested in the corporation, subject to a lease thereof for a term of 130 years from January 1, 1907, and for the convenience of its stockholders to receive and to distribute among them from time to time the rentals that accrue under said lease and the proceeds of any disposition of said land."

As we have construed the corporation tax law (Flint *v.* Stone Tracy Co., ante, p. 107) it provides for an excise upon the carrying on or doing of business in a corporate capacity. We have held in the preceding cases that corporations organized for profit under the laws of the State, authorized to manage and rent real estate, and being so engaged, are doing business within the meaning of the law, and are therefore liable to the tax imposed.

The corporation involved in the present case, as originally organized and owning and renting an office building, was doing business within the meaning of the statute as we have construed it. Upon the record now presented we are of opinion that the Minneapolis Syndicate, after the demise of the property and reorganization of the corporation, was not engaged in doing business within the meaning of the act. It had wholly parted with control and management of the property; its sole authority was to hold the title subject to the lease for 130 years, to receive and distribute the rentals which might accrue under the terms of the lease, or the proceeds of any sale of the land if it should be sold. The corporation had practically gone out of business in connection with the property, and had disqualified itself by the terms of reorganization from any activity in respect to it. We are of opinion that the corporation was not doing business in such wise as to make it subject to the tax imposed by the act of 1909.

This revenue-raising power was vested in Congress by the Constitution, and three-fourths of its vitality has been subtracted from it in the Pollock case, and upon this ground, if upon no other, we would have the right, if we chose to do so, to pass a plain, direct income tax, and appeal to the court to reconsider the opinion which reversed the traditions of a hundred years, and ask them to restore to us, as the revenue-raising branch of this Government, the power which was intended to be written there in aid of the crumbling ruins of the old Confederation, which had failed on account of it. [Applause.]

And let me suggest in that connection one other consideration.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. COOPER. I ask unanimous consent that the gentleman have time to conclude his remarks.

The CHAIRMAN. The time is under the control of the gentleman from Alabama [Mr. UNDERWOOD] and the gentleman from New York [Mr. PAYNE].

Mr. PAYNE. I will not object to that if the time be charged to the gentleman from Alabama.

Mr. UNDERWOOD. Mr. Chairman, how much time does the gentleman desire?

SEVERAL MEMBERS. Take plenty of time. [Applause.]

Mr. LITTLETON. I think if you will give me 20 or 30 minutes, I can conclude.

Mr. UNDERWOOD. I yield to the gentleman 30 minutes. [Applause.]

Mr. LITTLETON. I was about to say that there is one other consideration in connection with that clause of the Constitution. Generally speaking, the Federal Government is without police power. I believe the question came up the other day that all of the police power of the Government, so far as it affected interstate commerce, was conferred upon the Government by the section giving it exclusive control of interstate commerce. We know what the general exercise of the police power of the States is. We know how frequently it is invoked, how necessary it is to the life and welfare and the betterment of the State. We know that it is always invoked for the general welfare of the State. Now, this clause of the Constitution, however it was carved out, or by whatever processes or vicissitudes of debate, the fact remains that it says that Congress shall have power to lay and collect taxes, duties, and imposts. For what purpose? In order to pay the debts. And for what other purpose? To provide for the common defense and the general welfare.

In other words, in terms, in this particular section of the Constitution, as in no other section, the police power is written in the face of section 8 of Article I.

So that the purposes which Congress may tax for are the same purposes which a State may tax for to promote its general welfare and provide for its general health and security.

I have thus discussed these particular decisions of the court, this particular history, and the varying influences they may have on your mind as to the true meaning of section 8, Article I. I shall, if I can, make myself clear. I believe that Congress has the right to tax the incomes of this country if it can do so through the apportionment branch of the Constitution, or if it can do so through the excise branch of the Constitution. I believe the time will come when on this floor men will rise and say that the test of a direct tax is a tax which may be apportioned, and that no other tax can be a direct tax. Because, if the power to tax which is vested in this Government by that provision of the Constitution is to remain a vital thing, the doctrine of apportionment, except as to capitation and land, is bound to be a foredoomed failure.

So that the Constitution, intending to give us the power, and only providing two ways in which the power should be exercised, we must not get it into our heads that incomes are exempt from taxation. I know friends of mine and associates time and again have repeated to me, "Yes; but you can not tax incomes," never thinking that they might be in the transmutations of wealth and the development of history the great source of taxation, and that the Constitution never meant to inhibit the taxation of income, but only provided that if you levied direct taxes you must go by apportionment, and if you taxed by excise, imposts, or duties, you must go by uniformity. That being so, this bill in question provides for the taxation of the doing of business, with reference to the carrying on of business, taxing the doing of business, and measuring the tax by the equivalent of 1 per cent above an income of $5,000.

It has been said to me on the floor and elsewhere that this is simply another way of trying to reach the income. I say, so far as I am concerned and upon my own responsibility, that as far as I can make it a way constitutionally to reach the income I shall support it all the more heartily. [Applause.] I would not mask the thing, I would not share in an effort to do indirectly what the Constitution has forbidden to do directly. If there were such a law, that incomes for some reason had been sanctified beyond the power of taxation, I would not undertake to do in this manner what ought not to be done in any other manner. This is as subject to the power of this Government to tax as any other character or class of property. The only thing that has happened is that the power of the Government to tax unchallenged for 100 years was suddenly struck down by the decision of the court, and by that means these great resources of wealth were made exempt from the taxing power of the Government, and I say—either through the excise arm of the Government, by levying upon the doing of business and measuring it according to the income, or by the plain reversal of the Pollock case—there must come back into the power of the Government the full authority, the full strength, and the full vitality of section 8 of Article I of the Constitution. [Applause.]

Let us consider for a moment what has happened in the change of business in this country. In 1798 there were a little more than 3,000,000 people, and, according to the report of Mr. Franklin, nine-tenths of the people were engaged in agriculture. There were four corporations in existence when the Constitution was adopted. To-day we have 270,202 corporations whose income is in excess of $5,000 annually. These have an aggregate capital stock of $57,886,430,519.04, a bonded and other indebtedness of $30,717,336,008.84, and an aggregate net income of $3,360,250,642.65. Allowing for inflated capitalization, which we all know exists, let us consider the character of this colossal wealth.

It is corporate; it is distributed in shares, and as such it is the surest guaranty of the inviolability of the right of private property. Look at it from an even broader standpoint and consider it in connection with the nations of the earth. It means the ownership of American values in other countries, and it means the ownership by Americans of the values of other countries. Our bonds and stocks are in English, French, and German markets and are owned by the citizens and subjects of those countries. The bonds and stocks of other countries are in our markets and are owned by our citizens. All of this is distinctly collective ownership. It tends strongly and inevitably to unite in an inseparable industrial alliance and to bring into common interest the welfare of the nations made interdependent by this class of owership. I had almost said that it was upon this silent and resistless knitting together of the interests of the human race we can rely more than upon arbitration for the peace of the world.

What are the other kinds of wealth in our country? How do we judge of this wealth? How do we estimate the thrift and enterprise of the people of our country? Over against this corporate wealth, over against this collective and colossal empire of property, let us set off that distinctly individualistic ownership, that naked individualism for which agriculture stands. The estimated value of farm products for the year 1911 is $8,417,000,000. This is the gross value of farm products, without subtracting the cost of production. No estimate has been made of the cost of this production, but I dare say, if we subtracted from the gross figure $8,417,000,000, it would bring the net value of farm products not very far from the figure $3,360,250,642.65, which was the net income of corporate or collective property. The estimated value of the corn crop is $1,700,000,000 for the year 1911. The estimated value of the cotton crop is $775,000,000. The estimated value of the hay crop is $700,000,000. The estimated value of the wheat crop is $600,000,000. The estimated value of the oats crop is $380,000,000. The estimated value of the potato crop is $213,000,000; and yet only two of these—corn and cotton—exceed the net income of all the corporations in one State, the State of New York, which was $689,000,000, in round numbers.

The corn crop, which as a wealth producer is practically equal to the combined values of the cotton, wheat, and oats crop, is $1,700,000,000, and yet the net income of the corporations of Illinois, Ohio, Pennsylvania, and New York together equal $1,672,000,000, or practically these four States yield in the net income of their corporations as much as the great wealth-producing crop of the Nation.

Thus we have, on the one hand, the great collective ownership of property represented by these 270,000 corporate agencies, and, on the other hand, the distinctly individualistic ownership of the farm represented by this gross income of $8,417,000,000.

What has taken place in the miracle of a hundred years? What energies have burst out from that little fringe on the Atlantic and spread countless contrivances and multiplied benefits of civilization toward the Pacific slope? What transmutations have taken place in industrialism, where collectivism, through this vast corporate development with its myriad agencies, have taken the place of the old individualism? What changes have taken place in the cities? A man in New York owns 20 by 80 feet on Broadway. He builds a 30-story building. Is he in the real-estate business? Is his income from the land? Does the revenue come from real estate? To be sure it rests upon that foundation, but he reaches up into the heavens and captures the atmosphere, boxes it up, frescoes it, and sells it day by day as merchandise, the income from which enriches him and enables him to carry all his burdens. [Applause.] Is this doing business? Is that a direct tax on land

or on his income? Have we not passed away from the days of the simple, raw earth and the tilling of the fields? The old doctrine was that a direct tax was one which you could not shift, but in a nation in which every person produces a surplus of some sort every tax is shiftable except a poll tax. If we expect to tax the wealth of this country as we ought to tax it, we must revitalize to its full vigor section 8 of Article I.

We must not stand paralyzed in front of the impeding influence of the Pollock case, or fearful in front of a man who says, as a bondholder, that he is not taxable. [Loud applause.] I claim that we have a right to reach through these various arms of section 8 as to duties, imposts, and excises and tap the wealth of this country and bring it to the support of the Government. We have a right to reach out and turn this wealth into the channels which will lead to a common treasury. It was this supreme power of taxation that was lodged with us through and under section 8. It must not be allowed to atrophy under discouraging decisions. It must not be allowed to wither up by the abandonment of its power.

I remember the speech of the gentleman from Ohio [Mr. LONGWORTH], in which he said, in substance, that if 95 per cent of the people of this country were exempted under this bill, because it taxed only incomes in excess of $5,000, I would criticize it, too. If this 95 per cent of the people to whom he referred paid no other tax, I could share with him this criticism of the bill. But he does not forget, I am sure, that for all of these years the 95 per cent, whom he says will be exempted under this bill, have been paying taxes and are now paying it with the food they eat and the clothes they wear under the indirect system. [Applause.]

Mr. SHARP. May I ask the gentleman one question?

Mr. LITTLETON. Certainly.

Mr. SHARP. Is it not also true that the remaining 5 per cent only own vastly more property than the 95 per cent that would be exempt under this act?

Mr. LITTLETON. I would imagine that would be very accurate. But one other thing. My own State, New York, the State of Pennsylvania, and States powerful in wealth and influence and riches and accumulation, I do not think are unjust. I believe, so far as they know and understand the application of the taxing laws, they would not be willing to impose a burden upon those less able to bear them. I have heard people say, and they have said, that this tax would be paid, if it were an income tax, by Pennsylvania, New York, and the richer States of the East. While this may be partially true, I would remind them that for a hundred years the West and South have been paying the inscrutable and unseen contribution of a tariff system which is so mixed up with our revenue raising that we are compelled to raise a disturbance before we can raise revenue. [Loud applause.] I stand for this proposition more enthusiastically than for any other. I would divorce, as soon as I could, without disturbing the structure of business in this country, the raising of revenue from the favoritism and protection of manufactures. [Applause.] My friends upon the Republican side, if I differ from you radically upon any question it is because of the fact that your protective-tariff system has encouraged you to deny the authority and power of this Government under section 8 of Article I to get revenue; because of the fact that you have pulled the Government into a complicated alliance with business; because of the fact that you took the great revenue-raising power of levying imposts necessary to procure the revenues for the Government and turned it over to the private individual, who was made the beneficiary of your system, and the Government lost the revenue and the individual proceeded to tax through the cost of his wares and goods for his own profit. [Loud applause.] I would not undertake with one blow to destroy the industrial structure of our country, for I am at all times a conservative man, whether you call me a Democrat, a reactionary Republican, or a Progressive.

On that subject let me say in passing that my conservatism goes back to the structure of this Government, and I would not let violent hands be laid upon it any more than upon the ark of the covenant; but as to all economic questions I hold my mind open for the morrow, until a new miracle of civilization shall present itself and require a different treatment.

I make one plea in conclusion. There has been an effort to array the West against the East and the East against the West. I count that man as much an enemy to the progress of his country who sets them at each other's throats as I would count the man who blindly fomented the strife between the North and the South in 1860. There should be industrial peace between the East and the West. They should mutually cooperate here and elsewhere for the equalization of the burdens of taxation to be borne by the whole country.

My friends, it may be too much to predict, and yet I feel that the time will come when we shall rescue this Government from its complicated alliance with business on the one hand and from its complicated alliance with labor on the other; from its alliance with individuals of one class and another, and that we may be able to restore it to that rarer, higher, and purer atmosphere where it will stand with its feet firmly resting upon the Constitution and with its arms extended, protecting the life, the liberty, and the happiness of all the people of the Nation. [Prolonged applause.]

MESSAGE FROM THE SENATE.

The committee informally rose; and Mr. BURLESON having taken the chair as Speaker pro tempore, a message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had passed bills and joint resolution of the following titles, in which the concurrence of the House of Representatives was requested:

S. 4623. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors;

S. 2243. An act to correct the military record of John L. O'Mara and grant him an honorable discharge;

S. 3873. An act for the relief of Lewis F. Walsh;

S. 2194. An act to amend section 2288 of the Revised Statutes of the United States relating to homestead entries;

S. 5072. An act to establish a fog signal and additional quarters at Point Loma Light Station, San Diego, Cal.;

S. 5074. An act to authorize the improvement of Santa Barbara Light Station, Cal., including a fog signal and a keeper's dwelling;

S. 318. An act to provide for the acquisition of a site and the erection of a public building thereon at Newcastle, Wyo.;

S. 4493. An act to provide for the purchase of a site and the erection of a public building thereon at Thermopolis, in the State of Wyoming;

S. 406. An act for the purchase of a site and the erection of a public building thereon at Vermilion, in the State of South Dakota;

S. 407. An act to provide for the erection of a public building in the city of Madison, S. Dak.;

S. 954. An act for the acquisition of a site on which to erect a public building at Gilmer, Tex.;

S. 3831. An act to provide for the purchase of a site and the erection of a public building thereon at Denton, Tex.;

S. 4042. An act to provide for the erection of a public building at New Braunfels, Tex.;

S. 1175. An act to authorize the purchase of a site and erection of a public building at Astoria, Oreg.;

S. 1712. An act to provide for the purchase of a site for the erection of a public building thereon at Oregon City, Oreg.;

S. 4572. An act to designate Walhalla, Neche, and St. John, in the State of North Dakota, subports of entry, and to extend the privileges of the first section of the act of Congress approved June 10, 1880, to said subports;

S. 4004. An act to authorize the use of the funds of certain Northern Cheyenne Indians;

S. 4488. An act authorizing the setting aside of a tract of land for a school site and school farm on the Yuma Indian Reservation, in the State of California;

S. 4999. An act for the relief of Francis M. Malone;

S. 4222. An act to increase the limit of cost of the public building at Moundsville, W. Va.;

S. 2698. An act increasing the cost of erecting a post-office building at Plainfield, N. J.;

S. 4245. An act to increase the limit of cost of the additions to the public building at Salt Lake City, Utah;

S. 3716. An act for the erection of a public building at St. George, Utah;

S. 4619. An act to provide for the purchase of a site and the erection of a public building thereon in the city of Franklin, State of Pennsylvania;

S. 4520. An act for the relief of Catherine Grimm;

S. 408. An act to provide for the purchase of a site and the erection of a public building thereon at Canton, in the State of South Dakota;

S. 4753. An act to amend an act entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," approved April 26, 1906 (34 Stat. L., p. 137);

S. 1752. An act to provide for the erection of a public building at Eureka, Utah;

S. 4585. An act to provide for the erection of a public building on a site already acquired at South Bethlehem, Pa.;

S. 410. An act to provide for the acquisition of a site on which to erect a public building at Milbank, S. Dak.;

S. 876. An act to provide for the purchase of a site and the erection of a public building thereon at Bellefourche, in the State of South Dakota;

S. 100. An act to carry into effect the findings of the military board of officers in the case of George Ivers, administrator;

S. 2414. An act for the relief of Rittenhouse Moore;

S. 317. An act to provide for the purchase of a site and the erection of a public building thereon at Sundance, in the State of Wyoming;

S. 3225. An act providing when patents shall issue to the purchaser or heirs of certain lands in the State of Oregon;

S. 2014. An act for the relief of George Owens, John J. Bradley, William M. Godfrey, Rudolph G. Ebert, Herschel Tupes, William H. Sage, Charles L. Tostevin, Alta B. Spaulding, and Grace E. Lewis;

S. 4655. An act to provide for the purchase of a site and the erection of a public building thereon at Franklin, in the State of New Hampshire;

S. 5207. An act to provide an American register for the steamer *Oceana;*

S. 4734. An act for the relief of Mary G. Brown and others;

S. 5255. An act increasing the compensation of the collector of customs, district of Puget Sound, State of Washington;

S. 2347. An act increasing the cost of erecting a post-office and courthouse building at Walla Walla, Wash.;

S. 4470. An act to provide for the erection of a public building at Wenatchee, Wash.;

S. 5198. An act to authorize the issuance of patent to James W. Chrisman for the southeast quarter of the northeast quarter, the southeast quarter, and the southeast quarter of the southwest quarter of section 13, and the north half of the northeast quarter of section 24, township 29 north, range 113 west of the sixth principal meridian;

S. 3045. An act to provide for agricultural entries on oil lands; and

S. J. Res. 77. Joint resolution authorizing the Secretary of War to loan certain tents for the use of the Grand Army of the Republic encampment to be held at Pullman, Wash., in June, 1912.

The message also announced that the Senate had passed with amendments bills of the following titles, in which the concurrence of the House of Representatives was requested:

H. R. 19342. An act to amend section 2455 of the Revised Statutes of the United States, relating to isolated tracts of public land; and

H. R. 16661. An act to relinquish, release, remise, and quitclaim all right, title, and interest of the United States of America in and to all the lands held under claim or color of title by individuals or private ownership or municipal ownership situated in the State of Alabama which were reserved, retained, or set apart to or for the Creek Tribe or Nation of Indians under or by virtue of the treaty entered into between the United States of America and the Creek Tribe or Nation of Indians on March 24, 1832.

The message also announced that the Senate had passed without amendment bills of the following titles:

H. R. 17242. An act to authorize the Northern Pacific Railway Co. to cross the Government right of way along and adjacent to canal connecting the waters of Puget Sound with Lake Washington at Seattle, in the State of Washington;

H. R. 9845. An act to authorize the sale of burnt timber on the public lands, and for other purposes;

H. R. 17837. An act to amend an act approved July 1, 1902, entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes";

H. R. 16680. An act to authorize the Board of County Commissioners of Baxter County and the Board of County Commissioners of Marion County, in the State of Arkansas, acting together for the two counties as bridge commissioners, to construct a bridge across the White River at or near the town of Cotter, Ark.; and

H. R. 18155. An act authorizing the town of Grand Rapids to construct a bridge across the Mississippi River in Itasca County, State of Minnesota.

THE EXCISE-TAX BILL.

The committee resumed its session.

Mr. UNDERWOOD. Mr. Chairman, I ask that the gentleman from New York consume some of his time.

Mr. PAYNE. Mr. Chairman, I yield one hour to the gentleman from Indiana [Mr. CRUMPACKER].

Mr. CRUMPACKER. Mr. Chairman, in view of its character and the circumstances under which it is presented the pending bill is one of exceptional importance. It comes as the companion piece of the bill which passed the House on Friday last repealing the duty on sugar and incidentally destroying the entire beet-sugar industry in the United States. There is invested now in beet-sugar production in this country in the neighborhood of $100,000,000 of capital, and the tariff on sugar yields to the Government an annual revenue of $53,000,000. If the sugar bill becomes a law, it is expected that this bill will likewise be enacted and will provide for the loss of revenue resulting from the enactment of the sugar bill. If the sugar bill should become a law and this bill should be defeated, or if it should be enacted and held to be invalid, there would be a deficit in the current revenues and the administration of the affairs of the Government would be seriously embarrassed. It would likely require the issue of bonds to secure revenue to carry on the ordinary operations of the Government.

FEDERAL POWER OF TAXATION.

The power of the Federal Government to impose taxes is clearly defined in the Constitution, and Congress has no authority whatever to exact tribute from persons, property, or business except as it is authorized by the Constitution. Under the Articles of Confederation there was no power in the General Government to impose taxes or to provide revenue to carry on its functions; it could only make estimates of the cost of administration and apportion the sum required among the several States and make requisitions upon them for their pro rata shares. Some of the States responded to the requisitions and others did not. The entire power of taxation, direct and indirect, including the imposition of customs duties, resided with the several States. The original confederacy was bound together by a rope of sand. It had no national vitality; it had no means of protecting its dignity or enforcing the few powers that were vested in it; hence the present Constitution.

THEORY OF DIRECT TAXATION.

In the making of the Constitution one of the chief purposes was to give the Federal Government sufficient authority to carry on the national functions and to enforce the national powers. It was fundamentally necessary for the General Government to have within its control means of raising adequate revenues for all Federal purposes, and the powers of taxation that were given to it were surrendered by the States. There was naturally some reluctance on the part of the States to surrender to or even to share with the General Government any of their taxing power. The result was a compromise under which the power of imposing customs duties for revenue purposes was vested exclusively in the National Government, and in addition to that the National Government was given the right to impose excise taxes concurrently with the States, and it was given the power of levying capitation or poll taxes and direct taxes on property on the condition that all capitation and direct taxes should be apportioned among the States on the basis of population. All other taxing powers were reserved to the States. The only condition imposed upon the Federal authorities in levying customs and excise taxes was that they should be uniform throughout the United States.

There has been considerable controversy in the courts as to what constitutes a direct tax on the one hand and an excise tax on the other hand. It is universally admitted that a general tax upon land and personal property is a direct tax, and can not be imposed by the Federal Government except under the apportionment rule. In the case of Pollock *v.* Farmers, etc., Co. (157 U. S., 429) the Supreme Court held that a tax on the income or rents and profits of real property was a tax upon the property itself, and therefore a direct tax in the sense of the Constitution and could only be imposed by apportionment. The court also held that an income tax covering interest on State and municipal bonds was invalid, because the Federal Government had no right to tax the instrumentalities and agencies in the administration of local government. The court was unanimous in holding the invalidity of an income tax covering the interest upon State and municipal bonds. The court was divided in holding that an income tax covering the rents, uses, and profits of real property was a tax upon the property and therefore a direct tax. Six members of the court held in the affirmative and two in the negative. Justice Jackson, who was a member of the court at that time, was ill and did not hear the arguments nor participate in the decision.

The question as to whether an income tax upon the interests and profits of invested personal property was a direct tax on the property and could only be levied by apportionment was left unsettled, the court being equally divided respecting it. Upon petition a rehearing was ordered upon that aspect of the case, and the question was finally decided in the affirmative. It was held that a tax upon the income, resulting from invested personal property, was a direct tax upon the property itself in

the sense of the Constitution. This conclusion was reached by a divided court—five to four. That opinion is reported in the One hundred and fifty-eighth United States, page 601. There was considerable disappointment throughout the country over the decision in the Pollock case, and I confess I shared in the general feeling of dissatisfaction. I am a believer in a proper income tax. I have always felt that the Federal Government ought to have the power to levy a reasonable tax upon incomes whenever the exigencies of the Government might require it, and even as a part of the general revenue policy I believe it to be a just and equitable source of taxation.

THE INCOME-TAX DECISION.

I have studied somewhat critically the opinion of the court in the income-tax case, and as an original proposition the more study I give the opinion the more firmly convinced I am that the conclusion of the court in both opinions is sound from the standpoint of the Constitution. The framers of the Constitution had in mind the fact that the States would largely raise local revenues from a direct tax upon personal and real property. It was believed that this would be the chief source of local taxation, and the power granted to the Federal Government to impose a direct tax was granted upon condition that the Government should estimate the amount of revenue it might require from that source and apportion the sum among the States on the basis of population as shown by the preceding census. This plan was intended to give the States the right to contribute their pro rata share from their own revenues without complicating their local systems of taxation. This was regarded as a matter of much importance to the States. A direct tax imposed upon the same property by two different governments might involve embarrassment and unnecessary expense in enforcement. It was believed that the General Government would secure adequate revenues for ordinary purposes from customs and excise taxes, and would only have occasion to levy direct taxes in great national exigencies. With the power to levy and collect direct taxes vested in the Federal Government it was thought that the States would increase their local levies and pay their respective shares, and to enable them to do so the per capita basis of apportionment was fixed.

In the income-tax case the court held that a tax upon the uses, rents, and profits of real property and of invested personal property was a direct tax upon the property itself. Everybody knows that all there is of value in lands is the uses, rents, and incomes derived therefrom. It is a familiar rule of law that a grant of the uses, rents, and profits of land is a grant of the land itself. In the sense of the law the uses, rents, and profits of real property include the property itself. The same principle must hold true in relation to invested personal property. All there is of value in invested personal property is the income or the proceeds derived from its investment, and if the proceeds are taken away the property is valueless. The sale of the right to use a particular item of personal property, without condition or limitation, is a sale of the property itself and carries absolute title to it. It can hardly be supposed that the framers of the Constitution, in providing that a direct tax on property should be apportioned on the basis of population, intended to confer authority upon the Federal Government to impose a tax upon the uses, rents, and profits of property without regard to apportionment. It can not be supposed that men of such great ability and wide information as those who prepared the Constitution intended to prohibit a direct tax on property except upon the principle of apportionment, and yet give to the Government, without condition or limitation, the right to tax everything pertaining to the property that gives it value or desirability. The makers of the Constitution were guilty of no such folly as that. If that were the construction to be placed upon the Constitution, the apportionment limitation would be an empty husk. It would be a meaningless phrase. It would be absolutely barren of results. It would defeat the very purpose of the apportionment provision itself, and yet that provision was regarded as of sufficient importance to be inserted in the Constitution in two separate places.

Mr. MORSE of Wisconsin. Mr. Chairman, will the gentleman permit a question right there?

Mr. CRUMPACKER. Yes; I will permit a question.

Mr. MORSE of Wisconsin. I do not wish to interrupt the gentleman if he does not want to be interrupted. I was going to ask a question in relation to the kind of business last referred to, namely, looking after real estate, paying taxes, and looking after the collection of rents. Would not that be a business under the construction that the gentleman gives it?

Mr. CRUMPACKER. No; because that is one of the inseparable and necessary incidents of property ownership. It is not business in the commercial sense or in the legal sense. It is one of the incidents of the ownership of property. That is my definition.

Whatever we may think of the soundness of the decision of the court in the income-tax case, it is the law, and it is the only guide this body has in determining its power to impose taxes for Federal revenues. It is the solemn duty of Congress to carefully consider its constitutional powers in the enactment of any and all legislation. This duty is more strongly emphasized at this particular time, since it is seriously contended in current politics that the Supreme Court should not be authorized to hold an act of Congress as unconstitutional except by the unanimous concurrence of all its members, because Congress is supposed to be composed of statesmen and lawyers, and they are expected to carefully investigate the constitutionality of every measure that comes up for consideration. If the pending bill should become a law and it should ultimately be held invalid, it would greatly embarrass the administration of the Government, and it is well for Congress to carefully and thoroughly consider the constitutional question before acting upon it finally.

There is no doubt that Congress has the power to impose business or privilege taxes upon corporations, joint-stock associations, and individuals alike, or it may tax corporations and joint-stock associations for the privilege of carrying on business and impose no tax upon individuals for carrying on the same kind of business. This authority is well established. Furthermore, a tax upon occupation, business, or privilege may be measured by the income from all sources of the corporations or individuals taxed. Under such a law the tax is not upon the property; it is upon the right or privilege of doing business. The matter of income is altogether incidental and is considered only for the purpose of determining the amount of tax that corporations or individuals shall pay for the particular privilege.

If the tax were imposed on the property itself, it would be a direct tax and could only be imposed by apportionment on the basis of population, but where it is levied upon the right or privilege of doing business it is purely an excise tax, and in the sense of the Constitution it is not a property tax, and therefore the amount may be fixed by means of the gross or net income of the taxpayer. It may be graduated according to the amount of the income, but if the law should be so construed as to hold that the tax in fact is levied upon the income itself, it would be a direct tax upon the property which is the source of the income, and would be invalid, unless apportioned as the Constitution requires. In imposing a purely business or privilege tax, and fixing the amount of the tax which each individual shall pay on an income basis, there may be included in the income revenues derived from State and municipal bonds and other sources which the Government has no power to tax. This source of income may be included in an excise tax on the ground that the tax is not upon the property itself. It is not levied upon the income from State and municipal bonds, but the proceeds of that class of bonds may be considered in determining how much tax each corporation or individual shall pay for the privilege of conducting business.

This question was settled by the Supreme Court in a very able and exhaustive opinion, rendered by Justice Day, in the case of Flint *v.* Stone-Tracy Co. (220 U. S., 107). If, however, the tax should be upon income from property that is not taxable instead of upon the right to do business or exercise certain privileges it would be invalid.

THE BILL PROVIDES AN INCOME TAX.

The question which I desire to bring to the attention of the House is whether the pending bill is an excise tax, a tax on business or privilege, or whether it is a tax upon incomes covering the proceeds of property which would make it a direct tax and therefore unconstitutional. In the end the question as to whether a tax is direct or indirect can only be determined by the nature of the law imposing it. This bill declares the proposed tax to be a special excise tax upon business.

The Supreme Court, in upholding the corporation-tax law of 1909, said:

> While the mere declaration contained in a statute, that it shall be regarded as a tax of a proper character, does not make it such, if it is apparent that it can not be so designated consistently within the meaning and effect of the act, nevertheless the declaration of the lawmaking power is entitled to much weight, and in this statute the intention is expressly declared to impose a special excise tax with respect to the carrying on or doing business by such corporation, joint-stock company or association, or insurance company. It is therefore apparent, giving all the words of the statute effect, that the tax is imposed not upon the franchises of the corporation irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business and with respect to the carrying on thereof.

"Giving all the words" of the pending bill effect, it clearly shows a purpose to tax incomes as such from all sources whatsoever under the guise of a "special excise" tax.

It includes all firms and individuals engaged in business and defines the word business as "everything about which a person

can be employed, and all the activities which occupy the time, attention, and labor of persons for the purpose of a livelihood or profit."

There need be no relation between the business which is to be the subject of taxation and the income which is supposed to measure the amount of the tax. A person may be engaged in a business which yields no net income whatever, and yet if he owns real property or has invested personal property from which he derives a large income, that income will be subject to the tax, though it has no relation to the business which is the basis of the tax. Suppose the proposed tax were to be levied upon all persons who consume food and drink and the income of each individual should furnish the basis for the amount of the tax to be paid for the privilege of eating and drinking, would anybody contend that it would be valid under the income-tax decision? Though it might be labeled a "special excise" tax it would be an income tax pure and simple. Consuming food and drink is an activity which is conducted for a "livelihood," defined by lexicographers as a "means of supporting life."

The report accompanying the bill declares that the Committee on Ways and Means desires to go on record as favoring a general income tax, but refrains from reporting such a measure because of the decision of the Supreme Court holding such a tax invalid. Then, further along in the report, it is said:

As already stated, this bill, if enacted into law, will accomplish in the main all the purposes of a general income-tax law and at the same time escape the disapproval of the Supreme Court, as it keeps well within the principles laid down by that court in sustaining the constitutionality of the corporation-tax law.

It is the avowed purpose and intention of advocates of the measure to make it a general income-tax law so phrased as to avoid objections that would lie against a professed income-tax law. It is proposed to accomplish by indirection what can not be done directly. Are constitutional provisions so weak and flimsy that they can be violated in spirit and purpose by refinement in phraseology? Will a law creating a general income tax, in substance, as is claimed by the Ways and Means Committee for this bill, be upheld because it is disguised in the terminology of an excise tax?

PROPERTY OF IDLE RICH EXEMPT.

One who would be subject to the payment of the tax must be engaged in some kind of business for profit or for a livelihood. Under that provision the billions of dollars invested in valuable income-bearing real and personal property held by the idle rich would be exempt from taxation. Andrew Carnegie is generally understood to own upward of $300,000,000 of first-mortgage bonds upon the property of the United States Steel Corporation, from which he derives a revenue of twelve or fourteen million dollars a year. Would his income be subject to taxation under the provisions of the bill? If so, upon what basis? He is engaged in no business for a livelihood or for profit. His entire fortune is invested in real and personal property. The interest on his investments is paid periodically to his banker and placed to his credit. Where is the business basis of a tax upon his kingly income? The Astor family is understood to own hundreds of millions of dollars of valuable real property in the city of New York. The lessees pay rent to their bankers or agents. Members of that family are carrying on no business for a livelihood or for profit. They live upon the vast income from their landed property. They are engaged in no business that is subject to taxation under an excise law.

In the large cities of the country multiplied millions of dollars' worth of valuable lands are leased for long terms for stipuated rentals, and lessees are required to pay the periodical installments of rent to the lessors' bankers, where they are placed to their credit; and the lessors in many instances have no business at all, but live upon the income of the property.

Will this bill cover cases of that kind? It is the custom of many men of large wealth to provide by will that the property they leave shall be held and controlled by an executor or trustee and the proceeds be paid to the beneficiaries. Will this bill reach cases of that kind? The beneficiaries may have no business. They have nothing to say in relation to the management or investment of the property. They simply receive from the executor or trustee their respective shares of the income. The trustee can not be required to pay a tax upon an income of that kind unless the beneficiaries are subject to taxation. The trustee may be required to pay a tax upon his income, but he can not be required to pay a tax upon the income of the beneficiaries of the trust unless they are engaged in some kind of business.

The gentleman from Tennessee [Mr. HULL], who opened the debate in favor of the bill, insisted that substantially all of these classes of wealth owners would be subject to the proposed tax, because it is necessary to look after invested personal property and rented lands, and that would constitute business under the definition given in the bill. He seems to believe that the cutting of interest coupons by bondholders and surrendering them on payment of installments of interest would be taxable business. Such acts are not business privileges, they are the necessary incidents of the ownership of property. They can not constitute business in the sense of that term as it is universally used. But the report, which carries the signatures of all the majority members of the Ways and Means Committee, including the gentleman from Tennessee, admits, practically, that the classes I have enumerated would not be subject to taxation under the bill.

On page 7 of the report it is said:

Under the proposed law the citizen is not taxed upon his income nor is any tax measured by his income unless it be first shown that he is doing business within the meaning of the act. The very fact that some citizens, possessing large means, would under the proposed law escape taxation measured by their incomes, because they are not engaged in business, while unfortunate in its effect upon the revenues, is an added circumstance to show that this tax is an excise upon business and not a tax upon income. It is undoubtedly desirable that idle wealth should pay its share of taxation. Under the proposed law that portion of idle wealth, held by idle persons, will escape; but because the tax is measured by the income from all sources, idle wealth held by any person coming within the broad definition of persons doing business, as laid down by the Supreme Court and quoted in the proposed law, will be liable to this tax.

Gentlemen admit that incomes received from lands or invested personal property, by idle persons, would not be subject to the proposed tax either directly or indirectly. "Idle persons," under the bill, is construed to mean those not engaged in business. The owner of a farm who leases it for a period of 10 years, for instance, at a stipulated annual money rental, would not be engaged in "business" in the sense of the law or within the commercial meaning of that term, if he simply looked after the collection of his rent or visited the farm occasionally to see that it was properly cultivated and that improvements were kept in good condition. Those acts are necessary incidents of the ownership of property.

So it is admitted by the advocates of the bill that the fabulous fortunes of the unemployed rich will contribute nothing whatsoever to the raising of the revenue contemplated. They admit that the enormous burden of $60,000,000 a year will rest upon the shoulders of the enterprising, thrifty members of society who contribute greatly to the welfare of the people and to the glory of the country while the industrial drones "who toil not and neither do they spin," but who revel in luxury upon wealth they never did a thing to create or accumulate, will be entirely relieved from any share of the burden.

Mr. HAMMOND. Mr. Chairman, will the gentleman yield for a question?

The CHAIRMAN. Does the gentleman from Indiana yield to the gentleman from Minnesota?

Mr. CRUMPACKER. Yes; I will yield for a question.

Mr. HAMMOND. The gentleman has said there would be doubt as to whether it would be an income tax. Could it be any the less an income tax because it should be named an "excise tax"?

Mr. CRUMPACKER. I suppose not. It would be a debatable question. If it was a matter of serious doubt, the court would doubtless give Congress the benefit of the doubt and hold that it was within the exercise of its constitutional power. But what I am undertaking to show is that, considering all the provisions of the bill together, it is an income tax from its very nature, and I think if anything else is needed to ultimately and conclusively determine that question, it is found in section 5 of the bill, the section I propose to discuss now.

Mr. HAMMOND. Just another question. If, then, the name to be given to the tax will not determine its character, is it possible that this bill might be sustained as an income-tax bill?

Mr. CRUMPACKER. Well, the gentleman is as good a judge of that possibility as I am.

Mr. HAMMOND. I have much respect for the gentleman's opinion, and I simply desired to ascertain if, in his opinion, supposing the Supreme Court as it is now constituted would sustain an income-tax law, it would be apt to refrain from sustaining this law simply because it is called an "excise-tax law"?

Mr. CRUMPACKER. I will come to that particular question later on in my speech and show why I think the court would not be justified in overruling that Pollock decision under all the circumstances surrounding the situation.

Mr. HAMMOND. I will await that with interest.

"COLLECTION AT THE SOURCE."

Mr. CRUMPACKER. But if there should be any doubt that the proposed tax is an income tax, in its character and essence, that doubt must disappear in the face of provisions contained in section 5 of the bill. That section reads as follows:

SEC. 5. That it shall be the duty of all paymasters and all disbursing officers under the Government of the United States, or persons in the

employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of 1 per cent, and the pay rolls, receipts, or accounts of officers or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment. And it shall be the duty of the accounting officers of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officers, to require evidence that the taxes mentioned in this act have been deducted and paid over to the Treasurer of the United States or other officer authorized to receive the same. Every person, firm, or corporation who pays to any officer, employee, or other person a salary or compensation, interest, or other accrued profits, exceeding $5,000 for a taxable year, every lessee or mortgagor of real or personal property who pays to the lessor or mortgagee interest or compensation exceeding $5,000 for a taxable year, and every trustee, executor, administrator, conservator, agent, or receiver employing any person or paying any person business earnings, within the meaning of this act, exceeding $5,000 for any taxable year, computed on the basis herein prescribed, shall make and render a return as provided herein to the collector or a deputy collector of his district, and shall deduct and withhold the tax herein imposed, and shall pay on said return the tax of 1 per cent per annum as required by this act: *Provided*, That any officer, employee, or other person for whom return has been made and the tax paid, as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of $5,000 shall be made in the case of any such officer or employee: *Provided further*, That salaries paid to State, county, or municipal officers shall be exempt from the special excise tax herein levied: *And provided further*, That interest upon the bonds or other obligations of a State or any political subdivision thereof and also the proceeds of life insurance policies paid upon the death of the person insured shall not be included in computing the net income of a person subject to the tax herein imposed: *And provided further*, That all property or its value passing by will or by intestate laws or transferred by deed or gift made or intended to take effect in possession after the death of the grantor, donor, testator, or ancestor shall be exempt from the operation of this law.

The happy idea of "collection at the source" embodied in that section was imported from England, where it has worked most beneficently as a feature of the English income-tax system for many years. It must be borne in mind, however, that the English law from which it was taken is a straight income-tax law. It imposes a tax directly upon incomes, while the tax proposed by this bill is a charge upon the privilege of doing business.

Advocates of this measure deny most vehemently that it is a tax upon incomes. They admit that if it were it would conflict with the Constitution and would be invalid. They contend that reference is had to incomes only incidentally and for the purpose of fixing the amount each individual shall pay for the privilege of carrying on business. The English income tax has always been classed as a direct tax. There is no constitutional provision in that country respecting direct taxes on incomes or other property.

If this bill should become a law an individual might be engaged in a small line of business that returned an income, say, of $1,000 a year. The business in and of itself would not be taxable, because the income was less than $5,000, but if the individual should be the owner of a valuable parcel of land in a large city, which he had leased for a long term of years at an annual net rental of $50,000, the business he was engaged in would be taxable. The amount of taxes he would be required to pay would be equivalent to 1 per cent upon his entire net income from all sources above $5,000. Keep in mind that the tax is not to be on the income, for that would be fatal, but it is to be on the business. It is imposed on account of the income, however, which bears no relation to the business, and section 5 of the bill provides that it shall be paid directly out of the income. It requires the lessee to report to the Government the amount of the annual rental and pay the tax out of the rental directly into the Federal Treasury and charge the amount against the lessor. The tax is imposed on account of the income from the realty. The bill proposes to give the Government a lien upon the income for the payment of the tax, and compels the lessee to subtract the tax directly from the income and pay it into the Treasury; and yet it is insisted that the proposed tax is upon the carrying on of business of some kind and not upon incomes at all. No flimsier fiction was ever suggested as a feature of legislation. The court held in the corporation-tax case that under a bona fide excise law, fixing the amount of the tax to be paid on the basis of the income of the taxpayer, interest on nontaxable bonds might be reckoned as part of the income, because the tax was not on the bonds nor on the interest therefrom, but on the privilege of conducting business. If the law had provided that the tax should be paid in whole or in part directly out of the interest on the nontaxable bonds, it would surely have been overthrown. Here it is freely admitted that the income from real property and invested personal property is not taxable, but it is proposed to collect the business tax, which is based upon such income, directly out of the nontaxable fund. The taxpayer is not even given the privilege of paying the tax out of any other money he may have. There is no escape from the conclusion that the proposed tax is a tax directly upon incomes, and, therefore, upon real and personal property which is the source of incomes.

The bill can not be labeled or disguised in any form or fashion so as to relieve it of the character of a direct tax upon the income of lands and invested personal property so long as it retains the "collection at the source" provision. That provision operates in every instance where the taxpayer may receive an income independent of his business, from rented lands or invested personal property, and it vitiates every feature of the measure, like a single disease germ will pollute a barrel of water.

TAX ON SALARIES OF FEDERAL JUDGES.

The bill imposes a tax upon official salaries, including the salaries of Federal judges. It contemplates that the performance of official service for the Government is a business or an activity pursued for a livelihood or for profit. The justices of the Supreme Court of the United States under this bill would be liable for the payment of a tax on their salaries in excess of $5,000 a year. Few of them have any outside incomes, and none of them has any active business. Upon the death of the lamented Justice Harlan it was ascertained that his estate was nominal. His entire source of livelihood was the salary he received as a member of the Supreme Court. The bill provides that official paymasters and disbursing officers shall withhold from the salaries of public officers, including Federal judges, the tax that may be due from them under its provisions. The proposed tax would amount to a direct reduction of official salaries to the amount of the sum required to be withheld. Instead of having the tax paid to the Government by the officer who may be subject to it, it is subtracted from his salary, and he is paid only the balance that may be due him.

Section 1, Article III, of the Constitution provides that:

> The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

Every Member of the House understands the purpose of that constitutional provision. The theory of our Government is to make the three great departments independent of each other. The provision preventing the reduction of the salaries of judges was calculated to make the courts independent of the legislative and executive departments. If Congress may fix an income tax upon the salaries of judges in excess of $5,000, it may impose an income tax upon the entire salaries. If Congress may levy a tax of 1 per cent upon the salaries of judges, it may impose a tax of 10 per cent, 25 per cent, or even 50 per cent. This is not a question of the amount of the tax, but a question of power to impose any such tax at all. The Constitution deprives Congress of the power, directly or indirectly, to reduce salaries of Federal judges during their continuance in office; and a tax of 1 per cent upon a salary in excess of $5,000 a year is as much a violation of the spirit and purpose of the constitutional prohibition as a tax of 25 per cent upon the entire salary would be. The great safeguards written in the Constitution to secure independence of the departments of Government and to protect life, liberty, and property can not be swept out of existence by refinement or subterfuge. There can be no doubt in the mind of any thinking person that the proposed tax upon the salaries of judges is in violation of the Constitution and utterly void. It seems that there are not two sides to that question.

REVERSAL OF THE POLLOCK DECISION.

We hear it said that the Supreme Court, with its present personnel, might, and likely would, overrule the decision in the income-tax case, and, if that should be done, the proposed measure would be upheld. It is a most unwise course for Congress to pursue—to base an important measure of legislation upon the supposition or the hope that the Supreme Court would overrule its latest decision upon the identical question involved. It is true that the present Chief Justice is the only member of the court who was a member when the income-tax case was decided. It is, furthermore, true that he was one of the dissenting justices against that decision; but the court decided the question, and since then Congress has proposed an amendment to the Constitution authorizing the imposition of an income tax, and that amendment is now pending with the legislatures of the several States. A substantial majority of them have already ratified it. Congress has accepted the decision of the Supreme Court in the income-tax case as final, and the court will doubtless follow that decision because it is sound and for the reason that if the people of the country desire that Congress shall have the power to impose an income tax, they may give it that power by ratifying the proposed amendment. It is altogether too precarious a hope to justify Congress in taking from the Treasury over $50,000,000 of revenue a year, to be provided if the court overrules its own decision.

PROVISIONS OF BILL INSEPARABLE.

If the courts should hold that the provisions of the bill intended to cover the unemployed rich, or any other of its provisions amount to a direct tax upon incomes from lands and invested personal property, and therefore void, will any portion of it stand? It seems clear that the provisions of the bill are not separable. They are interdependent. No court could say that Congress would have passed the law exempting from its operation the multiplied millions of dollars owned by men and women who have no vocation. How many Members of this House would vote for this bill if they believed that many immensely rich and unemployed people would be required to contribute no part of the revenues intended to be raised by it for carrying on the expenses of the Government? The question of the separation of provisions in the income-tax law was directly involved in the income-tax case, and the court held that unless valid provisions could be clearly separated from the invalid provisions the whole law would be held void. Unless it clearly appeared that Congress would have enacted the law with the objectionable provisions eliminated, the whole law would be overthrown. That must of necessity be the case with the pending bill. This is an important measure from every standpoint. It involves grave questions of constitutional authority and of public policy. This body, in the face of recent decisions of the Supreme Court, is not justified in enacting this bill into law, for it seems morally certain that it will ultimately be overthrown. I hesitate to charge the majority membership of this House with playing politics in a matter of such importance as this. I can not believe that they are proposing this measure and have put through the free-sugar bill in the expectation and the hope that neither will be enacted into law, but are designed for campaign purposes only. Therefore I appeal to them to reflect seriously upon the gravity of the question and to follow that course which is dictated by wisdom and safety. Do not put the Government in a position where it will be compelled to depend for means of subsistence upon the uncertain contingency that the Supreme Court will overrule one of its latest and most thoroughly considered decisions. I am opposed to the bill because I believe it is in conflict with the Constitution. I would oppose it, even if I believed it to be constitutional, because it proposes to tax the creators of wealth, the benefactors of humanity, and to exempt from any share of the burden the numerous idle holders of immense fortunes earned by the toil and sacrifice of others—a proposition which is repugnant to every conception of fairness and justice. [Applause.]

Mr. TOWNER. Mr. Chairman, a somewhat singular condition exists in the consideration and discussion of this proposed law. It is in its essentials a limited income-tax law, in that it levies an impost on all incomes derived from business. It is defended and advocated as an income-tax law, and the arguments used to favor and sustain such a law are used here to induce its passage; and yet it is labeled an excise-tax law, and it is vehemently asserted that it is not, and must not be considered an income-tax law. Of course, nobody is deceived in this. It is known that for strictly political reasons it has been deemed good campaign strategy to take the tariff off from sugar. It is true that such a measure would destroy the beet-sugar interests of the North and West and obliterate the cane-sugar interests of the South, and that it would place us at the mercy of the Sugar Trust and compel us to depend upon foreign supplies for this great necessary article of food. But these considerations have little weight with gentlemen who hate the tariff and would strike it down whenever an opportunity occurs, and who think they can make the laboring classes believe that by the passage of such a law they would get cheaper food products and thus reduce the high cost of living.

But there was one great obstacle in the way. Already they had endeavored to strike down many of our sources of revenue, until it was apparent that nothing but a Republican President and Senate stood in the way of a large deficit and a consequent bond issue and the duty on sugar yielded $53,000,000 revenue. This could not be spared, and so to appear to make it up and to substitute that which would seem a popular for what they considered an unpopular tax this so-called excise law was proposed.

It is inherently defective, in that it is neither an excise nor an income tax, and it pretends to be both. It does not reach the very class of persons, the idle rich, the taxation of whom is the principal justification for an income tax, and it places the burden upon the middle-class business man or firm whose success and prosperity it should be the policy of Congress to foster. It does not reach the great corporations, who have absorbed so much of the wealth of the Nation and constitute the "interests" and the "big business" against which gentlemen on the other side thunder their denunciations. These great combinations of capital have already been taxed by a Republican measure, which now yields the Government $30,000,000 revenue. If our friends on the other side want more money, why do they not increase this tax? It has been declared constitutional. It is successfully enforced, and is a practicable scheme of taxation. The proposed measure is almost certainly unconstitutional, and it is utterly indefensible as a scheme of taxation. It will not reach the trust, but it will reach the independent manufacturer, who has been endeavoring to fight the trust. It will not reach the department stores of the great cities, but it will reach the fairly successful merchant in the smaller cities and larger towns. It will not reach the absentee landlord, but it will reach the successful farmer who by improved methods, industry, and frugality has just reached a period where he can claim that farming pays, and who is thereby encouraged to add to the food products of the Nation and in reality reduce the high cost of living. The Rockefellers, the Carnegies, and the Astors are not reached, for they have retired from business. It is only the energy and the thrift, the moderate success that is not a menace, and the fair measure of prosperity in business that ought to be encouraged that is burdened and penalized by this bill.

No real friend of an income tax should support this bill.

First. Because it is not an income tax and does not reach the persons who most of all should be burdened with such a tax.

Second. Because it is unconstitutional under the former decisions of the Supreme Court.

Third. Because the amendment to give this power to Congress is now pending, and unless delayed or prevented by the passage of this bill will almost certainly soon be adopted.

It is loudly asserted by the Democrats that they are in favor of an income tax. But it is not difficult to determine who are the real friends of that measure. The proposition to submit a constitutional amendment making possible the enactment of such a tax was made by a Republican President and passed by a Republican Senate and House. And now to obstruct or prevent or even delay the ratification by the States of that amendment is an act to defeat rather than to secure the passage of such a law.

While our friends claim for the present bill that it is almost as good as a general income-tax law they admit that it is but a makeshift. And were it not for the supposed political demand the honest, intelligent sentiment on that side of the House would never submit to the enactment of such a law. Now, on the eve, as it may fairly be said, of a ratification of the income-tax amendment to abandon the plain road and to take to an obscure and unexplored bypath would seem, to use no worse term, the height of folly.

The income-tax amendment was proposed by the President in 1909. It passed the Senate unanimously and the House by a vote of 317 to 14. It was ratified in 1910 by 9 States. It was ratified in 1911 by 21 States. It lacks the ratification now of only half a dozen States to become the sixteenth amendment to the Constitution of the United States. There are 18 States from which to secure the favorable action of 6. Gentlemen who are honest with themselves must admit that the necessary ratifications are to say the least probable. It is suggested that the last half dozen are likely the most difficult to be secured. But on examination I find in the list of those which have not yet acted nothing that would warrant such a belief. The list is as follows:

Arizona, Connecticut, Delaware, Florida, Louisiana, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia, and Wyoming.

I believe that nearly every one of these States will ratify this amendment unless this bill becomes a law. Half of these States are claimed to be Democratic; but it needs only six, and the Republican States who have so far ratified the amendment outnumber the Democratic. But if the Democrats in States which have not yet ratified rest on the assurance of their Democratic brethren here that this bill is almost as good, they may well cease their efforts. And if Republicans believe that it will be unwise to trust Congress with a power they so unwisely use, they may well hesitate to act, and the amendment thereby be defeated.

The true friends of an income tax will pursue the path marked out by wisdom and an almost absolute certainty of success and not approve a course so devious and dangerous.

It is admitted that this proposed law is unconstitutional unless it is an excise tax.

By its terms it is a tax on incomes, and under its operation it would include income derived from real estate and personal property, and thus be a direct tax and subject to apportionment, unless it is within that exceptional class of taxation known as excises. It has been decided by our Supreme Court

that when a law passed is clearly an excise the amount of the taxation and the determination of the classification may be measured by its income.

But this law is not an excise law, and it is impossible to force it into that class by so labeling it. And if it is not an excise, but a general law, it is clearly and unquestionably unconstitutional, because it imposes a tax upon incomes derived from real estate and personal property. This law proposes to tax all business. It is not specific, but general in its terms. An excise tax is not a general, but a specific tax, and when a law is passed which is in its nature a general law it can not be classed as an excise tax, because it is no longer a specific tax. Congress, by the terms of the Constitution, can pass an excise law, but it can not ecape the requirement of apportionment by labeling a law an excise when it is not. Congress has power to pass a specific tax on a particular thing or a particular activity, because it is then an excise; but it can not tax all business or activities, because that is not an excise, a specific, a particular tax, but a general law, and subject to the limitations of such a law.

It is asserted in the report of the committee that because you can tax one business or one form of business therefore you can tax all. That idea leaves out of consideration the essential nature of the power sought to be exercised. Congress is given power to levy an excise tax, subject only to the rule of uniformity; Congress is given the power also to levy a direct tax on property, but that must be done under the rule of apportionment by population. There has been no attempt made in this proposed law to apportion it among the States according to population. Hence if it is a direct tax on property it is unconstitutional. It has been held by our Supreme Court that a tax upon the income derived from real and personal property is in effect a tax upon the property itself and therefore a direct tax.

But an excise tax, if clearly so, is an exception, and Congress is given power to levy such tax. It may be a tax on property, and therefore direct; but if it is only levied on a particular property or thing or business, if it be exercised or cut off from the class, it is permitted under the power granted without being subject to the apportionment requirement. Thus liquor and tobacco are property. A tax on them is essentially a direct tax. But because they are excised, or cut off from the great bulk of property, a tax on them is permitted under the excise power and not the general power. But would gentlemen argue because we would tax liquor and tobacco and escape the requirement or apportionment that therefore we can tax all property and escape the requirement?

In essence and from its derivation (excidere—to cut off) it means a tax on specific things. Thus, in its other uses the word always means to cut off. The surgeon excises a portion of skin or a limb. We excise a word from its context. From the same derivation the word "excision" means that which is cut off, separated from the mass, taken from the whole.

As a method of taxation it was first adopted in England in 1643, in acknowledged imitation of the example of Holland. It was laid upon particular enumerated articles, and later upon particular enumerated trades and callings. It was from the first very unpopular. It was defined by Dr. Johnson, the great English lexicographer, as "a hateful tax." This opinion was evidently shared by Blackstone who, after enumerating the articles subject to the tax, said that it was "a list which no friend of his country would wish to see further increased."

This has always been and is now the meaning and use of the word in England from whence we derived it. Thus Churchill wrote:

> No statesman e'er will find it worth his pains
> To tax our labors and excise our brains.

Coming now to its use on this side of the Atlantic we find the word well known and the practice odious in the minds of the colonists, who justified their Revolution because of what they justly considered an unwarranted imposition of an excise tax on tea and other specified commodities. But while it was odious it was considered by the framers as a necessary power of Government, and so Congress was given the power to pass excise laws. Almost the first endeavor to use such power led to the whisky rebellion, and to this day the excise on liquor is considered an unjust and an unholy tax by those who are compelled to pay it. But all through these years, and in every instance of its application, the tax maintained its characteristic as a limited, a particular, a specific tax. Thus Thomas Jefferson, referring to the liquor tax, said:

> An excise is a duty paid in the hands of the consumer or retailer, but in Massachusetts they have perverted the word "excise" to mean a tax on all liquors.

Imagine his surprise if he could know that his Democratic followers were insisting upon a perversion of the word which would give Congress the unlimited power to tax anything and everything by simply calling it an excise.

But no such meaning or use of the word as that now contended for has been sanctioned by any American court. The word "excise" has been often defined by the courts of both the States and the Nation, but always in consonance with its historic origin and use. The text writers on the Constitution and on taxation have so understood and so defined it. There is not anywhere to be found, either in the decisions of the courts or in the discussion of its principles by jurists, a single statement that would justify the use of the werd or the principle as attempted and intended by this bill.

In Maine *v.* Grand Trunk Railway (142 U. S., 217) the Supreme Court of the United States said an excise tax "denotes an impost for a license to pursue certain callings or to deal in special commodities or to exercise particular franchises." In Patton *v.* Brady (184 U. S., 608) the Supreme Court had under consideration the validity of the tobacco-tax law of 1898, which levied an imposition of 12 cents a pound upon all tobacco and snuff. In determining the validity of that law they discussed somewhat at length the nature and definition of an excise law, and I desire to quote from the opinion which was rendered by Brewer, J., beginning on page 617:

> Ever since the early part of the Civil War there has been a body of legislation, gathered in the statutes under the title "Internal revenue," by which upon goods intended for consumption excises have been imposed in different forms at some time intermediate the beginning of manufacture or production and the act of consumption. Among the articles thus subjected to those excises have been liquors and tobacco, appropriately selected therefor on the ground that they are not a part of the essential food supply of the Nation but are among its comforts and luxuries. The first of these acts, passed on July 1, 1862 (12 Stat. 432), in terms provided for "the collection of internal duties, stamp duties, licenses, or taxes imposed by this act," and included manufactured tobacco of all descriptions. Subsequent statutes changed the amount of the charge, the act of 1890 reducing it to 6 cent a pound. Then came the act in question, which, for the purpose of providing means for the expenditures of the Spanish War, increased the charge to 12 cents a pound, specifying distinctly that it was to be "in lieu of the tax now imposed by law." Nothing can be clearer than that in these various statutes, the last included among the number, Congress was intending to keep alive a body of excise charges on tobacco, spirits, etc. It may be that all the taxes enumerated in these various statutes were not excises, but the great body of them, including the tax on tobacco, were plainly excises within any accepted definition of the term.
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> Turning to Blackstone, volume 1, page 318, we find an excise defined "An inland imposition paid sometimes upon the consumption of the commodity or frequently upon the retail sale, which is the last stage before the consumption." This definition is accepted by Story in his Constitution of the United States, section 953. Cooley, in his work on Taxation, page 3, defines it as "an inland impost levied upon articles of manufacture or sale and also upon licenses to pursue certain trades or to deal in certain commodities." Bouvier and Black, respectively, in their dictionaries give the same definition. If we turn to the general dictionaries, Webster's International calls it "an inland duty or impost operating as an indirect tax on the consumer levied upon certain specified articles, as tobacco, ale, spirits, etc., grown or manufactured in the country. It is also levied on licenses to pursue certain trades and deal in certain commodities." The definition in the Century Dictionary is substantially the same, though in addition this is quoted from Andrews on Revised Law, section 133: "'Excises' is a word generally used in contradistinction to imposts in its restricted sense and is applied to internal or inland impositions levied sometimes upon the consumption of a commodity, sometimes upon the retail sale of it, and sometimes upon the manufacture of it."

The same view is taken by the Supreme Court in the late corporation-tax case (Flint *v.* Stone Tracy Co., 220 U. S., 107). In that case Mr. Justice Day, for a unanimous court, in rendering the decision sustained the law because, he said, it—

> may be described as an excise upon the particular privilege of doing business in a corporate capacity, i. e., with the advantages which arise from corporate or quasi corporate organization, or when applied to insurance companies for doing the business of such companies.

The gentlemen who defend the bill meet none of these propositions in argument, but they say their measure is justified and sustainable under the Spreckels and the corporation-tax cases. An examination of these cases will not only furnish no support for such a contention, but will sustain and strengthen the position I have sought to establish.

In Spreckels Sugar Refining Co. *v.* McClain (192 U. S., 397) the Supreme Court had before it the question of the validity of the law of 1898, which provided:

> That every person, firm, corporation, or company carrying on or doing the business of refining petroleum or refining sugar or owning or controlling any pipe line for transporting oil or other products whose gross annual receipts exceed $250,000 shall be subject to pay annually a special excise tax equivalent to one-quarter of 1 per cent on the gross amount of all receipts of such persons, firms, corporations, and companies in their respective business in excess of said sum of $250,000.

The court held it to be a special excise tax on the particular business of refining oil and sugar. Justice Harlan, rendering the opinion, says:

> The contention of the Government is that the tax is not a direct tax, but only an excise imposed by Congress under its power to lay and collect excises which shall be uniform throughout the United States. Clearly the tax is not imposed upon gross annual receipts as property, but only in respect of the carrying on or doing the business of refining sugar. It can not be otherwise regarded, because of the fact that the

amount of the tax is measured by the amount of the gross annual receipts. The tax is defined in the act as "a special excise tax," and therefore it must be assumed for what it is worth, that Congress had no purpose to exceed its powers under the Constitution, but only to exercise the authority delegated to it of laying and collecting excises.

It will be seen that this decision holds that a tax on a particular business is an excise. But it is not an authority for the contention that a general tax on all business is an excise.

In Flint *v.* Stone Tracy Co. (220 U. S., 107), known as the corporation-tax case, the Supreme Court considered the law of 1909 taxing corporations, the material part of which is as follows:

SEC. 38. That every corporation, joint stock company or association organized for profit and having a capital stock represented by shares, and every insurance company now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company equivalent to 1 per cent upon the entire net income over and above $5,000 received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations.

It will be noticed that by the terms of the law itself the tax was to be imposed "with respect to the carrying on or doing business by such corporation"—that is, the right to do business in a particular way, to wit, the corporate form was taxed, and the court held the law an excise and not a direct tax.

That was in accordance with the original purpose. President Taft, in his message to Congress proposing the law and urging its passage, said:

The decision of the Supreme Court in the case of Spreckels Sugar Refining Co. *v.* McClain seems clearly to establish the principle that such a tax as this is an excise tax upon privilege and not a direct tax upon property, and is within the Federal power without apportionment according to population. This is an excise tax upon the privilege of doing business as an official entity and of freedom from general partnership liability enjoyed by those who own the stock.

The Supreme Court took that view and sustained the act as an excise law "on the privilege of doing business in a corporate capacity." This is made clear by reiterated statements in the decision. Thus, on page 145:

It is therefore apparent, giving all the words of the statute effect, that the tax is imposed not upon the franchises of the corporation, irrespective of their use in business nor upon the property of the corporation, but upon the doing of corporate or insurance business and with respect to the carrying on thereof, in a sum equivalent to 1 per cent upon the entire net income over and above $5,000 received from all sources during the year; that is, when imposed in this manner it is a tax upon the doing of business with the advantages which inhere in the peculiarities of corporate or joint-stock organizations of the character described. As the latter organizations share many benefits of corporate organization, it may be described generally as a tax upon the doing of business in a corporate capacity. In the case of the insurance companies the tax is imposed upon the transaction of such business by companies organized under the laws of the United States or any State or Territory, as heretofore stated.

Again, on page 150:

Within the category of indirect taxation, as we shall have further occasion to show, is embraced a tax upon business done in a corporate capacity, which is the subject matter of the tax imposed in the act under consideration. The Pollock case construed the tax there levied as direct, because it was imposed upon property simply because of its ownership. In the present case the tax is not payable unless there be a carrying on or doing of business in the designated capacity, and this is made the occasion for the tax, measured by the standard prescribed. The difference between the acts is not merely nominal, but rests upon substantial differences between the mere ownership of property and the actual doing of business in a certain way.

Also, on page 155:

While the tax in this case, as we have construed the statute, is imposed upon the exercise of the privilege of doing business in a corporate capacity as such business is done under authority of State franchises, it becomes necessary to consider in this connection the right of the Federal Government to tax the activities of private corporations which arise from the exercise of franchises granted by the State in creating and conferring powers upon such corporations.

Also, on page 158:

In levying excise taxes the most ample authority has been recognized from the beginning to select some and omit other possible subjects of taxation, to select one calling and omit another, to tax one class of property and to forbear to tax another. For examples of such taxation see cases in the margin decided in this court upholding the power.

Also, on page 165:

It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable. Applying that doctrine to this case, the measure of taxation being the income of the corporation from all sources, as this is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part at least, property which as such could not be directly taxed. See in this connection Maine *v.* Grand Trunk Ry. Co. (142 U. S., 217), as interpreted in Galveston, Harrisonburg & San Antonio Ry. Co. *v.* Texas (210 U. S., 217, 226).

It is contended that measurement of the tax by the net income of the corporation or company received by it from all sources is not only unequal but so arbitrary and baseless as to fall outside of the authority of the taxing power. But is this so? Conceding the power of Congress to tax the business activities of private corporations, including, as in this case, the privilege of carrying on business in a corporate capacity, the tax must be measured by some standard, and none can be chosen which will operate with absolute justice and equality upon all corporations.

The corporation-tax law was intended to be and was held to be a tax upon the doing of business in a particular manner, to wit, in a corporate capacity, and was therefore an excise law. How this can be considered as an authority to tax all business it is impossible to understand.

The Spreckels case was a tax on a particular business, and therefore properly held an excise tax.

The corporation-tax case was a tax on a particular manner of carrying on business, and therefore properly held an excise tax.

The proposed law is neither. It is not a tax on a particular business, nor a particular manner of doing business, but it is a general tax on all business. Such a law was never held to be and is not an excise law.

CONCLUSION.

After all, is it a wise policy, gentlemen on the other side, to play politics when the great, the vital interests of the Nation are concerned? It has been popular to denounce corporate greed and "the interests" and "idle wealth." There has been a large measure of justification in this. But if you refuse, when the power is yours and the way is easy, to further tax the great corporations against which you thunder your denunciations, if you refuse to follow the constitutional course by which you can reach the "idle rich" whom you have been so fond of lashing with the scorpion whip of your invective, will not the people believe that your attitude has been and is but a pretense, and your words mere sound and fury, signifying nothing?

It is exceedingly probable, nay it is almost certain, that when the people of the country come to consider the real merits of these twin propositions of unwisdom, they will condemn rather than approve. If upon such issues the Democratic Party proposes to appeal to the electorate this fall, we welcome the contest; for there is little doubt the American people will reject such propositions and repudiate the party which supports them. [Applause.]

Mr. COVINGTON. Mr. Chairman, the bill now under consideration by the House, to levy a Federal excise tax upon the carrying on or doing business by all persons in the United States, is simply an extension of the principle underlying the corporation tax, made a part of the Payne-Aldrich tariff bill at the instance of President Taft and the Republican Party managers in Congress in 1909, and now a part of the revenue system of the country. The active opponents of the extension of that tax to persons are the same class of people who, at various times and in manifold and devious ways, have opposed every scheme for taxation by the Federal Government which seeks to distribute the burden of taxation with due regard for the ability of all the people to pay.

The Federal corporation-tax law of 1909 provides that *every corporation engaged in business in any State or Territory of the United States shall be subject to pay annually a special excise tax with respect to carrying on or doing business by such corporation equivalent to 1 per cent upon the entire net income over and above $5,000*, and the law then merely provides the method of ascertaining the income and the machinery for the collection of the tax.

The bill now under consideration simply extends the special excise tax on corporations and provides that *every person, firm, or copartnership residing in the United States or any Territory thereof shall be subject to pay annually a special excise tax with respect to carrying on or doing business by such person equivalent to 1 per cent upon the entire net income over and above $5,000.* The bill defines the term "business" and then provides the method of ascertaining the income of the person doing business and the machinery for the collection of the tax.

There are two questions involved in the proper consideration of the bill. First, is it a valid exercise of the taxing power of the Congress under the constitutional provision for collecting taxes, duties, imposts, and excises for the support of the Federal Government? Second, is it an equitable tax, having due regard for the proper method and distribution of taxation by the Federal Government among the people of the United States?

Taking up the first question, the constitutional aspect of this proposed extension of the corporation excise tax has been so ably discussed by the gentleman from Tennessee [Mr. HULL] in presenting the bill to the House, and by the gentleman from New York [Mr. LITTLETON], that it seems almost trite to refer in detail to the decisions of the United States Supreme Court

which bear upon the subject. At the same time, Mr. Chairman, I desire to urge in my own way the real significance of the more important of those decisions.

The Constitution of the United States provides that Congress shall apportion direct taxes among the States, and that no capitation or other direct tax shall be laid unless in proportion to the census directed to be taken. (Art. I, sec. 2, cl. 3, and Art. I, sec. 9, cl. 4.) From the formation of the Constitution down to 1894 the unbroken doctrine of the Supreme Court of the United States was that there were but two kinds of direct tax—the capitation tax, expressly named, and a tax on land.

Under the second Cleveland administration the Wilson law was passed in 1894, placing a tax upon the net incomes, as incomes, of all persons and corporations. The constitutionality of this law was attacked, as this House knows, and the question was decided in the case of Pollock *v.* Farmers' Loan & Trust Co. (157 U. S., 429).

Now, Mr. Chairman, I do not believe in abusing the courts, but, having due regard for the right of the citizen to criticize freely any branch of this Government, I make bold to say that no decision since the troublous days of the slavery agitation before, during, and shortly after the war has been so generally or so justly condemned as that of the Pollock case. The Supreme Court, by a bare majority of five to four, overturned the precedents of a century, and a single judge overturned himself in a night to accomplish that result.

Now, the opponents of the pending excise-tax bill seize upon the Pollock case and assert upon its authority that the proposed tax is merely an income tax under another name, and is, consequently, unconstitutional because it seeks to levy a direct tax on incomes without apportionment among the States according to population. But taking the Pollock case as an authority for what it actually decided—while expressing here the belief that it will be destroyed as a precedent as soon as necessary by a sounder and a broader Supreme Court—and remembering that the law there under consideration was a plain provision to tax incomes, wholly unrelated to business, let us see the language of Chief Justice Fuller:

> We have considered the act only in respect of the tax on income derived from real estate and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such. (158 U. S., p. 635.)

And it is, of course, known by the lawyers of this House that the court left subject to taxation certain restricted classes of incomes. The Pollock case is bad reasoning, and the dissenting opinions are the logical and unanswerable ones; but, even then, all that the case decided was that a tax on incomes from real and personal property was a direct tax within the meaning of the Constitution. It said nothing against a tax on incomes from business. In fact, the Chief Justice, in this case, further said:

> We do not mean to say that an act laying by apportionment a direct tax on all real estate or personal property, or the income thereof, might not also lay excise taxes on business, privileges, employments, and vocations.

Now, Mr. Chairman, the Congress of the United States must be presumed to act constitutionally. It is a co-ordinate branch of the Government of the United States, and its acts must always be so construed as to determine, if possible, that they are within the limits of the Constitution.

In fact there has been lost sight of, in criticizing this bill, the difference between the validity of a law and the extent of its application. The Supreme Court has always upheld Federal tax laws where it could constitutionally apply them to classes of persons and fields of taxation, even if other persons and property have to be exempt.

The precise judicial construction of the word "business," the nature of its application, and the consequent extent of the excise tax must be for the court. I can only say that with the wide meaning of the word "business" given in the proposed law there is little income in the United States not derived therefrom.

Moreover, we have had in this country an imperceptible but steady growth of unwritten constitutional law. The doctrine of due process of law has been expanded to meet the varying needs of a complex civilization; other sections of the Constitution have been restricted beyond the dream of the fathers to meet the exigencies of our Territories beyond the seas. I believe the widely diversified industries, the varying activities and extent of capital, and the great disparity in the population of the States will impel the Supreme Court, if necessary, to return to the doctrine of Marshall and the other early expounders of the Constitution and hold that only capitation and land taxes are direct taxes requiring apportionment among the States.

As showing how careful was the majority of the court in the Pollock case not to extend the application of its opinion beyond the point necessary to destroy the value of the broad income tax then before it, I want to call to the attention of the House the fact that they attempted to distinguish and did not overrule the case—Springer *v.* United States (102 U. S.)—where a tax—

> upon the annual gains, profits, and income of every person residing in the United States, or of any citizen of the United States residing abroad, whether derived from any kind of property, rents, issues, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever—

was held to be an excise tax and not a direct tax within the meaning of the Constitution, and was upheld by the court.

In Nicol *v.* Ames (173 U. S.) the Supreme Court upheld the validity of the war revenue act of 1898, requiring a memorandum of every sale at any exchange or board of trade or other similar place and the affixing of a revenue stamp to such memorandum. The court, after holding that such a tax was not a direct tax, held that sales of that sort could be classified by themselves and apart from other sales, and could therefore properly be selected for a special tax, because of the obvious and peculiar privilege and facility of making a sale at a place where there was the best opportunity for a demand, a price, and dispatch in the transaction of business. Recalling the language of Chief Justice Fuller in the Pollock case that there is no Federal tax which is not a direct tax that is not included under the words "duties, imposts, and excises," it is clear to understand that the tax held valid in Nicol *v.* Ames was an excise tax.

The Spanish War revenue laws brought many cases to the Supreme Court, and in order to see how firmly that court adheres to its position on excise taxes, I want to refer to Spreckels Sugar Refining Co. *v.* McClain (192 U. S.). In that case the statute imposed an excise upon "all persons and companies carrying on or doing the business of refining petroleum or refining sugar or owning any pipe line transporting oil or other products, whose gross annual receipts exceed $250,000 shall be subject to pay a special excise tax," and so forth. In deciding the validity of that act the court says:

> The tax is defined in the act as a special excise tax, and therefore it must be assumed for what it is worth that Congress had no purpose to exceed its powers under the Constitution, but only to exercise the authority granted to it of laying and collecting excise.

And in this same case it is well to note that the court very effectively destroyed the argument that a tax of the character of the tax sought to be imposed by the present bill is an income tax by a statement regarding the decision in the Pollock case, for the court in that respect said:

> It is said that if regard be had to the decision in the income-tax cases a different conclusion from that just stated must be reached. On the contrary, the precise question here was not intended to be decided in those cases.

In 1909 the existing corporation-tax law was passed as a part of the Payne-Aldrich tariff bill. That act, as I have stated, provided an excise tax with respect to doing business by corporations. Soon after it went into effect its validity was brought into question in the Supreme Court in the case of Flint *v.* Stone Tracy Co. (220 U. S.), where a unanimous opinion of the court held that this form of tax applied to corporations was unquestionably valid.

Notwithstanding attempts to circumscribe the purpose and effect of that decision, in my judgment as a lawyer there is nothing in the opinion of the court to indicate that a broadening of the field of operation of such a tax might make it of doubtful constitutionality. The court, among other things in that case, said:

> The revenue of the United States must be obtained from the same territory and the same people and its excise tax collected from the same activities as are also reached by the States to support their local governments, and this fact must be considered in determining whether there are any implied limitations on the Federal power to tax because of the sovereignty of the States over matters within their exclusive jurisdiction.

In other words, as I read the opinion in the Flint case, the court meant to permit the proper and constitutional kind of an excise tax to be levied upon all business activities, whether they shall be personal or corporate.

Now, Mr. Chairman, at the time the Flint *v.* Stone Tracy Co. case was argued in the Supreme Court it was urged as the chief objection to the law that a tax claimed to be an excise tax, levied upon every conceivable business occupation or calling in which any individual, copartnership, joint-stock association, or corporation may engage, was limited to those only who carry on such business in joint-stock or corporate form,

and with the result that one competitor in a particular line of business had imposed upon it a burden that was not imposed upon other competitors in the same line. The case was the leader in a group representing the vast corporate activities of the United States and the ablest counsel in the land appeared to attack the law. I have examined the very able brief of Mr. Maxwell Evarts, of New York, general counsel of the Southern Pacific Railroad Co., filed in the case, and I find that it was elaborately argued that the law invaded the sovereignty of the States; that it was a deprivation of property without due process of law; that it denied to persons the equal protection of the laws; and that by taking away that privacy of its affairs which is a part of the business property of a corporation it took private property for public use without compensation. But that the tax might be a direct tax was barely adverted to, and then only to assert that it was such a tax if it applied directly to the corporate franchise. And, Mr. Chairman, better than all, I find in that remarkable brief this admitted statement:

The taxing power of the Federal Government may reach the business of the defendant corporation for 2 per cent, for 10 per cent, for 50 per cent, if necessary, if it will but seek out all who are engaged in the same business and not attempt to tax the corporate franchise.

In other words, the real argument in the Flint case was that the corporation tax was a discriminating tax because it did not reach individuals who were business competitors of corporations, and consequently was invalid. It was generally conceded that if its application had been to all persons, natural as well as artificial, it would have been valid. The court held that even with the restriction, being uniform in its operation all over the United States upon the classes it reached, it was a constitutional tax. Can it then be seriously urged that the extension of this tax by a Democratic House is other than a wise as well as constitutional act?

The true construction of an act may often be gotten by examining the purposes and views of those responsible for it. The corporation-tax law was introduced in the Senate and there was wide and thoughtful discussion upon it. In this House it was voted on merely as a part of a conference report upon the Payne-Aldrich tariff bill in the closing days of a congressional session. With remarkable force the able lawyers in the Senate who debated the amendment to the Payne-Aldrich bill providing that tax conceded the constitutional power to extend it to all persons.

During the debate on June 30, 1909, there was a colloquy between Senator ROOT and Senator BAILEY, as follows:

Senator ROOT. May I ask the Senator from Texas if I am right in inferring from the statement which he has just made that he does not seriously question the constitutional power of the Congress to impose this tax on corporations?

Senator BAILEY. Mr. President, I answer the Senator frankly that I do not. I believe that Congress can tax all red-headed men engaged in a given line of business if it pleases. I think it would be a very foolish thing to do; but I have no doubt if the tax fell upon every red-headed man in Massachusetts the same as in Mississippi or in Texas and all other States, the law imposing such a tax would be perfectly valid. (CONGRESSIONAL RECORD, 61st Cong., p. 4251.)

On July 1, with the debate still in progress, we find the assertion:

Senator BORAH. The Senator from New York [Mr. ROOT] will observe that I am not questioning the constitutionality of this tax. * * * But I suggest this proposition as well worthy of the attention of the great legal acumen of the Senator from New York; that the power which enables us to lay this tax is such a power as does not require us to make the discrimination which is made in this amendment. If we have the power to make the classification which is made in this amendment we have the power to extend that classification.

On July 2 there was general discussion between Senators CUMMINS, ROOT, RAYNER, and others, and answering a question of Senator CUMMINS whether or not he had any doubt that the proposed corporation tax could be constitutionally extended to individuals, Senator RAYNER said:

I do not; not the slightest. I think you can tax the privileges of an individual the same, and they are doing it. The Government is taxing special occupations. Take the tobacco and distillery cases. (CONGRESSIONAL RECORD, 61st Cong., p 4095.)

The next day, July 3, in answering a question by Senator SUTHERLAND, Senator CUMMINS said:

Yes; I am fairly familiar with that statement by the justice who wrote the opinion (referring to opinion in Spreckels case). It sustains a tax upon a certain business. I have no doubt about the right of Congress to levy a tax upon business, whether it is a blacksmith, or whether it is a shoemaker, or whether it is a sugar refiner. It is in the wisdom and discretion of Congress to select those kinds of business which can best, in its opinion, bear the burdens of an excise tax. (CONGRESSIONAL RECORD, 61st Cong., p. 4246.)

Mr. Chairman, I have gone at some length into this matter, but the preservation unimpaired by this House of the taxing power of the Government is of vital importance. In the face of the explicit decisions of the Supreme Court as to the right to tax business and business incomes as excises, with this class of taxes carefully excluded from the majority opinion holding the income tax invalid in the Pollock case, with the admission of the constitutionality of such a tax as the corporation tax, if extended to individuals, made by the counsel who in the Supreme Court assailed that tax, with the constitutional right to extend the tax conceded by the able Senators who debated the law applying it to corporations, I assert that the broad statesmanship of the Democratic Party is amply supported by authority and its judgment will be upheld by the courts.

The second question involved in this bill is, therefore, Mr. Chairman, the one vital question before the House. Is the proposed tax a fair one; is it equitable having due regard for the proper method and distribution of taxation by the Federal Government among the people of the United States? All economists agree that the ideal system of taxation is one under which men pay the expenses of the Government in proportion to their faculty or ability, and since income from business is by all means the best single mark of such ability an excise tax upon the carrying on or doing business, to be measured by the net income from the business of the person taxed, is the fairest and most equitably distributed tax which can be used in the United States short of a straight income tax.

No scheme of taxation can be devised which will reach every person who ought to pay taxes in a country as large as the United States, but if the plan reaches substantially all the people and places the burdens of taxation upon them in the manner in which I have just stated that all taxes ought to be laid—that is, with due regard for the ability of persons to pay—it is a scheme of taxation that is not merely sound, it is just. And for years the barons of special privilege through an iniquitous protective tariff and other forms of governmental favoritism have seen the burdens of government fall upon the consumer of the land without regard to his humble station and slender means, while they have basked in the sunshine of Republican power and have flitted like will-o'-the-wisps before the eyes of an outraged and overburdened public, untaxable, unassessable, unreachable.

Yet, Mr. Chairman, it is now cunningly argued by some Republicans here that the present excise-tax bill is unfair because the enforcement of the law, if it be enacted, will not reach the so-called idle wealth of the country while it taxes the great earnings from the industrial activities of our people. It may be that a very few people with great incomes will escape this tax. But I venture the assertion that more than nine-tenths of the material wealth of America that produces to its possessors an income each year in excess of $5,000 is held by people and corporations who are engaged in business within the meaning of even a circumscribed construction of the language of the present bill.

The gentleman from Ohio [Mr. LONGWORTH] saw fit to criticise the bill by urging that it permitted the aggregated wealth of a Rockefeller, of a Carnegie, and an Astor to escape taxation, while it bore down upon the activities of the man who is advancing industrial prosperity in America, but he failed to tell the whole story. He failed to tell the fact that while the very restricted class to whom belong the men he named may possibly be exempt, that yet there will come the taxation of the enormous incomes from the business activities of a Morgan and a Ryan and a Hill and a Schiff and a Gould and a Perkins, and a host of others who to-day are amassing inordinate sums from the American people through skillfully contrived special privileges and through the iniquitous system of tariff legislation imposed upon the poor people of America, and that such men are now escaping taxation themselves because of their alliance with and protection by that stand-pat reactionary Republican organization of which the gentleman from Ohio is a loyal member.

It is unfortunate that some scheme has not been devised by which the class of people who "toil not, neither do they spin," shall be subjected to their full share of taxation in America, but it is not the fault of the Democratic Party that such is not the case. That party has firmly and resolutely stood for the adoption of an amendment to the Constitution of the United States which shall make possible the taxation directly of all incomes in the United States. In the report to the House on the present bill the Democratic members of the Committee on Ways and Means specifically state that they desire to go on record as favoring an income-tax law; and they state that the enactment of the present bill will aid in preparing the public mind for a fuller appreciation of the justice and desirability of the income tax and hasten the adoption of the proposed income-tax amendment to the Federal Constitution. On the other hand, the Republican Party, true to its traditions as the representative of and the sponsor for the privileged classes of America, has stood firmly in the way of that great tax reform until some of its leaders within a brief period have seen gathering the storm of opposition about them and yielded to the inevitable.

And, moreover, Mr. Chairman, there should not again come from the other side of this Chamber any argument against the proposed excise tax because of its failure to be universal in its application. That party has continued in power by a system of taxation that has been the reverse of universal. It has thrived upon the results of the burdens of taxation placed inequitably upon the consumers of America. And I want to show that when the subject of a proper tax on business and other incomes was under discussion during the Republican ascendency in this House no question of the universality of application of a proposed law actuated the Republican Party. On the 25th of March, 1909, Mr. STEVENS of Minnesota, a stand-pat Republican, for whose personal integrity and soundness of judgment I have great respect, in discussing President Taft's supposed advocacy of an income tax, stated:

I think most of us realize that the time is rapidly approaching when this Federal Government can no longer expect to derive its full income to defray the vast expense of carrying on its varied operations entirely from the consuming capacity of the people.

And he stated his purpose to introduce a bill which would provide for a tax on real-estate incomes, and in another section for a tax on the incomes from personal property, and so on in separate sections to apply his tax to various classes of persons and various fields of taxation, and to include in each section a provision which would declare that the validity of that particular section should not affect the balance of the provisions of the act. He stated to the House that he had laid this sort of legislation before President Taft and that the President approved of it. Now, the effect of such legislation as proposed by the gentleman from Minnesota would simply be to provide a scheme of income taxation enumerating all of the different classes of people and property whether engaged in business activities or not, and subject them to an income tax from all of the sources of their income, and then, no matter how much the Supreme Court might narrow the operation of the law, he would still leave to be taxed the classes of people and businesses which the court determined were properly subject to taxation. I did not at that time, nor have I since, heard that a single Republican in this House objected to that scheme of taxation upon the theory that it did not provide at all hazards for reaching the last man in the United States who had an income which might be subject to taxation at the hands of the Federal Government.

The truth is, Mr. Speaker, that the stand-pat element of the Republican Party to-day is fighting this tax because it knows, as the country knows, that the great bulk of it will be paid by the individuals who, engaged largely in the same activities as are the corporations now paying this tax, have enjoyed and are still enjoying the enormous benefits and special privileges which have come to them through their corrupt alliance with the Republican Party.

Talking about fairness and equity in taxing the people, the trouble is that the wealth of the country has so long compelled this Nation of 90,000,000 freemen to worship in the temple of inequality and injustice that it views with impotent frenzy the swelling, irresistible demand for the readjustment of the national taxing system on the sound basis of equality and justice. For the last 40 years the predatory interests which have maintained a close partnership between business and Government have, in fact, forced the honest yeomanry of the land to enrich the coffers of those interests, and at the same time pay the bulk of the taxes, so that their very life history may be found in the lines of the western poet, who describes the lot of the farmer of the Plains:

His horses and mules had all gone lame,
And he lost his cows in a poker game.
A cyclone came and blew down his barn;
Then an earthquake swallowed up his farm,
But the tax collector came around
And taxed him on his hole in the ground.

The report accompanying the present bill shows that over $700,000,000 in taxes were collected from the people of the United States in 1911, and every dollar of it was a tax upon consumption. It was a burden which fell with substantial evenness of levy upon every man, woman, and child in the land. The articles embraced within the tax provisions of the customs and the internal-revenue laws of the United States are those which all people, poor as well as rich, use to at least appreciably the same extent. The harsh result of such a system of taxation is that the man in struggling poverty with a wife and several children will pay in taxes nearly as much for each human life in his humble home as the great captain of industry in his opulence and luxury.

This House knows and the country knows that there will not be forever the maintenance of such an unjust system of taxation. It was created out of the long-ago-established program to plunder the pockets of the American people for the benefit of the special beneficiaries of the high protective tariff, who have maintained in power the Republican Party, and it will surely be supplanted by an equitable system of taxation at the hands of a Democracy which is responsive to the true needs of the American people and which yields obedience to that quickened public sentiment which demands that there shall be equality of opportunity for all and a just distribution of the burdens as well as the blessings of government.

Let us look at the fairness of the proposed tax from another viewpoint. It is proposed at the same time that the Democratic Party has passed in this House a bill to place sugar on the free list and thereby reduce the customs revenues about $53,000,000. That bill was passed as a response to a strong and persistent popular demand. It has been estimated by Chairman UNDERWOOD that the sugar tariff, in taxes and in tribute to the Sugar Trust, places a burden of $115,000,000 annually on the consumers of the land. Such an effect of the sugar tariff has been admitted even by the Republican leaders. When the McKinley bill was reported to the House in 1890, the report, signed by the martyred McKinley, by the late Thomas B. Reed, and by Representatives PAYNE and DALZELL, high priests of protection still with us, after going into details about the bad effect of a sugar tariff, said:

It is clear that the duty on sugar and molasses made the increased cost of sugar and molasses consumed by the people of this country about $1 for each man, woman, and child in the United States.

That burden to-day is the same, and if the free-sugar bill becomes a law it will be lifted from the consumers of the country. Now, the present corporation tax is producing $29,000,000 of revenue, and the proposed excise tax will produce anywhere from $30,000,000 to $60,000,000 more. The revenue of this system of taxation, therefore, can more than make up the loss from free sugar.

With proper economy of governmental administration, the present corporation-tax revenue may all go to replace in part the loss of sugar revenue, and it is easy to see that the whole excise-tax system will completely replace that loss and thus simply will result in lifting an unequal tax from the plain people of the land and putting it, in proportion to business income, with absolute equality upon the bountiful earnings of the wealth of the country. Where stands a man to say that a taxing program to produce such results is unfair?

Ah, Mr. Chairman, but it is said this bill can not become law. Who says so? What marvelous prescience has indicated to the aggregated wealth of this country that it can make a last stand in the Congress of the United States against an enlightened and awakened public opinion? I say, sir, no one will dare thus to assert, unless he be of the class that Byron speaks of—so debased that he "perverts the prophets and purloins the Psalms."

My confidence in this House and in the Senate of the United States is not yet shaken. When an opportunity is afforded to tax the widely diffused wealth of this country by a plan so fair and a method so effective that it attains almost to the universality of an income tax, I believe that the patriotism of the American Congress will assert itself—

For right is right, since God is God,
And right the day must win.
To doubt would be disloyalty,
To falter would be sin.

One thing is certain. The militant and soundly progressive Democratic Party takes its united stand on the side of the people; it is making a determined effort to reduce those taxes which harrow the humble homes of the land and to place a proper share of the burdens upon those who have enjoyed the favors of government and are prospering to opulence. Woe be unto him of the Republican organization in this House who elects longer to serve the masters of privilege and stand to-day against this program of justice in taxation for the whole people of this land of the free and home of the brave.

Mr. UNDERWOOD. Mr. Chairman, it has been stated that equality in taxation represents abstract justice. Unless some method is devised by which great wealth can bear its proportionate share of the taxes of the country there can be no equality in taxation, and no justice rendered to those who must bear the burdens of Government. [Applause.]

Mr. Bastable, a leading English financier said:

"Production and a tolerable approach to just distribution are the two essentials of taxation."

The tax proposed by H. R. 21214 is the embodiment of the two essentials named. The revenues from such a tax readily respond to changes in rates without entailing hardship, and at the same time promptly meet the exigencies of Government finances, making good a deficit or diminishing a surplus, as the case may be. If the income of a taxpayer declines, his taxes are reduced in proportion; if, on the other hand, his income increases, his taxes proportionately increase and properly so.

Such a tax possesses wonderful adaptability, flexibility, and certain productiveness, which enables it to meet every peace or war emergency. In England an income tax proved to be a wonderful force, in the language of Gladstone, "an engine of gigantic power." During the great stress of national emergencies it is admittedly without a rival as a relief measure. Many Governments in time of war have invoked its prompt and certain aid. "It enabled England to conquer Napoleon. It came to the relief of our depleted Treasury during the Civil War when the customs revenues were at a low ebb, and saved the rapidly sinking credit of the Nation." We can not expect always to be at peace. If our Nation were plunged into a war with any great commercial country from which we now import large quantities of supplies, our customs revenues would decline and we would be helpless to meet the revenue requirements of the war without taxing the wealth of the country in effect as provided by the bill now under consideration.

The tax as levied in this bill does not purport to be an income tax, but it is an effort to approach as near to the principle of an income tax as it is possible for Congress to do without violating the decisions of the Supreme Court of the United States. So far as my own judgment is concerned, I have never approved the decision in the Pollock case, in which a divided Supreme Court declared the law of 1894 unconstitutional. I believe whenever this proposition again confronts that court it will, in so many words, reverse its decision in the Pollock case and return to the line of decisions maintained by it for a hundred years, and hold that this Congress has the power to levy directly an income tax.

Mr. BARTLETT. Mr. Chairman, will the gentleman yield?

Mr. UNDERWOOD. Certainly.

Mr. BARTLETT. Mr. Chairman, I agree thoroughly with reference to what the gentleman has said in respect to the decision in the Pollock case, but I want to say that if Congress does not pass an income-tax law, and if this is not an income-tax law, when will the Supreme Court get an opportunity to pass upon the question? If this is not an income-tax law, and the act of 1894 having been repealed by the act of 1897 and the act of 1909, how are we to get the question before the court?

Mr. UNDERWOOD. Mr. Chairman, I will say to the gentleman from Georgia that at this time Congress can not afford to draft this bill in the form of an income tax, because while requiring the revenue that will be produced by it, we must bring it within the terms of the decision of the Supreme Court. I will say to the gentleman from Georgia that if it was not for the fact that a constitutional amendment has been submitted to, and may be approved by, the several States within the next year or two, I would be in favor of passing a bill levying directly an income tax for the purpose of sending the question back to the Supreme Court and having it again tested, because I believe we have no right to rest content with the present decision. [Applause.]

Mr. BARTLETT. I agree with you thoroughly about that.

Mr. UNDERWOOD. The hour may come at any time when all the taxing power of this Government may be needed to sustain our Army and our fleet in a foreign war, and if the people in the States do not shortly ratify the proposed amendment to the Constitution I think it would be advisable for Congress to enact a direct income-tax law such as was enacted at the time of the Civil War and again in 1894, and send it to the Supreme Court to have the question tested. But I admit that this case does not raise the question. It was not intended that the question should be raised, and I do not for a moment doubt that the Supreme Court will hold that this case in no way conflicts with the decision in the Pollock case, and will affirm the constitutionality of this act. I do not intend to make an argument reciting numerous decisions in favor of the constitutionality of the bill now before the House. My colleagues have already ably, fully, and carefully discussed that question. But I merely wish to say this much as to the constitutionality of this measure.

The power to levy an excise tax was given to this Government by the States when they adopted the Federal Constitution.

The Supreme Court of the United States in its most recent decision on this question, in the case of Flint *v.* The Stone Tracy Co., stated:

> The Constitution contains only two limitations on the right of Congress to levy excise taxes; they must be levied for the public welfare and are required to be uniform throughout the United States.

Mr. MADDEN. Will the gentleman allow me to ask him a question there for information? Suppose that a man was engaged in the business of being a Member of Congress and would be subject to taxation on $2,500 of salary, which would be the excess over the $5,000 exempt; would the fact that because he came under the terms of the law and was obliged, therefore, to make a report of his income compel him to include in the report of his income revenues received as dividends on stocks or bonds in corporations which paid the corporation tax under the provisions of the Payne law? And if he was obliged to do that, would he not be placed in a different category from the man who was simply the holder and investor of idle wealth in similar corporations from which he received his income, and would not be obliged to make a return, and consequently not pay the tax, such as in the case of Andrew Carnegie? If the Congressman was obliged to pay on his idle invested wealth because he happened to be in the business of being a Member of Congress and the other man was exempted from the payment of his income invested in idle wealth because he was not in any business, would that be uniform taxation?

Mr. UNDERWOOD. I see from the trend of my friend's remarks that he desires to exempt Mr. Carnegie from paying this tax. The purpose of this bill is to reach men like Mr. Carnegie, who to-day own an immense number of bonds and are not paying taxes on them.

Mr. BARTLETT. May I suggest right there in reference to uniformity——

Mr. UNDERWOOD. If my friend will allow me, I wish to make the suggestion myself. The uniformity of taxation contemplated by this decision of the Supreme Court and all other decisions on this subject has been uniformly held to be geographical uniformity and nothing else; and, therefore, if we levy an excise tax for the public welfare that has geographical uniformity throughout the United States it is within the Constitution, as defined by the Supreme Court of the United States in this same Flint *v.* Stone Tracy Co. case. The court says:

> When the Constitution was framed the right to lay excise taxes was broadly conferred upon the Congress. At that time very few corporations existed. If the mere fact of State incorporation, extending now to nearly all branches of trade and industry, could withdraw the legitimate objects of Federal taxation from the exercise of the power conferred, the result would be to exclude the National Government from many objects upon which indirect taxes could be constitutionally imposed. Let it be supposed that a group of individuals, as partners, were carrying on a business upon which Congress concluded to lay an excise tax. If it be true that the forming of a State corporation would defeat this purpose, by taking the necessary steps required by the State law to create a corporation and carrying on the business under rights granted by State statute, the Federal tax become invalid, and that source of national revenue would be destroyed except, as to the business in the hands of individuals or partnerships.

Now, I call your attention to that decision, because some gentlemen on that side of the House have argued that levying an excise tax on business only applies to business done by corporations and not that done by individuals. In the Stone Tracy case the only argument that the court makes in reference to corporations is to show that a corporation, by reason of being a corporation, is not excluded from the power of the Government to levy an excise tax on corporations as well as on individuals or copartnerships. Now, the gentleman from Illinois [Mr. MADDEN] asked me whether he, as a Member of Congress, doing business as a Member of Congress and subject to an excise tax on account of his doing business, has an income in excess of his congressional salary or the $5,000 exempted by the bill, and his congressional salary itself puts him beyond that exemption, whether or not he would be taxed on the additional income.

The court very clearly held in this case and in other cases——

Mr. MADDEN. I beg the gentleman's pardon. I do not think the gentleman stated my question correctly.

Mr. UNDERWOOD. I am coming to it. I will state it.

Mr. MADDEN. You did not make a correct statement of what I said.

Mr. UNDERWOOD. The gentleman wants to know whether there is an additional tax on an income derived outside of the actual income from the business he is taxed for doing, as I understand it.

Now, the courts in the Stone Tracy case and in other cases have held that you have a right to levy an excise tax on the privilege of doing business. In the Spreckels case they held that, either as an individual or corporation, you might be taxed for the privilege of doing business as a refiner of sugar or petroleum. Now, if the law enacted at the time of the Spanish-American War that levied the excise on sugar and petroleum refining had named a thousand other businesses that should pay that excise tax, the court would have held that those other businesses were just as much subject to the excise tax as those named in the law. That being the case, there is no reason, to my mind, and I have never heard of a decision of the Supreme Court in which it has been held, that when you can in so many words enumerate the class of business that shall be taxed you can not by general definition enumerate all classes of business.

Mr. LONGWORTH. Will my colleague yield to a question on this point?

Mr. UNDERWOOD. I would like to answer the question of the gentleman from Illinois first.

Mr. LONGWORTH. I would like to get the views of the gentleman. I want to ask him this question and put the proposition in the simplest possible form, so that I can see if I understand his position. On the same day that the Flint case was decided the Zonne case was also decided, in which, as the gentleman knows, it was held that a corporation which merely received the rent from real estate and distributed it among its stockholders was exempt. Now let me put this question to the gentleman: Suppose the gentleman himself had owned stock, owned a controlling interest, in the corporation which came under the Zonne case. Suppose he received, in addition to his congressional salary of $7,500, the whole amount paid in rent to the corporation, which, as I remember, was $61,000, could he be compelled to list that income in determining the amount of his income that was taxable?

Mr. UNDERWOOD. If my friend will allow me, that is the question the gentleman from Illinois [Mr. MADDEN] asked me, and I hope to get to the answer in a few minutes, but I desire to work up to it in my own way.

Now, I contend that this Congress, having the power to definitely specify by name the businesses which should pay an excise tax, also has a right to say in general terms that all classes of business shall pay an excise tax for the privilege of doing business, and that is exactly what was done in the Payne-Aldrich law when it levied a special excise tax on corporations. It did not say "corporations refining petroleum," or "corporations refining sugar," or "corporations manufacturing pig iron," but it said that all corporations doing business should pay a special excise tax.

In the Spreckels case no distinction was drawn between individuals and corporations where a particular business was named. In the corporation-tax case all business was named, and I contend that the court can not escape the logic of the reasoning that you can levy an excise tax, if it is an excise tax, upon individuals and upon copartnerships by defining the tax as resting on those doing any business instead of a particular business.

Mr. MADDEN. Now, will the gentleman allow me right there?

The CHAIRMAN. Does the gentleman from Alabama yield to the gentleman from Illinois?

Mr. UNDERWOOD. I will be glad to yield later, if the gentleman will allow me to proceed now.

Mr. MANN. The question is whether the leaving out of the income upon municipal bonds was purposely done because you did not want to tax the income or because you did not want to affect the right?

Mr. UNDERWOOD. I will answer my friend's question when I come to it. It does not come within this present answer.

Mr. MANN. It is part of the same question.

Mr. UNDERWOOD. Now, assuming that Congress has the power, as provided in this bill, to levy an excise tax upon all individuals and copartnerships doing business, then the question arises as to how you shall measure that tax. When you have admitted the right to levy the excise tax, then you must determine in some way what shall be the measure of the tax. And on that point we come directly to the question asked by the gentleman from Illinois [Mr. MADDEN]. In the carriage case cited by the gentleman from New York [Mr. LITTLETON] in the debate this morning a tax of $10 on each carriage was levied. I take it to be without question that if we levy an excise tax on the right to do business we can measure that tax by levying $1 a head on every man that is employed in the business or $100 a head on every man that is engaged in the business.

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman from Alabama yield to the gentleman from Kansas?

Mr. UNDERWOOD. I will ask my friend not to interrupt me until I have answered the question of the gentleman from Illinois. If you have the right to levy a tax and measure its amount by the number of men in business, you unquestionably have the right to measure it by the scope of the business, and in the corporation-tax case its validity did not stand on the question of the measure of the tax. The Supreme Court said when Congress provided that the tax should be equal to 1 per cent on the net income of these corporations doing business that it was merely measuring the amount of the tax, and that tax could apply to the income derived directly from the business as well as all other incomes which the corporation enjoys, whether derived from that particular business or from other sources. That is manifestly so, because there is scarcely a corporation existing to-day that is not deriving income from other sources than the business for which it is organized and in which it is doing business. They are required to make a return of their total income, and they are taxed on their total net income.

Now, if that is true as to the measure of the tax on corporations, why is it not just as constitutional to measure your tax for individuals on the same basis you use for the measure of the tax for corporations? It does not relate to the question of your right to levy an excise tax. It is merely a question of how you shall measure the tax.

Mr. MADDEN. Mr. Chairman, will the gentleman allow me a question there?

Mr. UNDERWOOD. I hope the gentleman will withhold until I have finished. I am answering his first question.

Mr. MADDEN. It is just an interpretation of the first question. So far you have talked about the man who is doing business. Now, will you be kind enough to tell us about the man who is not doing business, whose income is derived from the same source as that you are talking about?

Mr. CAMPBELL. Mr. Chairman, I would like to ask the gentleman a question right there. The question is, What are you going to do with the man who has retired from business? That is the case with thousands.

Mr. UNDERWOOD. I prefer to answer the original question first.

Now, my friend wants to know, if a man is engaged in the business of being a Congressman and is taxed under this law for engaging in the business of being a Congressman, whether his income outside of that business is to be taxed? Why, certainly it is. There is a very great distinction between an income tax, the purpose of which is to levy a tax on the amount of income that you have, and an excise tax that is intended to tax your right to do business. But the court has held that after you constitutionally levy an excise tax you can measure the amount the tax shall be by the net income of the person or in some other way. Therefore, if the gentleman is engaged in business as a Congressman, and yet possesses wealth that otherwise would not be taxed under this law if he was not engaged in business, the measure of this tax includes that wealth, and the scope of his tax is measured by the amount of his net income above $5,000. For instance, if the gentleman has a net income of $25,000 a year the amount of his tax under this bill will be $200. He may have all except his congressional salary invested in bonds or annuities, but he is doing business as a Congressman; therefore he is taxed $200 a year for doing that business. Now, I know the gentleman has employed much labor in his business in times past, if not at present. Assuming that he is not a Congressman and is employing 200 men as a contractor, making $25,000 a year, the Congress could levy a tax on him for doing business as a contractor and assess the amount of the tax that he should pay at $1 a head for each man he employed, and his tax on his $25,000 a year income would be $200.

There should be no confusion between the proposition to levy an excise tax for the privilege of doing business and the measure of the tax. We have attempted in this bill, as you did in the corporation-tax law, to make the measure of the tax take the place of an income tax that we could not write. You attempted to do it in referenee to corporations when you enacted the Payne-Aldrich law. We are attempting to do it now in the enactment of this law. As to how far it can reach, I admit that if a man is doing no business at all he is not taxed by this bill. If he is absolutely the idle holder of idle wealth he goes free under this bill. I regret that he does. I would prefer a straight income tax, and I would much prefer levying the tax on idle wealth rather than on industrial wealth, and I hope the day is not far distant when, either through an amendment to the Constitution adopted by the States, or through a change of the Pollock decision by the Supreme Court of the United States, this Congress will again have the absolute power to levy an unqualified income tax. [Applause.] But in order to avoid the prohibition of the Pollock decision and not raise that question of constitutionality, we have written a bill that admittedly does not tax the idle holders of idle wealth. But I do not think there are many men who will escape the tax levied in this bill. The holders of great wealth in this country are not idle men. Almost all of them are engaged in some business. Some gentleman on the other side on Saturday referred to the fact that Mr. William Waldorf Astor was supposed to own $100,000,000 in real estate in the city of New York, and said that he was the idle holder of idle wealth. Now, let me put a case to you. I live here in the Arlington Hotel. I do not know who owns that hotel, but I know it contains about 300 rooms. The owner of that hotel is running a hotel business. He rents the rooms to myself and his other guests. We pay him a monthly rental for those rooms. Would anybody say that he is not in business? Can anybody question the fact that he is doing a hotel business by renting the rooms?

Mr. LONGWORTH. Suppose the owner of a hotel leases the hotel to a manager, who rents the rooms to the gentleman?

Mr. UNDERWOOD. Wait till I finish. What is the difference between the hotel man and Mr. Astor? Mr. Astor may own 300 houses in the city of New York instead of the 300 rooms in the Arlington Hotel. What does he do? He rents those houses to anybody who wants to rent them. He keeps those houses in repair. He is in the business of furnishing homes and storehouses to people. Can anybody deny the fact that he is in business?

Mr. LONGWORTH. Will the gentleman yield right there?

Mr. UNDERWOOD. Yes.

Mr. LONGWORTH. I think the gentleman has cited a pretty good parallel, because, as I understand it, Mr. Astor owns the Waldorf-Astoria Hotel, where I have had the pleasure of meeting the gentleman; but Mr. Boldt manages the hotel. He is in the business of running that hotel. Mr. Astor simply receives, perhaps, a dividend under the lease. Is there not a distinction between these two so far as the business of running a hotel is concerned?

Mr. UNDERWOOD. I am glad my friend made the suggestion. Referring to the Waldorf-Astoria Hotel, will the gentleman tell me that there is any difference between these two propositions: If I go to the hotel and say to Mr. Boldt, the proprietor of that hotel, "I want you to rent me one room," and he does so, the gentleman says he is in the hotel business. If I go to Mr. Boldt and say, "Mr. Boldt, I am a multimillionaire. I am going to bring my friends to New York and I want you to rent me every room in your hotel," is he not still in the hotel business? Now, when Mr. Astor goes to Mr. Boldt and says, "I do not want to retail out these rooms, but I want to rent them in wholesale quantities, and I will rent you every room in my house," what is the difference between his renting to Mr. Boldt every room in his house and Mr. Boldt renting to somebody else every room in his house? [Applause on the Democratic side.] It seems to me that is a distinction without a difference.

Mr. MANN. Does the gentleman think Mr. Astor is in the hotel business?

Mr. UNDERWOOD. I certainly think he is in the business of renting real estate.

Mr. MANN. An agent will do that for him.

Mr. UNDERWOOD. Does not every man transact his business through agents? The bigger the business the more agents he has. [Applause on the Democratic side.]

Mr. MANN. The agent has to pay an excise tax for the privilege of doing business, but the man whose business is done through the agent is not engaged in business.

Mr. UNDERWOOD. I suppose, then, the gentleman from Illinois will say that if I own a railroad, or am running a railroad, and hire a conductor, that the conductor is to pay the tax for running the railroad.

Mr. MANN. The hiring of a conductor is a part of the business of running a railroad.

Mr. UNDERWOOD. The gentleman who owns the Waldorf-Astoria Hotel is in the business of renting the hotel and other property.

Mr. MANN. Does the gentleman from Alabama claim that a widow who owns a house and permits an agent to rent it for her is in business?

Mr. UNDERWOOD. If she has more than $5,000 a year income she is in the business of renting real estate. I own a lot or a block of ground and I conclude to have a truck garden on it and use my real estate for that purpose. I am in the business of a truck gardener.

The gentleman from Illinois owns lots across the street. I have to pay the necessary tax for raising vegetables. The gentleman across the street instead of raising vegetables on his lots erects buildings and rents them. Does the gentleman mean to say, because I am raising vegetables on one block and he is renting houses on the other, that I am in business and he is not in business?

Mr. MANN. The gentleman states a case where both parties are in business. Suppose he owned the block and gave through his agent a long-time lease on it, does the gentleman claim that he is in business? I may die and my son may collect the rent. Is my son in business?

Mr. UNDERWOOD. If you rented the block for a month, you might die and your son collect the balance of the lease; that has nothing to do with it. It makes no difference whether you lease it for a month, a day, or a year, or 10 years; if you are engaged in the business of renting real estate you have money invested in it, and you are just as much in business, in my judgment, as if you were engaged in manufacturing pig iron.

Mr. MANN. If you are engaged in the business of renting real estate, that goes without saying.

Mr. UNDERWOOD. What makes you engage in the business of renting real estate?

Mr. MANN. I am not engaged in the business of renting real estate.

Mr. UNDERWOOD. The gentleman admits that if he had a number of houses and was renting them by the month and went around collecting the rents he would be engaged in the business of renting real estate. I can see no distinction between that and the situation where he owns a number of houses and rents them for the year and has an agent go around and collect the rents.

Mr. MANN. The gentleman can see this distinction, that in the one case there would be only one tax paid for the business, and in the other there would be two. This is a question of business, and the excise tax is on the business.

Mr. UNDERWOOD. The business is renting real estate.

Mr. TOWNER. Will the gentleman yield?

Mr. UNDERWOOD. Let me get through with this first; I can not answer so many questions at one time. The gentleman wants to know whether a man like Mr. Carnegie, who is supposed to have many millions invested in bonds, is in business. Well, really, Mr. Carnegie is in many different kinds of business. He is in business entirely outside of his ownership of bonds. But if he is in any business whatever, then his excise tax is measured by his net income from all sources.

And I want to say this: If a man in Chicago is engaged in loaning money on watches, he is said to be in the business of a pawnbroker. Now, if a gentleman living in New York is lending his money out to great corporations, and instead of making a 30-day loan makes a 30-year loan, it seems to me that he is just as much in the business of lending his money as the man who loans his from the pawnshop. They are both engaged in the business of loaning money and make their income out of these loans. I think that is very clearly defined by the Supreme Court of the United States in the case of Flint *v.* the Stone Tracy Co., where the court says:

> It remains to consider whether these corporations are engaged in business. "Business" is a very comprehensive term and embraces everything about which a person can be employed. That which occupies the time, attention, and labor of men for the purpose of a livelihood or profit.

If a man takes his money, and his time and attention are engaged directly or through an agent in building houses and renting them, is not that within this definition—

> That which occupies the time, attention, and labor of men for the purpose of livelihood or profit.

If he has $100,000,000, and instead of investing it in real estate lends it on long or short time bonds or securities, does that not come within the definition that the Supreme Court lays down—that which occupies his time and attention for the purpose of a livelihood or profit? It seems to me it clearly does.

Mr. TOWNER. Mr. Chairman, will the gentleman yield?

Mr. UNDERWOOD. Yes.

Mr. TOWNER. I would like to ask the gentleman whether this case is within the rule, as he understands it: A farmer retires from his farm, rents it, and goes to town. If his income is more than $5,000 a year from that farm, is he engaged, within the meaning of the law, in such a business as to make him subject to the terms of this act?

Mr. UNDERWOOD. Mr. Chairman, I will say to the gentleman from Iowa that I have no doubt there are cases not within the terms of this law. We do not contend that it embraces every man, because, as I have already said, the idle holder of idle wealth will not be taxed under this bill; but I do contend that you will find in the end that there are very few idle holders of idle wealth; and I think that if a man were in the business of renting farms or invested his money in country real estate and rented it out for a livelihood, he would come within the terms of doing business as well as would the man who built houses in the city and rented them for a livelihood.

Mr. Chairman, I do not wish to take too much of the time of the committee, but before closing I wish to refer to the amount of revenue this bill is likely to produce. We must compare it with bills that have produced revenue in a similar way, and although this is not an income tax, it seeks to levy or fix the amount of the excise tax on the net incomes of individuals; and therefore we can fairly compare it with the tax collected under the income tax at the time of the Civil War and other similar income taxes.

The first tax on incomes was authorized August 5, 1861, at a rate of 3 per cent on the excess of all incomes above $800 per annum. This was increased in 1862, and again in 1865, until incomes between $600 and $5,000 were taxed at 5 per cent, and above $5,000, 10 per cent. As the immediate war necessities

became less pressing the limit of exemption was advanced to $1,000, and in 1867 to $2,000; in 1872 the tax was abolished. The number of persons assessed, with the total amounts received from this form of duty from 1866 to 1870, was as follows:

Year.	Number of persons.	Amount collected.
1866	460,170	$72,982,000
1867	266,136	66,014,000
1868	254,617	41,455,000
1869	272,843	34,791,000
1870	276,661	37,775,000

These figures clearly show that the tax as a whole was very productive, amounting during the five years shown in this table to $253,017,000.

It is true that at that time the taxes were levied on corporations as well as individuals, and this bill seeks only to levy a tax on individuals and copartnerships, a tax already being levied upon corporations. But considering the few corporations that existed in the sixties, as compared with the number of corporations that exist to-day; considering that aside from the States bordering the Mississippi there was almost a wilderness on to the Pacific slope, a vast stretch of country that is now filled with prosperous people and thriving cities; considering, for instance, the fact that the city of New York to-day has ten times the population it had at the time of the Civil War; considering all this, when we estimate that the present bill levying a tax against individuals and copartnerships doing business will bring $60,000,000, contrasted with the Civil War tax on a much smaller population and a much smaller amount of wealth, it is not an exaggeration to say that the law will produce that much, or more than was produced during any year of the five years of the Civil War.

Mr. LONGWORTH. Mr. Chairman, will the gentleman yield?

Mr. UNDERWOOD. Yes.

Mr. LONGWORTH. The gentleman admits that in order to raise $60,000,000 a year under this bill there would have to be available incomes amounting to $6,000,000,000 a year?

Mr. UNDERWOOD. Yes.

Mr. LONGWORTH. And that $6,000,000,000 a year is 4 per cent on a total wealth of $150,000,000,000 a year. The gentleman admits that?

Mr. UNDERWOOD. I am coming to the figures, and I will give my friend my own figures on the subject.

Mr. LONGWORTH. The gentleman has made the statement that conservatively estimated this tax of 1 per cent will produce $60,000,000 a year. I asked him a direct question whether that does not presuppose that there is wealth in this country amounting to $150,000,000,000 which is susceptible to this tax?

Mr. UNDERWOOD. I will state to my friend that if he will let me go ahead I shall give him my own argument in this case. You collect to-day $30,000,000 under your corporation tax. The amount of corporate wealth as measured by the capital stock of corporations making returns to the Commissioner of Internal Revenue in 1911 is about $58,000,000,000. Many of these corporations are exempt under the present law. You collect thirty millions of revenue from them to-day and you entirely overlook the fact that you do not collect any revenue from the bonds of these corporations.

You entirely overlook the fact that this bill taxes the earnings from the bonds of corporations and makes the owners of stock in holding companies pay a tax in addition to that under the corporation-tax bill. The amount of income from the bonded wealth in this country amounts to $1,200,000,000.

Mr. MANN. What were the gentleman's figures?

Mr. UNDERWOOD. I have not the memorandum before me, but I will correct it if I am not correct.

Mr. LONGWORTH. The gentleman is very much underestimating the bonded wealth at $1,200,000,000. It is over $30,000,000,000. It all appears in the report of the minority on page 4. The gentleman does not dispute the accuracy of the figures of the minority report?

Mr. UNDERWOOD. Not at all. I find by reference to the report of the Commissioner of Internal Revenue that the amount of bonded wealth, as measured by the bonded indebtedness of the corporations making returns in 1911 under the corporation-tax law, is $30,715,336,008. At only 4 per cent interest this bonded wealth would earn more than $1,200,000,000.

Mr. MANN. The gentleman, when he said $1,200,000,000, must have meant interest.

Mr. LONGWORTH. These are the figures furnished by the Treasury Department.

Mr. UNDERWOOD. The tax levied by this bill on this bonded indebtedness will far exceed $12,000,000.

Mr. LONGWORTH. But the gentleman must realize that a vast amount of these bonds have been held by corporations which are included in estimating the total income earned by those corporations.

Mr. UNDERWOOD. Not a vast amount of them.

Mr. PAYNE. The gentleman will know more about it when it becomes a law as regards taxing insurance companies. What I rose for, however, was another question. He states that under the law of 1867, or whatever the date was, the percentage of taxation was 5 per cent on incomes below $5,000 and 10 per cent on those above. Now, of course, under this law the income tax is only 1 per cent. Has the gentleman made any computation to show how much less it would have produced under the other law?

Mr. UNDERWOOD. The gentleman can make the calculation.

Mr. PAYNE. And also how much would be deducted on account of the smaller limit of income that was taxed under the old law? Here $5,000 is the limit; under that all under $5,000 was taxed at 5 per cent.

Mr. UNDERWOOD. I will answer the gentleman's question. In 1866 there were 460,000 people assessed. The total amount collected was $73,000,000.

Mr. PAYNE. How much were the exemptions?

Mr. UNDERWOOD. Six hundred dollars.

Mr. PAYNE. Instead of $5,000?

Mr. UNDERWOOD. Instead of $5,000.

Mr. PAYNE. Then the corporation was out of the list?

Mr. UNDERWOOD. But, as I stated to the gentleman, and the gentleman from Ohio [Mr. LONGWORTH] admits, that we go into the domain of corporations and tax them $5,000,000 a year. It is reasonable to estimate that this law will produce from the bonds of the United States $12,000,000 a year, and that the additional tax of the holding companies will amount in the neighborhood of $8,000,000, so that out of the corporate wealth that you are already taxing we will obtain $20,000,000 of additional revenue from corporate wealth. This bill can raise $50,000,000, and only have $30,000,000 to raise out of the entire wealth that is owned by individuals and copartnerships.

I will approach the estimate from this viewpoint. The total wealth of this country, according to the census of 1909, was estimated at more than $135,000,000,000. At the rate of increase between 1900 and 1905, as shown by the statistics of the Bureau of the Census, the wealth of the United States during the first 12-month period under H. R. 21214 will be not less than $150,000,000,000. The total corporate wealth as measured by the capital stock of all the corporations making returns to the Treasury Department under the corporation-tax law amounted, in 1911, to $57,886,430,519. From a careful examination of the classes of industries represented by these corporations it would appear conservative to estimate that at least $12,000,000,000 of this capital stock represents inflation above the actual wealth invested in the industries, thus leaving $46,000,000,000 to represent the actual corporate wealth in 1911. Estimating the same annual increase between 1911 and 1913, as was shown between 1910 and 1911 in the returns of corporate capital under the corporation-tax law, the amount of the actual corporate wealth of the country in 1913 would be estimated at about $55,000,000,000. If, from the total wealth of $150,000,000,000 for 1913 there be deducted the fifty-five billions of corporate wealth, the result, ninety-five billions, would represent the noncorporate wealth. From the corporations in 1911 there were collected $29,432,255, and at the same ratio of increase as that given for the capital invested, the amount of revenue to be collected in 1913 would be estimated at $35,200,000. Now, if it may be assumed that an individual is as likely to have a net income in excess of $5,000 as a corporation, it would be seen that as fifty-five billions of corporate wealth produced $35,200,000 of revenue, the ninety-five billions of noncorporate wealth would produce revenue to the extent of $60,800,000.

Mr. PAYNE. Does the gentleman ever consider that when he gets to taxing mutual insurance companies what mighty hot water he will be getting into?

Mr. UNDERWOOD. Well, I will say to the gentleman that he has not read this bill, and I am surprised that he has not, because I know of no one of my colleagues on the Ways and Means Committee that are ordinarily more diligent in their duties and in the understanding of the measures that come before that committee than the distinguished gentleman from New York. But he knows, if he has read the bill, that we are not attemping to tax mutual insurance companies. We tax the income——

Mr. PAYNE. Oh, well, that is playing upon words. It is hardly worthy of the gentleman. It is nothing but an income tax, pure and simple. There is nothing less of it by calling it an excise tax and measuring it by the income.

Mr. UNDERWOOD. But the Supreme Court of the United States differs very widely from the gentleman.

Mr. PAYNE. Not any more widely than with the gentleman from Alabama on the subject.

Mr. MADDEN. Will the gentleman answer one question, please?

Mr. UNDERWOOD. Yes.

Mr. MADDEN. The gentleman stated a moment ago that outside of the corporate wealth there were $95,000,000,000 of wealth in the United States. Can the gentleman state, for the information of the committee, how much of the $95,000,000,000 is in the exempt class?

Mr. UNDERWOOD. I can not state it accurately, but it is comparatively small.

Mr. MADDEN. Approximately?

Mr. UNDERWOOD. As the gentleman understands, when I say that there is ninety-five billions of wealth, he understands that most of that is taken from assessed value. I do not know what the assessed value in his section is——

Mr. MADDEN. The assessed value is only one-third of the actual value.

Mr. UNDERWOOD. In my country the assessed value is usually one-half. Now, the assessed values are about one-half or one-third of the actual values.

The figures for wealth are largely taken from the assessor's books and estimated by the Bureau of the Census from book figures. But as the gentleman knows, and as I know, those assessed values are very much less than the actual values.

Mr. MADDEN. There is no doubt about that.

Mr. UNDERWOOD. And therefore the amount of tax will far exceed the assessed value, because this bill will levy a tax on the actual value.

Mr. MANN. Mr. Chairman, will the gentleman yield there?

The CHAIRMAN. Does the gentleman from Alabama yield to the gentleman from Illinois?

Mr. UNDERWOOD. I yield.

Mr. MANN. The gentleman spoke of the assessed value in our State. But the one hundred and thirty-five billions of wealth a year or two ago was not based upon the assessed valuation in our State. It was based on the actual valuation, which is three times as much as the assessed valuation.

Mr. UNDERWOOD. What I mean to say is that these values are largely taken from the assessors' books, and the estimate is made in that way.

Mr. MANN. I think the gentleman is mistaken. They may be based upon the assessors' books, but they are estimated by the actual values.

Mr. UNDERWOOD. They may be in some places and in other places not. But I have no doubt, nor do I think anyone has, that this estimate of values in the United States is largely under the actual values.

Mr. WARBURTON. Mr. Chairman, will the gentleman allow me to interrupt him?

The CHAIRMAN. Does the gentleman from Alabama yield to the gentleman from Washington?

Mr. UNDERWOOD. Yes.

Mr. WARBURTON. I would like to ask the gentleman if the committee has any data as to the number of men who are drawing salaries of over $5,000 a year? Would not that be a very large number?

Mr. UNDERWOOD. It would be a very large number, but I have not the information, and therefore I can not answer the gentleman's question.

Mr. FOCHT. I would like to ask the gentleman a question. It has not been made quite clear as to whether or not you propose to reach the enormously rich individuals——

Mr. UNDERWOOD. I will say to my friend——

Mr. FOCHT. Let me ask the question further.

Mr. UNDERWOOD. If you will allow me, I will say that I would be glad to yield my time, but when the gentleman was not in here I discussed that question for three-quarters of an hour. I will therefore ask my friend to read the RECORD in the morning and not take up my time now.

Mr. FOCHT. The gentleman is sure about that?

Mr. UNDERWOOD. I have just explained that, and I do not wish to go into the explanation again. But I think it does reach that class of wealth.

Mr. FOCHT. In this bill you tax industry and enterprise. Now, does it reach Mr. Carnegie's three hundred millions, and Mr. Morgan's five hundred millions, and Mr. Rockefeller's eight hundred millions? Do you think you can reach that enormous personal rebated wealth?

Mr. UNDERWOOD. I think so.

I have submitted my estimate of the amount of revenue to be collected under this tax, giving the details more fully than I have explained on the floor of the House. I merely wish to say that I have the utmost confidence that if this bill becomes a law it will produce as revenue for the United States Government between fifty and sixty million dollars, at a low estimate.

Now, in conclusion, I merely want to say——

Mr. MANN. Before the gentleman from Alabama yields the floor I would like to ask him a question about the bill. I do not know whether the gentleman can dispose of it, because I understand the gentleman himself did not draw the bill. With reference to this provision for the deduction by paymasters and officers of the Government, and employers anywhere, that the paymaster shall deduct the aforesaid tax of 1 per cent, I do not find anything in the bill which provides for a reduction pro rata of the amount, or any method of determining that. Is that the intention; and if so, how do you arrive at the limitation of $5,000?

Mr. UNDERWOOD. I will state to the gentleman that the purpose of the bill is this——

Mr. MANN. I understand the purpose of it. I quite appreciate that. I was discussing the question, so that if there is an explanation it could be given for the guidance of administrative authority.

Mr. UNDERWOOD. If the gentleman will permit, I will try to give an explanation. The purpose of this bill is, if possible, to adopt the English system and collect the tax at the source, and where it is so collected it can not be collected again.

In this connection I will quote Prof. Seligman from his book entitled "The Income Tax":

"The principle of the stoppage at source in the income tax was introduced in England. As compared with the old method of the direct, lump-sum assessment of incomes, the effects of the stoppage-at-source method were immediately noticeable. Although the rate of the new tax was only one-half of the old one, the yield was almost the same. In other words, the alteration in the principle of assessment at one blow doubled the efficiency of the tax. No more signal proof could be afforded of the vital importance of good administrative methods in fiscal practice. * * * In the United States the arguments in favor of this method are far stronger than in Europe, because of the peculiar conditions of American life. In the first place, nowhere is corporate activity so developed and in no country of the world does the ordinary business of the community assume to so overwhelming an extent the corporate form. Not only is a large part of the intangible wealth of individuals composed of corporate securities, but a very appreciable part of business profits consists of corporate profits. In the second place, in no other important country are investments to so great an extent domestic in character. The one great difficulty in England * * * is that connected with foreign securities. And in France, where the same difficulty exists, * * * the projected control of these foreign investments through the French bankers and agents forms the one difficult and complicated point in the scheme. In the United States, on the other hand, the situation is the reverse. Instead of our capitalists seeking investments abroad, it is the foreign capitalists who purchase American securities. We are therefore fortunately exempt from the chief embarrassment which confronts Europe, and there is every likelihood that this situation will not be changed for some time to come. The arguments that speak in favor of a stoppage-at-source income tax abroad hence apply with redoubled force here. The stoppage-at-source scheme lessens to an enormous extent the strain on the administration; it works, so far as it is applicable, almost automatically; and where enforced it secures to the last penny the income that is rightfully due."

But inasmuch as all of the tax could not be collected at the source, there is an additional provision in the bill to the effect that the man who is taxed must make a return. Now, there is no intent in this bill to collect the tax twice. If in his return the man shows that he is receiving a salary from a corporation subject to a tax which has been deducted from the salary and paid by the corporation, he will be given credit under the terms of this bill for the amount that has been paid for him, and he will have to pay only the excess above that which has already been collected from him at the source.

Mr. MANN. If the gentleman will pardon me, he is not answering the question that I asked at all. I understand that part of the bill. A Member of Congress receives $7,500 a year. You know that a part of that might be taxed, and you might deduct one-twelfth part of 1 per cent per month, although that is not what the bill says. That would be the English system. But supposing a Member of Congress received $4,000 a year. How much would be deducted the first month?

Mr. UNDERWOOD. There would not be any deducted. It would then be apparent that the income was not subject to taxation. Therefore the disbursing officer of the Congress would not pay any tax for him, but that Member of Congress

who received only $4,000 a year would have to put that $4,000 in with the balance of his income when he made his return, and it would be estimated by the collector of internal revenue when he made up his tax.

Mr. MANN. I appreciate that the English system provides for the deduction of a pro rata amount. This provides for a deduction of 1 per cent.

Mr. UNDERWOOD. Yes.

Mr. MANN. Is it the intention to deduct a pro rata amount of 1 per cent?

Mr. UNDERWOOD. I may be very dull, but I must say I do not understand the gentleman's question. Does the gentleman mean, Shall it be done by the month or by the year?

Mr. MANN. Is it one-twelfth every month, when you are paid a monthly salary or one twenty-fourth every two weeks, when you are paid a semimonthly salary?

Mr. UNDERWOOD. Under this bill, as I understand it, it would be the duty of the Sergeant at Arms to retain that portion of the tax, where he paid a salary that was subject to the tax, and he would determine how he should retain it. He would have to make the return only once a year. He might find it necessary to retain a portion each month. He might find it necessary, in order to protect himself, to collect it all at the end of the year; but the burden will rest on him to see that the tax is paid, and he would exercise his own discretion in determining at what time he should deduct the amount of the tax.

Mr. MANN. The bill says, if the gentleman will notice about the retention—

Computed on the basis herein prescribed—

Which is a basis of computing 1 per cent on all over $5,000 income.

Mr. UNDERWOOD. Certainly.

Mr. MANN. That is what a corporation is required to do, to retain 1 per cent.

Computed on the basis herein prescribed.

If anybody can explain what that means, there ought to be an explanation put in the RECORD, as a matter of some advice at least to the administrative officers, because, without it, there will be inextricable confusion, if this bill becomes a law, on the part of employers or corporations paying salaries.

Mr. UNDERWOOD. I will say to my friend from Illinois that under the corporation tax, the administrative features of which were not considered as fully as those of this bill, there would have been inextricable trouble in collecting that tax if the Secretary of the Treasury had not been authorized to make rules and regulations for its collection. That avoided the difficulties and enabled him to establish a fixed system for the enforcement of this law. This bill also provides that as to the working features of the law the Secretary of the Treasury may make such rules and regulations as he finds necessary, and I think it is safer to allow the Secretary to make such rules and regulations, which may be changed as emergencies may require, than to enact them as a part of the fixed law of the land.

Mr. MANN. If the gentleman will pardon me, I quite agree with the gentleman in that statement. The trouble is that the bill endeavors specifically to cover those things. He could not make rules and regulations that conflicted with the terms of the law.

Mr. UNDERWOOD. It does not specifically cover those propositions, and the gentleman said the administrative features were not specific. They only say that 1 per cent shall be collected, as I indicated a minute ago. Now, I will ask my friend to let me conclude my remarks.

Mr. MANN. I am sorry that I trouble the gentleman by asking him questions.

Mr. UNDERWOOD. It is no trouble at all. I simply wish to conclude my remarks.

Mr. MANN. Of course, if the gentleman does not like to answer questions——

Mr. UNDERWOOD. I have endeavored to answer the questions of the gentleman from Illinois, and I think I have done so.

I merely want to say, in conclusion, that, so far as the Democratic Party is concerned, it has always stood for the proposition that the wealth of this country should bear its fair share of the taxes necessary to support this great Government.

I do not believe there has ever been a decision in the United States that has brought more criticism on the courts of this land than the 5 to 4 decision in the income-tax case, especially in view of the unfortunate way in which that decision was rendered. Up to the time of that decision I had never heard the highest tribunal of the United States criticized. It was recognized by all men as the final arbiter of justice. As long as this Government retained the power to tax wealth, and exercised that power, we did not hear the continual socialistic cry against the rich. But when the Supreme Court of the United States abandoned a line of decisions that had been maintained for a hundred years and notified the people of the United States that the great wealth of this country was exempted from the power of the Government to levy taxes upon it, that marked the beginning of unrest. The time never will come when the toiling masses of the American people will be content to bear the great burdens of taxation to support a Government that properly and justly protects the great property interests of this country, when those great property interests are exempt from taxation and do not have to bear their proportionate share of the burden of the Government. In my judgment there is nothing that this Congress can do that will go further toward the maintenance of a stable government and toward quieting discontent in the land than to return to the principles of our fathers and place a fair share of the burdens of taxation on the great wealth of this Nation. And to-day that proposition confronts every Member of this Congress.

I do not think any man can justly question the constitutionality of this bill. He may indulge in captious criticism as to the extent to which this tax can be levied, but it is an honest effort to tax the great wealth of this country. If it does not go as far as it should go, it will be an incentive for the people of the United States to ratify the proposed amendment to the Constitution. To-day you are presented with an opportunity to say whether you propose to continue levying taxes necessary for the support of this Government on the consuming capacity of the American people, or whether you are willing that a comparatively small portion of the burden of maintaining the Government shall be borne by great wealth, whose possessors, more than anyone else, receive the benefits of government. [Applause.]

Mr. PAYNE. Mr. Chairman, I yield 15 minutes to the gentleman from New York [Mr. MALBY].

Mr. MALBY. Mr. Chairman, it is not my purpose to enter into a discussion of the constitutionality of this bill, not only on account of the fact that it has been very ably disposed of by others, but there are so many other serious objections to its passage on the merits that from my viewpoint its legality or illegality is not very material.

Neither shall I discuss the question as to the amount of money which could be collected from the people under its provisions, although this is important if it is intended to take the place of a law which now concededly produces about $55,000,000 of revenue per annum. For I am opposed to the whole policy and scheme which its adoption in any form would force us to accept. It is simply a general scheme which the Democratic Party has adopted to excuse their murderous assaults upon the great industries of the country, as this has already been done upon one of them so far as any action on the part of this House could make it possible.

I am opposed to a national income tax and to a national tax on corporations in times of peace, for in this legislation one clearly sees a well-defined scheme and purpose on the part of the Democracy to change our entire existing system of raising moneys for the support of the Government and a substitution of it for the present system of a tariff.

It is in relation to this change of our national system of taxation and its effect that I shall endeavor to point out, as it seems to me most important of all. With a legal income and corporation tax which can be increased from year to year to cover any blunder which the Democracy is sure to make there would be no necessity for an income from the tariff on imports, whether it be levied for protection's sake or for a revenue.

The gentleman from Alabama, the present leader of the Democracy in this House, has so plainly stated the position of himself and his party as to leave no doubt as to exactly where they stand in relation to the tariff. He has frequently announced, and reiterated only a day or two ago when he and his party were engaged in the killing off of a great agricultural industry, that neither he nor his party had ever since the beginning stood for a tariff upon any American industry for the purpose of protecting it against the slave labor of the world, but only allowed it to exist as a necessary evil to raise money for the support of the Government. When this necessity no longer exists, then there will be no tariff for protection or otherwise if the Democracy remain in power and have their way.

This is one of the reasons why I am opposed to this legislation, and it presents an all-sufficient reason why it and all kindred legislation should be defeated.

To show that I am correct as to the purposes of the Democracy it is only necessary to state the reasons which they offer for the passage of this bill, which are that having passed a free-trade bill on sugar and thus lost $55,000,000 of assured annual income they proceed to try to recoup this loss by the

passage of this bill, and this scheme will continue until the last vestige of a protective tariff is wiped out and the entire burden of supporting the Government is placed upon its business interests in one form or another.

This whole scheme, if entirely successful, would result in the destruction of substantially all our great industries, and at the same time transfer an additional burden upon the business interests of the country which are already bearing the greatest share of the burden of Government, whether national, State, or local. And this fact suggests to me another reason for opposing the passage of this bill.

Let us stop for a moment and inquire as to what method is now employed in conducting the business affairs of the country and who are now paying the greatest proportion of taxes. Most business is now conducted by a corporation duly organized under the laws of some State. This method has been generally adopted not only because it can be better conducted in that way than in any other, but it is also possible to secure a much larger amount of capital for investment so necessary for the economical management and production of articles to be manufactured.

A majority of all the incomes of our people upon invested capital is derived from the ownership of stock and bonds in some one of these thousands of corporations which transact the business of the country. But our Democratic friends denounce them, one and all, as a common scourge. I do not recall that in the five years of my service here that I have ever heard a Democrat say a kind word for an industrial or other corporation or ever performed an official act which had for its intent and purpose the benefiting of the business in which they were engaged. On the other hand, I have heard them denounced almost daily as thieves and robbers and the common enemy of all mankind; and, as the surest way of exterminating them all, they propose not only to take away from them all the protection which under the laws they now enjoy, but, as though that were not enough, tax them completely out of existence.

In their desire to render some excuse for this wholesale and unjust denunciation of our business interests no care even is ever exhibited for the poor and unfortunate employee, who will be obliged to either take the wages paid to his unfortunate brother in other lands or starve. But who cares for the workingman, anyway? Certainly not the Democracy, who have ever stood for cheap labor. And, besides, does not their scheme contemplate affording them an opportunity of purchasing in the markets of the world all that which they were heretofore paid for and produced? What difference is it whether he has the price to purchase his daily bread and the other necessaries of life or not? Has not Democracy agreed to remove every tariff Chinese wall, and that is all that it ever agreed to do? When did Democracy ever agree to keep the laborer employed at present or even living wages? Never. They only agreed that everything he required for his daily comfort would be cheaper, because he would be privileged to purchase from others cheaper than it has heretofore been possible for him to produce them for himself.

Oh, this Democratic free-trade idea is a fine thing! Just think of it for a moment, for under it you can purchase all your goods from foreign lands cheaper; and if any employer in this country tries to lower the wages of his employees because he can no longer get his old prices, and therefore can not afford to pay higher or usual wages, have not the Democracy assured him in advance that the employer is simply an old member of the Ananias club and is robbing him at every opportunity?

And besides, has not the Democracy proposed to so amend existing law that no injunctions can hereafter be granted by the courts against them, and hence they are at liberty not only to strike but to boycott and destroy their employers' property at will, and beat up and destroy him personally to their hearts' content? Is not that enough for a laboring man in addition to the joy of free trade? What does he want anyway—the earth? Why should he be ever heard to suggest that free trade means free labor? Why should he ever inquire how his employer is going to be able to pay him a thousand dollars for producing a given quantity of merchandise when it must be sold in competition with similar articles in the same market which have cost only one-half or one-third as much to produce? Why muddy the Democratic waters by the asking of such irrelevant questions?

It has ever been the policy of the Republican Party to raise its revenues in times of peace by an internal-revenue tax, levied for the most part on luxuries, such as liquors and tobacco, and a tariff upon imported articles, which has not only resulted in producing a sufficiently large revenue for the support of the Government, but has protected the laborer and secured for him more than a living wage. The National Government has never attempted in times of peace to invade a State and take from it its sources of income by levying a tax either upon its business or property. The various States, and the counties, towns, and municipalities therein, have been granted and assured a free field to raise taxes in such manner as they saw fit upon the property within the State. The States have relied upon this as a settled policy of the National Government and have so regulated their taxes that all business and property therein is made to bear its just share of the burdens of government, and this system so long adopted can not be disturbed without great injury and hardship resulting therefrom. Vast responsibilities have been assumed by most of the States, and a change in the methods of raising funds to meet the current expense of the National Government would result in unjustly increasing the burdens of those who under State laws are bearing their just proportion of taxation.

To illustrate, take the State of New York as an example. For several years past and up to last year before the Democracy came into power all the expenses of the State government were met by indirect taxes. Taxes were levied upon real estate and some personal property not otherwise taxed to defray the great expenses of towns, counties, and municipalities. Vast obligations have been assumed by our State as well as by our counties, towns, and municipalities in reliance upon a continuance of this general policy of taxation by the National Government. The State of New York has up to the present time authorized the issue of $127,000,000 of bonds for the improvement of its canals, $50,000,000 of bonds for good roads, and several million dollars more for a forest preserve and other purposes, and it is now seriously contemplating other improvements on a vast scale.

The bonded indebtedness of our cities, counties, and towns is so great as to make our national debt look like 30 cents. For instance, the bonded indebtedness of the city of New York alone is about equal to the national debt with a yearly tax roll of $200,000,000, and other cities in like proportion.

Are not the burdens of our taxpayers quite enough at present without the National Government adding anything thereto? If our business interest can stand any further taxation than it now bears, should it not be left to our State to determine those additional burdens instead of being further robbed and deprived of that by the National Government, whose present sources of supply are ample for all purposes?

Our citizens are now contributing their full share toward the support of the National Government under existing laws. Our State only recently, and in order to preserve to itself the opportunity of levying further taxes by different means if necessity required, has by its present assembly passed by a large majority a resolution repealing its former ill-considered action of a year ago which gave its consent to the National Government to levy an income tax upon our citizens. We need all the revenues which we can legitimately and properly get by any fair system of taxation to discharge our existing obligations and to meet current expenses. We have never appealed to the National Government for aid in the construction of our canals or good roads or in the preservation of our forest preserves. We have taken pride as a State in doing these things ourselves, not only for the benefit of our own citizens, but for the Nation and the world at large, and we wish to continue to do so.

This Democratic scheme, however, would result not only in destroying our tariff policy, and hence our great industrial system, but would at the same time destroy our present just and equitable system of National, State, and local taxation to the serious injury of all concerned.

For these reasons I am opposed to the passage of the present bill, and I have reason to believe that I but speak the sentiment of a vast majority of the citizens, not only of my native State, but all other States of the Union, which are trying to discharge their obligations to their citizens without constantly appealing for aid to the National Government. [Applause.]

Mr. UNDERWOOD. Mr. Chairman, I yield 10 minutes to the gentleman from Michigan [Mr. SWEET].

Mr. SWEET. Mr. Chairman, the sugar bill just passed and the present excise bill imposing a tax upon net incomes of over $5,000 may well be considered as practically one piece of legislation. The sacrifice of Federal revenues by removing the tariff on sugar is about $53,000,000. This is the amount collected at the customhouse on sugar imported from Cuba and other foreign countries, but the tariff rate raises the price of this important food product to all American consumers, so that in addition to the $53,000,000 which they are paying annually into the United States Treasury, they are paying about $60,000,000 to the producers and refiners of sugar in the United States.

The bill now under discussion is expected to produce a revenue of between fifty and sixty millions of dollars per annum,

and if both measures are enacted into law they will shift the burden from sugar consumers, who are largely people of moderate means, and place it upon those who have incomes in excess of $5,000 per year.

The gentleman from New York [Mr. MALBY], who has just addressed the House in opposition to these measures, very properly characterizes them as a change in our national system of taxation. This is not the first time that sugar has been placed on the free list nor is it the first time that we have had a tax on incomes, but it is the first time that these enactments have been contemporaneous or with the avowed purpose of giving relief to the consuming masses of our people, and in this respect it marks an important epoch in Federal taxation.

I firmly believe that these measures are based upon a correct principle, and it is my purpose to briefly consider the attitude of the two principal political parties on the important subject of raising revenues for the Federal Government.

In 1904 the Republican national platform for the first time admitted that there was danger of carrying the protective principle too far, and it was deemed advisable, as a party measure, to lay down some rule or standard by which it should be limited. This was out of deference to a well-recognized public sentiment that the rates of the Dingley law were too high. The language used was somewhat noncommittal, but it answered its purpose. It is this: "The measure of protection should always at least equal the difference in the cost of production at home and abroad." A too-confiding public construed this as a statement that it would be feasible, or at least possible, to ascertain the difference in the cost of production at home and abroad, and that if continued in power the Republican Party would proceed to ascertain such difference and readjust the tariff rates accordingly.

President Roosevelt was reelected and both Houses of Congress were Republican by a safe majority, and yet no steps were taken to ascertain the difference in the cost of production, and the rates of the Dingley law remained unchanged.

In 1908 the murmurs of the previous four years had become a very pronounced uproar of popular discontent. It would not do to go before the public without a more definite promise of relief. Hence, the assertion in the platform of that year of the new principle that the measure of protection ought to be the difference in the cost of production at home and abroad, omitting the words "at least" used in the previous platform, but surreptitiously opening the door for rates higher than this rule would permit by adding "together with a reasonable profit for American industries." This remarkable and somewhat startling "reasonable profit" clause then for the first and probably the last time made its appearance in a Republican platform.

The situation in 1908 was so acute that this additional platform announcement was made:

> The Republican Party declares unequivocally for a revision of the tariff by a special session of the Congress immediately following the inauguration of the next President.

During the campaign which followed the Republican candidate for President and other party leaders, without exception, stated that this meant a material downward revision. They admitted the justice of the popular demand, made no claim that the Dingley rates were in harmony with the cost of production rule, and recognized that the exigency for a downward revision was so great that a special session of Congress should be immediately called in order to give the needed and promised relief.

The Republican candidate was elected, a special session was called, and the Payne-Aldrich tariff law was enacted. It is generally conceded that the rates of the Dingley law were not reduced. The most offensive schedule, that taxing wool and woolens remained without material change. The rule which the party had laid down as the proper measure of protection was ignored from the start by the controlling faction of the Republican Party, by the very men who had only a few months before interpreted and praised it, and asked for the votes of the people and a continuance of power in order that the tariff might be reduced by its friends according to the platform principle by which protection was to be measured. This is history.

In order to accurately determine the attitude of the prevailing faction of the Republican Party upon the question of Federal taxation it is necessary right here to dwell for a moment upon the merits of the measure of protection which they have laid down.

The business community never took any stock in the guaranty of profits, but the difference in cost of production plan seemed plausible on its face, and for a time received more approval than a careful analysis of it justifies.

The city of Grand Rapids, where I reside, is recognized as the greatest furniture center in the world. Some of its factories make satisfactory profits and declare large dividends. Others, with the same kind of labor and machinery, make no profits at all. Such differences are found in every industry the world over. One factory buys its raw material when the market is the most favorable and in large quantities. It stores its material and locates all machinery so that not an unnecessary step need to be taken. It is careful in its selection of selling agents and takes vigorous measures to keep them up to their work. It adopts a wise and just policy toward labor, avoiding strikes and other complications. Another factory just across the road, making the same line of goods is conspicuous for its neglect of all these things. They sell their output in the same market at substantially the same price. If there were any uniformity of cost, there would necessarily be some uniformity of profit. The fact that there is in reality such a wide difference in profits clearly indicates a corresponding difference in cost of production. It is the difference between good management and bad management. Which is to be taken as the American standard? The best-managed factory, with its low cost, or the worst-managed factory, with its excessive cost?

But before we reach that point we encounter another difficulty. The badly conducted factory has no accurate method of keeping a cost account, while the best-conducted factory under the shrewdest management would regard its cost of production as a trade secret. I doubt if any Member of this body, or any commission appointed either by this body or by the President, can ascertain the actual cost of production in any single furniture factory in Grand Rapids or the difference of cost between different factories. Manufacturers can not afford to show their hand to their competitors or to the purchasing public, and unless charged with illegal conduct can not be compelled to do so.

The management of a factory through death, resignation, and other causes is necessarily subject to frequent changes. It may be highly efficient now and equally inefficient a year hence. If the difference in the cost of production between any two factories could be accurately ascertained at any given time a year or even a month later the difference might be materially changed or even reversed.

Our tariff laws have put a premium on inefficient management in the protected industries by the removal in whole or in part of competition, which is essential to the highest degree of human effort. The Interstate Commerce Commission refused to permit the railroad companies to raise their rates on the ground that their management was not as efficient as it might be and that with better management fair profits could be earned at existing rates. If this is good medicine for railroad companies why not for steel companies, sugar companies, woolen and cotton companies? Why should inefficient management be a liability in one case and an asset in another? If the cost of production is higher in this country than in some other country it is of the highest importance to know why. Does it come from the payment of higher wages or from using out-of-date machinery or from overtaxed materials such as lumber and steel used in the erection of plants or from overtaxed raw materials used directly in the manufacturing process, or does it come from inefficient management?

It is the evident purpose of the Republican national platform to convey the impression that there is a difference in the cost of production between our own and foreign countries, that this difference is against us, that it can be ascertained with reasonable accuracy, and, furthermore, that it is caused solely or chiefly by the higher wages paid to American labor.

The tariff clause in the platform of 1908 alleges that one of the purposes of a protective policy is to—

> maintain the high standard of living of the wageworkers of this country who are the most direct beneficiaries of the protective system.

That American manufacturing interests are handicapped by some heavy legislative burdens which may be removed in the near future can not be denied and yet even on our present basis it is a libel upon American industry to assert that the cost of production is uniformly or usually greater in this than in other countries. In spite of artificially increased cost of buildings, machinery, and raw material and in spite of the very material sacrifice of our foreign commerce entailed by our protective policy we still hold no mean rank as an exporting Nation and of our total exports very nearly one-half are the output of our factories. Germany and England alone surpass us. Our annual exports of manufactured goods are crowding the billion-dollar mark. They are about twice as great as our exports of food products. This means that we are even now meeting open competition in the world's markets in respect to numerous articles of manufacture. And this means that our cost of production can not be materially higher than the cost to our competitors. But even if it were higher the claim that higher wages are the chief or only cause is an unwarranted and unjust aspersion upon

American labor. The superior intelligence of our labor due to our public-school system and our free institutions is conceded. Its greater efficiency both of mind and muscle, the result of better education and better food, is beyond question. That American labor gives better service in proportion to its better pay and that it gives as good value received for its wages as any labor on earth it ill becomes any well-informed American to dispute.

Why should the toiling masses of the United States be taxed for all time to come on the pretext that they and they only are responsible for an excessive cost of production which our great and growing export trade refutes and which, if it exists at all, is clearly due entirely or in great part to other causes?

What is meant by the word "abroad" used in the Republican platform statement? England and Japan are from our standpoint equally abroad. With which is the comparison to be made? With the nation which gives us the sharpest competition? If so, what is to be taken as the standard of cost in that nation? Its manufacturers differ from one another the same as our own. Some make large profits and others none. If it is practically impossible to get accurate figures here, how can we expect to get them from the manufacturers of a competing foreign nation?

What I have said thus far fairly raises the question as to whether the statement in the Republican platform was made in good faith. Its framers were intelligent men. They could not have overlooked these difficulties. They knew that accurate information was not obtainable and that many months would be required to procure even its semblance; and yet in the same paragraph of the same platform they promised that Congress would be called in special session immediately after the inauguration of the next President for the purpose of revising the tariff.

If the Republican Party had been sincere, would it not have followed up its announcement in the platform of 1904 with the establishment of a commission to ascertain or try to ascertain the difference in the cost of production at home and abroad? If sincere in its statement of 1908, why did it declare for a revision with such unusual haste and with the certainty that it would not have the aid of such an investigation in making the revision promised?

If President Taft considered such information essential, why did he approve the Payne-Aldrich bill, which was not only prepared without any effort to get it, but in total disregard of the principle laid down in the platform upon which he was elected? Upon what claim of consistency can he justify his approval of a bill which did not reduce the rates and his subsequent veto of a bill which did reduce the rates upon a reasonable and conservative basis, when the conditions as to information were precisely the same?

The platform provision for the guaranty of a reasonable profit to American industries can only be applied to protected industries and suggests a discrimination which every unprotected producer and every suffering consumer resents. If it were not so mischievous it would be ludicrous. The chief claim of the Republican Party for its excessive tariff rates has been that they were necessary to protect American labor, and yet it adds insult to injury by guaranteeing profits to the manufacturer without a corresponding guaranty to the laborer and without the slightest suggestion that the guaranteed profits are to be divided. [Applause.]

The Tariff Board provision of the Payne-Aldrich law met with some approval from the business community. It looked like an effort to take the tariff out of politics and place it under control of a nonpartisan board of experts, and it was hoped that this would put a stop to tariff tinkering and that it would place the tariff upon a more scientific basis. It is quite possible that a permanent tariff commission, responsive to the lawmaking branch of the Government rather than to the executive, might procure information and offer suggestions which would be helpful to Congress in the preparation of tariff bills, but it is apparent that, simple as the problem may appear at first sight, the determination of the existence of a difference in the cost of production at home and abroad and if one is found, which side it is on, what it amounts to, and what its causes are, presents a complex proposition which involves a vast number of inquiries and investigations, some of which are physically unattainable.

It is also apparent that if the figures or the conclusions of such a commission should be at variance with the facts disclosed by our actual export of manufactured goods, the latter would control. One of the inherent weaknesses of the tariff system is that the rates must be changed from time to time to meet the varying conditions of Government expenses and changes in the amount of revenues derived from other sources. Tariff revision is a legislative function which Congress can not farm out to any commission; and if it could, these changes which are deemed so detrimental to business could not be avoided.

That the present attitude of the stand-pat faction of the Republican Party upon the subject of Federal taxation is distinctly favorable to the permanent maintenance of high protective rates on all commodities now taxed, including food products and other necessaries of life, is beyond question. That some of them are opposed to the transfer of any part of Federal taxation as proposed in this bill on the ground that it will interfere somewhat with their protective policy is amply proven by the arguments they have used in this discussion.

The Democratic platform of 1904 favors "a revision and a gradual reduction of the tariff," and the Democratic platform of 1908 contained this further provision:

> Articles entering into competition with trust-controlled products should be placed upon the free list, material reductions should be made in the tariff upon the necessaries of life, especially upon articles competing with such American manufactures as are sold abroad more cheaply than at home, and gradual reductions should be made in such other schedules as may be necessary to restore the tariff to a revenue basis.

It also contained these words:

> We favor an income tax as part of our revenue system.

Farm machinery, sewing machines, wire for fencing, and other articles of iron and steel, and refined sugar enter into competition with trust-controlled products, and many of these articles are sold abroad more cheaply than at home. Hence the Democratic majority in this House has consistently done everything in its power to place them on the free list. At the extra session, as well as at the present session, it has earnestly tried to make material reductions in the tariff upon the necessaries of life. This conscientious regard for party pledges is in striking contrast with the conduct of the Republican Party with reference to its own pledges. [Applause.]

In these acts and in the Democratic declaration for an income tax and in this bill, which is the fulfillment of that promise, we find the attitude of the Democratic Party upon the subject of Federal taxation.

We have already seen what the Republican promises were. We have seen that these promises were broken. In the adoption of the Payne-Aldrich bill and in their votes against a downward revision of the woolen, cotton, steel, chemical, and sugar schedules—thus, in effect, voting again in favor of the corresponding schedules in the Payne-Aldrich bill—and in the President's approval of the Payne-Aldrich bill and in his veto of every downward revision which has been placed before him, as well as in the opposition which Republican Members, under the leadership of the gentleman from New York [Mr. PAYNE], are making to the bill now under consideration, it is easy to determine the attitude of the Republican Party, from its acknowledged leader down, upon this important subject of Federal taxation.

The Democrats, broadly speaking, are in favor of material reduction and, where feasible, the removal of the tariff upon the necessaries of life and substituting therefor methods of taxation which will reach the people of independent means, while the stand-pat Republicans are opposed to reduction of tariff rates, and upon one pretext or another many of them are opposed to obtaining revenue by a tax upon incomes. [Applause.] If they had wanted to materially reduce the tariff on woolen clothing and woolen blankets so that the poor could more fully enjoy these comforts during the severe winter which, we hope, is now coming to an end, they had an opportunity to do so last summer. When the woolen and cotton schedules and the free-list bill came back to Congress with the President's disapproval, they again had an opportunity to lighten the poor man's burden, but refused to do so. Progressive Republicans joined with the Democrats in voting for these measures. Only a few more votes were needed to place them on the statute books. You stand-pat Republicans knew of the urgent need for tariff reduction without delay. You knew that the reductions were reasonable and based upon ample information. It would be an insult to your intelligence to assume that you took any stock in the flimsy excuses which were offered for delay, and yet in the time of need you did not come to the rescue. Your party should be and will be judged by its acts. [Applause.]

Reference is often made by the President to the platform upon which he was elected and to the popular approval of that platform which his election upon it implies. He seems to overlook the fact that there was an election in 1910. As the last pronouncement of the American people, it is worth while to consider what they really meant to declare in the 1910 election. On its face it seems to be a reversal of the verdict of two years

before. Was it really so? I think not. On the contrary, it was another and more peremptory demand for a downward revision.

The nicest discriminations at popular elections must not be expected, and it seems to me that a fair interpretation of the changed vote of 1910 might thus be expressed: "The living cost is too high. The price of many kinds of food and wearing apparel is unreasonable. We don't know the cause for this condition, but we are fully satisfied that the enormous tariff taxes on most of these things are responsible for at least a portion of it. We want lower tariff rates. [Applause.] We want extortionate monopolies not only fought to a finish in the courts but destroyed by any and every means available. We prefer foreign competition to home monopolies. The high rates maintained by the Payne-Aldrich tariff law have taught us that protection is not the innocent thing we used to suppose—a mere aid to industries seeking to get a start—but, on the contrary, that it is cumulative in its character. The older an industry becomes the more protection it demands and the more corrupt influences it brings to bear to get what it wants."

Personally, I preferred and tried to get a reduction of about 50 per cent of the tariff on sugar, not because I believed that the beet-sugar industry would be destroyed by putting sugar on the free list, for the fact is that beet sugar in our country can be produced for nearly a cent a pound less than cane sugar, but I deemed it wiser and safer to sacrifice at this time less than the whole amount of the revenue derived from the tariff tax on sugar. [Applause.]

I shall vote for this measure because I deem it essential to the welfare of our people that more of the revenues of the Federal Government shall be raised by some method which is more just than a tax upon consumption, and because I believe an excise tax upon incomes exceeding $5,000 is the most just and reasonable that can be devised. If the present bill becomes a law I believe it will be held to be constitutional. It will doubtless soon be tested in the Supreme Court and its constitutionality will be determined. This may save the long delay necessary to obtain a constitutional amendment and will materially hasten the relief which our people need and demand.

As a Nation we ought to do one of two things. Either place the burden of Federal taxation more equitably than at present, or if this can not be done, if for every dollar that reaches the Federal Treasury the people must pay more than $2, and if this must be paid not in accordance with ability or the value of the property receiving protection from the Government or the magnitude of the business interests for which the Government affords facilities, but by taxation which keeps children out of school and drives them into the factory, then let us adjust our national expenditures upon the basis of the poverty which we tax rather than the wealth which practically goes untaxed, and let us discard the altruism of the Spanish War and our insular dependencies, for we have no business to create domestic misery in order to relieve the misery of foreigners. [Loud applause.]

Mr. UNDERWOOD. Does the gentleman from New York desire to use any further time?

Mr. PAYNE. I do not think so. I might spend five minutes profitably in correcting some of the errors that the gentleman from Michigan has indulged in, but he has simply done it without knowing the effect of the present tariff law. He has not studied the statistics of the last six months, for if he had he would be ashamed to fall into the errors that he has.

Mr. SWEET. I would like to have the gentleman from New York point them out.

Mr. PAYNE. I will take the gentleman into my office some day and give him a kindergarten lesson and show him the grave errors that he has made about the present tariff law.

Mr. SWEET. The people of the United States have taken the gentleman from New York into their private office and given him a kindergarten lesson that he ought to remember. [Laughter.]

Mr. PAYNE. And many of them were as ignorant as to the tariff as my friend from Michigan. From the Government statistics the gentleman from Michigan ought to be ashamed to make the statement that he has.

Mr. SWEET. From the last election the gentleman from New York ought to be satisfied that the people of the country do not approve of the tariff bill which carries his name.

Mr. PAYNE. That is not the only election, we are going to have others.

Mr. SWEET. Yes; we are going to have others, but they will turn out the same as the last one, only more so.

Mr. PAYNE. Possibly, but the gentleman may be mistaken.

Mr. SWEET. The gentleman from New York has been mistaken so often that the people have turned him down.

Mr. PAYNE. Well, we have done pretty well for the last 20 years without being turned down before.

Mr. SWEET. Not to the satisfaction of the country.

Mr. UNDERWOOD. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee determined to rise; and Mr. FOSTER of Illinois having taken the chair as Speaker pro tempore, Mr. MOON of Tennessee, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 21214, the excise-tax bill, and had come to no resolution thereon.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted—

To Mr. MCMORRAN, for one week, on account of important business.

To Mr. DIES, indefinitely, on account of important business.

SENATE BILLS REFERRED.

Under clause 2 of Rule XXIV, Senate bills and joint resolution of the following titles were taken from the Speaker's table and referred to their appropriate committees, as indicated below:

S. 100. An act to carry into effect the findings of the military board of officers in the case of George Ivers, administrator; to the Committee on War Claims.

S. 317. An act to provide for the purchase of a site and the erection of a public building thereon at Sundance, in the State of Wyoming; to the Committee on Public Buildings and Grounds.

S. 318. An act to provide for the acquisition of a site and the erection of a public building thereon at Newcastle, Wyo.; to the Committee on Public Buildings and Grounds.

S. 406. An act to provide for the acquisition of a site on which to erect a public building at Vermilion, S. Dak.; to the Committee on Public Buildings and Grounds.

S. 407. An act to provide for the erection of a public building in the city of Madison, S. Dak.; to the Committee on Public Buildings and Grounds.

S. 408. An act to provide for the acquisition of a site on which to erect a public building at Canton, S. Dak.; to the Committee on Public Buildings and Grounds.

S. 410. An act to provide for the acquisition of a site on which to erect a public building at Milbank, S. Dak.; to the Committee on Public Buildings and Grounds.

S. 876. An act to provide for the acquisition of a site on which to erect a public building at Bellefourche, S. Dak.; to the Committee on Public Buildings and Grounds.

S. 954. An act to provide for the acquisition of a site on which to erect a public building at Gilmer, Tex.; to the Committee on Public Buildings and Grounds.

S. 1175. An act to authorize the purchase of a site and erection of a public building at Astoria, Oreg.; to the Committee on Public Buildings and Grounds.

S. 1712. An act to provide for the purchase of a site and for the erection of a public building thereon at Oregon City, Oreg.; to the Committee on Public Buildings and Grounds.

S. 1752. An act to provide for the erection of a public building at Eureka, Utah; to the Committee on Public Buildings and Grounds.

S. 2014. An act for the relief of George Owens, John J. Bradley, William M. Godfrey, Rudolph G. Ebert, Herschel Tupes, William H. Sage, Charles L. Tostevin, Alta B. Spaulding, Grace E. Lewis, and Dolly Neely; to the Committee on the Public Lands.

S. 2194. An act to amend section 2288 of the Revised Statutes of the United States relating to homestead entries; to the Committee on the Public Lands.

S. 2243. An act for the relief of John L. O'Mara; to the Committee on Military Affairs.

S. 2347. An act increasing the cost of erecting a post-office and courthouse building at Walla Walla, Wash.; to the Committee on Public Buildings and Grounds.

S. 2414. An act for the relief of Rittenhouse Moore; to the Committee on Claims.

S. 2698. An act increasing the cost of erecting a post-office building at Plainfield, N. J.; to the Committee on Public Buildings and Grounds.

S. 3045. An act to provide for agricultural entries on oil and gas lands; to the Committee on the Public Lands.

S. 3225. An act providing when patents shall issue to the purchasers or heirs of certain lands in the State of Oregon; to the Committee on the Public Lands.

S. 3716. An act for the erection of a public building at St. George, Utah; to the Committee on Public Buildings and Grounds.

S. 3831. An act to provide for the purchase of a site and the erection of a public building thereon at Denton, Tex.; to the Committee on Public Buildings and Grounds.

S. 3873. An act for the relief of Lewis F. Walsh; to the Committee on Military Affairs.

S. 3974. An act to increase the limit of cost of the United State public building at Denver, Colo.; to the Committee on Public Buildings and Grounds.

S. 4004. An act to authorize the use of the funds of certain Northern Cheyenne Indians; to the Committee on Indian Affairs.

S. 4042. An act to provide for the erection of a public building at New Braunfels, Tex.; to the Committee on Public Buildings and Grounds.

S. 4222. An act to increase the limit of cost of the public building at Moundsville, W. Va.; to the Committee on Public Buildings and Grounds.

S. 4245. An act to increase the limit of cost of the additions to the public building at Salt Lake City, Utah; to the Committee on Public Buildings and Grounds.

S. 4470. An act to provide for the erection of a public building at Wenatchee, Wash.; to the Committee on Public Buildings and Grounds.

S. 4488. An act to authorize the setting aside of a tract of land for a school site and school farm on the Yuma Indian Reservation, in the State of California; to the Committee on Indian Affairs.

S. 4493. An act to provide for the purchase of a site and the erection of a public building thereon at Thermopolis, in the State of Wyoming; to the Committee on Public Buildings and Grounds.

S. 4520. An act for the relief of Catherine Grimm; to the Committee on Claims.

S. 4572. An act to designate Walhalla, Neche, and St. John, in the State of North Dakota, subports of entry, and to extend the privileges of the first section of the act of Congress approved June 10, 1880, to said subports; to the Committee on Ways and Means.

S. 4585. An act to provide for the erection of a public building on a site already acquired at South Bethlehem, Pa.; to the Committee on Public Buildings and Grounds.

S. 4619. An act to provide for the purchase of a site and the erection of a public building thereon in the city of Franklin, State of Pennsylvania; to the Committee on Public Buildings and Grounds.

S. 4623. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors; to the Committee on Invalid Pensions.

S. 4655. An act to provide for the purchase of a site and the erection of a public building thereon at Franklin, in the State of New Hampshire; to the Committee on Public Buildings and Grounds.

S. 4734. An act for the relief of Mary G. Brown and others; to the Committee on Indian Affairs.

S. 4753. An act to amend an act entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," approved April 26, 1906; to the Committee on Indian Affairs.

S. 4999. An act for the relief of Francis M. Malone; to the Committee on Military Affairs.

S. 5072. An act to establish a fog signal and additional quarters at Point Loma Light Station, San Diego, Cal.; to the Committee on Interstate and Foreign Commerce.

S. 5074. An act to authorize the improvement of Santa Barbara Light Station, Cal., including a fog signal and a keeper's dwelling; to the Committee on Interstate and Foreign Commerce.

S. 5198. An act to authorize the issuance of patent to James W. Chrisman for the SE. ¼ NE. ¼, SE. ¼, SE. ¼ SW. ¼ sec. 13, N. ½ NE. ¼ sec. 24, T. 29 N., R. 113 W. of the sixth principal meridian; to the Committee on the Public Lands.

S. 5207. An act to provide an American register for the steamer *Oceana;* to the Committee on the Merchant Marine and Fisheries.

S. 5255. An act increasing the compensation of the collector of customs, district of Puget Sound, State of Washington; to the Committee on Ways and Means.

S. J. Res. 77. Joint resolution authorizing the Secretary of War to loan certain tents for the use of the Grand Army of the Republic encampment, to be held at Pullman, Wash., in June, 1912; to the Committee on Military Affairs.

ENROLLED BILL PRESENTED TO THE PRESIDENT FOR HIS APPROVAL.

Mr. CRAVENS, from the Committee on Enrolled Bills, reported that this day they had presented to the President of the United States, for his approval, the following bill:

H. R. 17119. An act granting the courthouse reserve at Pond Creek, Okla., to the city of Pond Creek for school and municipal purposes.

WITHDRAWAL OF PAPERS.

Mr. HUGHES of New Jersey, by unanimous consent, was given leave to withdraw from the files of the House, without leaving copies, papers in the case of Franklin Peters, Sixty-first Congress.

ADJOURNMENT.

Mr. UNDERWOOD. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 53 minutes p. m.) the House adjourned until to-morrow, Tuesday, March 19, 1912, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1. A letter from the Secretary of War, transmitting, with a letter from the Chief of Engineers, report of examination and survey of St. Joseph Harbor, Mich. (H. Doc. No. 629); to the Committee on Rivers and Harbors and ordered to be printed with illustrations.

2. A letter from the Attorney General of the United States, in reply to House resolution adopted March 12, 1912, asking for information touching the existence of a smelter trust in the United States, etc. (H. Doc. No. 628); to the Committee on the Judiciary and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the several calendars therein named, as follows:

Mr. ASHBROOK, from the Committee on Public Buildings and Grounds, to which was referred the bill (H. R. 1718) providing for the sale of the old Federal building and site at Owensboro, Ky., reported the same without amendment, accompanied by a report (No. 428), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. BARNHART, from the Committee on Public Buildings and Grounds, to which was referred the bill (H. R. 12013) to authorize the Secretary of the Treasury to convey to the city of Corsicana, Tex., certain land for alley purposes, reported the same without amendment, accompanied by a report (No. 429), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, committees were discharged from the consideration of the following bills, which were referred as follows:

A bill (H. R. 15421) granting a pension to F. Byron Ridgeley; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 639) granting a pension to Anna S. Anderson; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 14436) granting a pension to James W. Fisher; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 15422) granting a pension to George W. Smith; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 7078) granting a pension to Charles H. Heimlich, alias Charles H. Henderson; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 20425) granting a pension to Thomas Hartman; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 1111) granting an increase of pension to Bruce Clifton; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. WARBURTON: A bill (H. R. 22042) making an appropriation for the improvement of the Government road in Mount Rainier National Park; to the Committee on Agriculture.

By Mr. ADAMSON: A bill (H. R. 22043) to authorize additional aids to navigation in the Lighthouse Service, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. REDFIELD: A bill (H. R. 22044) to amend sections 4214 and 4218 of the Revised Statutes; to the Committee on Ways and Means.

By Mr. STEPHENS of Mississippi: A bill (H. R. 22045) to establish in the Department of Agriculture a bureau to be known as the bureau of drainage, and to provide for national aid in draining wet, swamp, and overflowed lands; to the Committee on Agriculture.

By Mr. KAHN: A bill (H. R. 22046) to purchase a suitable site on the Pacific coast to be used as a range for small-arms target practice by the United States Navy; to the Committee on Naval Affairs.

By Mr. HOWLAND: A bill (H. R. 22047) to amend section 4450 of the Revised Statutes of the United States; to the Committee on the Merchant Marine and Fisheries.

By Mr. BURNETT: A bill (H. R. 22048) to further restrict the admission of aliens into the United States; to the Committee on Immigration and Naturalization.

By Mr. COX of Indiana: A bill (H. R. 22049) to erect an addition to Federal building at New Albany, Ind.; to the Committee on Public Buildings and Grounds.

By Mr. LANGLEY: A bill (H. R. 22050) to provide for the erection of a public building at Jackson, Ky.; to the Committee on Public Buildings and Grounds.

By Mr. LINDSAY: Memorial of the Senate of the State of New York, asking that one of the new battleships be built at the Brooklyn Navy Yard; to the Committee on Naval Affairs.

By Mr. DRAPER: Memorial of the Senate of the State of New York, asking that one of the new battleships be built at the Brooklyn Navy Yard; to the Committee on Naval Affairs.

By Mr. REDFIELD: Memorial of the Senate of the State of New York, asking that one of the new battleships be built at the Brooklyn Navy Yard; to the Committee on Naval Affairs.

By Mr. MOTT: Memorial of the Senate of the State of New York, favoring the building of a battleship at the Brooklyn Navy Yard; to the Committee on Naval Affairs.

By Mr. GOLDFOGLE: Memorial of the Legislature of the State of New York, asking the United States to improve the inlet of Lake Champlain; to the Committee on Rivers and Harbors.

By Mr. McCALL: Memorial of the Massachusetts House of Representatives, protesting against the removal of the United States navy yard at Boston; to the Committee on Naval Affairs.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BARNHART: A bill (H. R. 22051) granting an increase of pension to George W. Hayward; to the Committee on Invalid Pensions.

By Mr. BELL of Georgia: A bill (H. R. 22052) granting a pension to Ollie Gordon; to the Committee on Invalid Pensions.

By Mr. CLARK of Missouri: A bill (H. R. 22053) granting an increase of pension to Jesse S. Trower; to the Committee on Invalid Pensions.

By Mr. CLAYPOOL: A bill (H. R. 22054) granting an increase of pension to William H. H. Minturn; to the Committee on Invalid Pensions.

By Mr. CULLOP: A bill (H. R. 22055) granting an increase of pension to Thomas B. Poe; to the Committee on Invalid Pensions.

By Mr. DYER: A bill (H. R. 22056) for the relief of C. M. Perkins; to the Committee on Claims.

By Mr. EDWARDS: A bill (H. R. 22057) for the relief of the heirs of Benedict Bourquin; to the Committee on War Claims.

Also, a bill (H. R. 22058) for the relief of the heirs of Col. William B. Gaulden; to the Committee on War Claims.

By Mr. FAISON: A bill (H. R. 22059) for the relief of the heirs of Mary Everitt, deceased; to the Committee on War Claims.

By Mr. GALLAGHER: A bill (H. R. 22060) granting a pension to Ellen Cardenas; to the Committee on Invalid Pensions.

By Mr. HUGHES of New Jersey: A bill (H. R. 22061) to remove the charge of desertion now existing on the records of the Navy Department against Charles Berry; to the Committee on Naval Affairs.

By Mr. LANGLEY: A bill (H. R. 22062) for the relief of the legal representatives of Sophia Nesbitt; to the Committee on War Claims.

Also, a bill (H. R. 22063) granting an increase of pension to John C. Smallwood; to the Committee on Invalid Pensions.

By Mr. LOUD: A bill (H. R. 22064) granting an increase of pension to Henry P. Stork; to the Committee on Invalid Pensions.

By Mr. McGUIRE of Oklahoma: A bill (H. R. 22065) granting an increase of pension to James Wharry; to the Committee on Invalid Pensions.

Also, a bill (H. R. 22066) granting an increase of pension to Horace G. Norton; to the Committee on Pensions.

Also, a bill (H. R. 22067) granting an increase of pension to Ezra Gilbert; to the Committee on Invalid Pensions.

Also, a bill (H. R. 22068) granting an increase of pension to Charles A. Detrick; to the Committee on Invalid Pensions.

Also, a bill (H. R. 22069) granting an increase of pension to James Richardson; to the Committee on Invalid Pensions.

By Mr. MOSS of Indiana: A bill (H. R. 22070) granting an increase of pension to Waldo W. Williams; to the Committee on Invalid Pensions.

Also, a bill (H. R. 22071) granting a pension to Thompson F. Frisbie; to the Committee on Pensions.

Also, a bill (H. R. 22072) for the relief of John H. Kidd; to the Committee on Military Affairs.

Also, a bill (H. R. 22073) for the relief of William Horsley; to the Committee on Military Affairs.

Also, a bill (H. R. 22074) providing for the presentation of a medal of honor to William C. Shortridge; to the Committee on Military Affairs.

By Mr. PRAY: A bill (H. R. 22075) granting an increase of pension to Edward Pierce, jr.; to the Committee on Invalid Pensions.

By Mr. SCULLY: A bill (H. R. 22076) granting an increase of pension to Duncan Cox; to the Committee on Invalid Pensions.

Also, a bill (H. R. 22077) granting an increase of pension to Howard Forster; to the Committee on Invalid Pensions.

By Mr. SMITH of New York: A bill (H. R. 22078) granting an increase of pension to John C. Hagen; to the Committee on Invalid Pensions.

By Mr. VREELAND: A bill (H. R. 22079) granting an increase of pension to John W. Weaver; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By the SPEAKER (by request): Memorial of the Mexico (Mo.) Commercial Club, for reduced rates on first-class mail matter; to the Committee on the Post Office and Post Roads.

Also (by request), memorial of the South St. Joseph (Mo.) Live Stock Exchange, for reduction in the tax on oleomargarine; to the Committee on Agriculture.

By Mr. AINEY: Petitions of sundry granges, Patrons of Husbandry, for a governmental system of postal express; to the Committee on Interstate and Foreign Commerce.

Also, petition of citizens of Bradford County, Pa., for enactment of House bill 14, providing for a parcel-post system; to the Committee on the Post Office and Post Roads.

By Mr. ANDERSON of Minnesota: Petition of F. A. Masters and 13 others of Canton, Minn., against extension of the parcel-post system; to the Committee on the Post Office and Post Roads.

By Mr. ANSBERRY: Memorial of business men of Ohio, regarding legislation to cover the legal operations of industrial and labor combinations; to the Committee on Labor.

By Mr. ASHBROOK: Petition of Roy C. Cummings, R. B. Herron, and R. R. Leggett, legislative committee of Pomona Grange, Tuscarawas County, Ohio, asking for the enactment of a parcel-post law; to the Committee on the Post Office and Post Roads.

Also, petition of John Factor and 20 other citizens of Newark, Ohio, protesting against the enactment of interstate-commerce legislation; to the Committee on the Judiciary.

By Mr. BOWMAN: Petition of P. H. Meixell, of Wilkes-Barre, Pa., protesting against enactment of House bill 5955; to the Committee on Interstate and Foreign Commerce.

Also, petition of W. F. Potts, Son & Co., of Philadelphia, Pa., protesting against enactment of House bill 16844; to the Committee on Interstate and Foreign Commerce.

Also, petition of American Association for Labor Legislation, for enactment of House bill 20842; to the Committee on Ways and Means.

Also, petitions of residents of the State of Pennsylvania, for enactment of House bill 20595, amending the copyright act of 1909; to the Committee on Patents.

By Mr. BRADLEY: Petition of members of Cronomer Valley Grange, No. 982, Patrons of Husbandry, remonstrating against the passage of certain proposed legislation relating to oleomargarine; to the Committee on Agriculture.

By Mr. BURKE of Wisconsin: Petition of William Frank and 21 other residents of Van Dyne, Fond du Lac County, Wis., and Fred C. Mansfield and 40 other citizens of Johnson Creek, Wis., protesting against the passage of the Lever bill (H. R. 18493) providing for a reduction in the tax on oleomargarine, etc.; to the Committee on Agriculture.

By Mr. CALDER: Memorial of Tompkins County Pomona Grange, relating to the tax on oleomargarine; to the Committee on Agriculture.

Also, memorial of Sioux City Commercial Club, of Sioux City, Iowa, protesting against House bill 16844; to the Committee on Interstate and Foreign Commerce.

By Mr. CARTER: Petitions of citizens of the State of Oklahoma, for enactment of House bill 20595, amending the copyright act of 1909; to the Committee on Patents.

By Mr. COOPER: Petition of citizens of Waukesha County, Wis., in favor of a general parcel-post system; to the Committee on the Post Office and Post Roads.

By Mr. COX of Ohio: Petition of citizens of Hamilton, Ohio, for the construction of one battleship in a Government navy yard; to the Committee on Naval Affairs.

Also, memorial of the City Council of Dayton, Ohio, for the coinage of 3-cent pieces; to the Committee on Coinage, Weights, and Measures.

By Mr. CRAVENS: Petition of citizens of Logan County, Ark., for parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr. DIXON of Indiana: Petition of citizens of Greensburg, Ind., in favor of bill providing for the erection of an American Indian memorial building in Washington; to the Committee on Public Buildings and Grounds.

Also, petition of citizens of fourth district of Indiana, in favor of bill for the erection of an American Indian memorial building in Washington; to the Committee on Public Buildings and Grounds.

Also, petition of citizens of Lexington, Ind., in favor of a bill providing for the erection of an American Indian memorial building in Washington; to the Committee on Public Buildings and Grounds.

Also, petition of citizens of Vallonia, Ind., against the passage of the Webb-Sheppard-Kenyon bill; to the Committee on the Judiciary.

Also, petition of citizens of Medora, Ind., against parcel post; to the Committee on the Post Office and Post Roads.

Also, petition of Charles L. Coles and 299 other citizens of Columbus, Ind., favoring old-age pension bill; to the Committee on Pensions.

By Mr. DODDS: Petition of citizens of North Star, Mich., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of citizens of Howard City, Mich., protesting against parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr. DRAPER: Petition of West Sand Lake Grange, No. 949, of West Sand Lake, N. Y., against the sale of colored oleomargarine; to the Committee on Agriculture.

By Mr. DYER: Petition of Camp No. 1, Department of the District of Columbia, United Spanish War Veterans, in favor of passage of House bills 18229 and 18230; to the Committee on Public Buildings and Grounds.

Also, petition of the Merchants' Exchange of St. Louis, Mo., for reduced rates of first-class mail matter; to the Committee on the Post Office and Post Roads.

Also, petition of Garrison No. 113, Army and Navy Union, urging passage of House bill 17040; to the Committee on Pensions.

By Mr. ESCH: Memorial of Philadelphia Chamber of Commerce, March 16, 1912, favoring legislation framed for the purpose of preventing transcontinental railroads from operating steamship companies through the canal; to the Committee on Interstate and Foreign Commerce.

Also, petition of R. J. Wright and 13 other signers of Lindsay and Granton, Wis., favoring House bill 14, Sulzer parcel-post bill; to the Committee on the Post Office and Post Roads.

Also, memorial of the board of directors of the Sioux City Commercial Club, protesting against the adoption of House bill 16844; to the Committee on Interstate and Foreign Commerce.

Also, memorial of Lake Seamen's Union, Milwaukee branch, favoring House bill 11372, by Mr. WILSON of Pennsylvania; to the Committee on the Merchant Marine and Fisheries.

By Mr. FOCHT: Petition of the Woman's Christian Temperance Union of Mount Union, Pa., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of Grange No. 772, Patrons of Husbandry, in favor of House bill 19133, for establishment of a rural parcel post; to the Committee on the Post Office and Post Roads.

By Mr. FOSS: Petitions of residents of Chicago, Ill., for passage of House bill 20595, amending the copyright act of 1909; to the Committee on Patents.

Also, petition of A. W. Meyer, of Barrington, Ill., protesting against parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, memorial of Local No. 1, Tug Firemen and Linemen's Protective Association, for passage of the Wilson eight-hour bill (H. R. 18787); to the Committee on Labor.

Also, petitions of the St. Louis Live Stock Exchange and Illinois State Dairymen's Association, in regard to legislation relating to oleomargarine; to the Committee on Agriculture.

Also, petition of the Chicago (Ill.) Association of Commerce, for passage of the Federal pay bill for the National Guard; to the Committee on Military Affairs.

Also, petition of Du Quoin (Ill.) Retail Merchants' Association, for 1-cent letter postage; to the Committee on the Post Office and Post Roads.

Also, petition of Camp No. 54, Department of Illinois, United Spanish War Veterans, for enactment of House bill 17470; to the Committee on Pensions.

Also, memorial of Local Union No. 194, Brotherhood of Painters, Decorators, and Paperhangers of America, for a constitutional amendment granting to women the same political rights as are now enjoyed by men; to the Committee on the Judiciary.

Also, memorial of Local Union No. 147, Brotherhood of Painters, Decorators, and Paperhangers of America, regarding the attitude of a certain business firm toward organized labor; to the Committee on Labor.

By Mr. FRANCIS: Petitions of citizens of Belmont County, Ohio, for the passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of citizens of Fairpoint, Ohio, protesting against increasing the rates of postage of second-class mail matter; to the Committee on the Post Office and Post Roads.

Also, petition of citizens of Fairpoint, Ohio, for legislation establishing an immigration test for immigrants; to the Committee on Immigration and Naturalization.

By Mr. FULLER: Petition of Chestnut Tree Bark Conference, of Pennsylvania, for an appropriation for use of the Department of Agriculture in chestnut bark disease work; to the Committee on Agriculture.

Also, petition of Haddorff Piano Co., of Rockford, Ill., against the passage of the Underwood bill (H. R. 182), relating to proposed duty on varnish gums and china nut oil; to the Committee on Ways and Means.

Also, petition of Illinois State Dairymen's Association, favoring the retention of the color feature in the oleomargarine law, etc.; to the Committee on Agriculture.

Also, petition of Harry Carroll, August Bossen, and Charles Vance, of Streator, Ill., favoring the passage of the Townsend bill (H. R. 20595), to amend section 25 of the copyright act of 1909, etc.; to the Committee on Patents.

Also, petition of the National Business League of Chicago, Ill., favoring the passage of the Nelson-Foss bill, relating to the Consular Service; to the Committee on Foreign Affairs.

Also, petition of S. E. Hall, of Cherry Valley, Ill., favoring the establishment of a parcel-post service; to the Committee on the Post Office and Post Roads.

Also, petition of George Soedler & Son, of Peru, Ill., against the extension of the parcel-post service, etc.; to the Committee on the Post Office and Post Roads.

Also, petition of T. A. Pottinger and other citizens of Cherry, Ill., favoring the establishment of a parcel post, etc.; to the Committee on the Post Office and Post Roads.

Also, petition of D. C. Murray, of Streator, Ill., against the establishment of a parcel-post service until investigation made by an impartial commission, etc.; to the Committee on the Post Office and Post Roads.

Also, petition of C. R. Arnold, of Marseilles, Ill., favoring the passage of the McKinley bill, relating to rural mail carriers; to the Committee on the Post Office and Post Roads.

By Mr. GOLDFOGLE: Memorial of Chestnut-Tree Bark Disease Conference, held at Harrisburg, Pa., February 21, 1912, relating to chestnut-tree bark disease; to the Committee on Agriculture.

Also, memorial of Philadelphia Chamber of Commerce, favoring legislation to prevent transcontinental railroads from operating steamship companies through the Panama Canal; to the Committee on Interstate and Foreign Commerce.

Also, memorial of Naval Camp, No. 49, United Spanish War Veterans, favoring pension bill H. R. 17470; to the Committee on Pensions.

By Mr. GUERNSEY: Petitions of citizens of Mattawamkeag; Robbinston Grange, Robbinston, Me.; and the Woman's Christian Temperance Union, Dumysville, Me., favoring the passage of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. HAMMOND: Petitions of citizens of Martin and Murray Counties, Minn., for parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr. HARTMAN: Petitions of Munster Grange, No. 1117, of Cambria County, Pa., and Bald Eagle Grange, No. 1390, in favor of parcel-post bill (H. R. 19133); to the Committee on the Post Office and Post Roads.

Also, petition of the German-American Alliance of Pottsville, Pa., against the Kenyon-Sheppard bill; to the Committee on the Judiciary.

Also, memorial of Bald Eagle Grange, No. 1390, relating to classification and taxation of oleomargarine; to the Committee on Agriculture.

By Mr. HAWLEY: Petitions of the Woman's Christian Temperance unions, churches, and church organizations in the State of Oregon, for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. HENRY of Connecticut: Petition of voters of the town of Southington, Conn., protesting against the repeal of the canteen law; to the Committee on Military Affairs.

By Mr. HENSLEY: Petition of members of Pueblo Tribe, No. 143, Improved Order of Red Men, of Mine La Matte, Mo., for the erection of American Indian memorial and museum building in city of Washington; to the Committee on Public Buildings and Grounds.

Also, petition of members of Ettawah Tribe, No. 126, Improved Order of Red Men, of De Soto, Mo., for the erection of American Indian memorial and museum in the city of Washington, D. C.; to the Committee on Public Buildings and Grounds.

Also, petition of S. Dubinsky, of Idle Theater, Bonne Terre, Mo., favoring House bill 20595, to amend section 25 of the copyright act of 1909; to the Committee on Patents.

Also, petition of E. J. Chappuis, of Electric Theater, Perryville, Mo., favoring the passage of House bill 20595, to amend section 25 of the copyright act of 1909; to the Committee on Patents.

Also, petition of F. Earl De Weed, of the Academy Theater, Ironton, Mo., favoring the passage of House bill 20595, to amend section 25 of the copyright act of 1909; to the Committee on Patents.

Also, petition of E. S. Hensley, of Listerville, Mo., favoring the passage of House bill 20595, to amend section 25 of the copyright act of 1909; to the Committee on Patents.

By Mr. HIGGINS: Petition of George Clifford Brown, of New York City, asking that certain charges preferred against the United States district attorney of Kansas City, Mo., be investigated; to the Committee on the Judiciary.

Also, petitions of operators of moving-picture machines in the third congressional district of Connecticut, in favor of House bill 20595; to the Committee on Patents.

By Mr. HUGHES of New Jersey: Memorial of the New Jersey Society, of Newark, N. J., favoring Senate bill 271 and House bill 19641; to the Committee on Military Affairs.

By Mr. LINDSAY: Petition of Arthur G. White, of Novelty Theater, Brooklyn, N. Y., favoring amendment of the copyright act of 1909; to the Committee on Patents.

By Mr. LLOYD: Petitions of Cherokee, Creek, Choctaw, and Chickasaw Indians, protesting against present treatment and requesting immediate relief; to the Committee on Indian Affairs.

By Mr. McCOY: Petitions of Woman's Christian Temperance Unions, churches, church organizations, and individuals throughout the country, urging passage of pending interstate liquor legislation; to the Committee on the Judiciary.

Also, petitions of German-American Alliances throughout the country, protesting against the enactment of prohibition or interstate liquor legislation; to the Committee on the Judiciary.

By Mr. McKINLEY: Petition of citizens of the nineteenth congressional district of Illinois, favoring the passage of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. McMORRAN: Petition of certain citizens of Harbor Beach, Mich., protesting against the passage of House bills 21, 15131, 18493, and 20281; to the Committee on Agriculture.

Also, petitions of voters of Richmond, Columbus, and Macomb, St. Clair County, Mich., favoring the passage of the Kenyon-Sheppard bill to withdraw from interstate commerce protection liquors imported into "dry" territory for illegal use; to the Committee on the Judiciary.

By Mr. MANN: Petition of Chicago (Ill.) Veterinary Society, favoring House bill 16843; to the Committee on Military Affairs.

Also, petition of the board of directors of the St. Louis Live Stock Exchange, favoring passage of House bill 20281, amending the oleomargarine law; to the Committee on Agriculture.

Also, petition of Illinois State Dairyman's Association, in reference to oleomargarine; to the Committee on Agriculture.

By Mr. MONDELL: Petition of citizens of Farson, Wyo., urging amendments to the postal laws in the aid of settlement; to the Committee on the Post Office and Post Roads.

By Mr. MOON of Tennessee: Papers to accompany House bill 21517; to the Committee on Pensions.

By Mr. NELSON: Petitions of sundry citizens of the State of Wisconsin, protesting against the Lever agricultural bill; to the Committee on Agriculture.

By Mr. NYE: Petition of citizens of Minneapolis, Minn., favoring the construction of one battleship in a Government navy yard; to the Committee on Naval Affairs.

By Mr. RAKER: Petition of citizens of California, protesting against parcel post; to the Committee on the Post Office and Post Roads.

Also, memorial of Roosevelt Camp, No. 9, United Spanish War Veterans, favoring House bill 17470; to the Committee on Pensions.

Also, memorial of Yreka Improvement Club, favoring improvement of Yosemite National Park; to the Committee on Appropriations.

Also, papers to accompany House bill 16450; to the Committee on the Judiciary.

Also, memorial of Union Civic Center, of Hayward, Cal., favoring the enforcement of the white-slave traffic act; to the Committee on Appropriations.

By Mr. SIMMONS: Petition of Gibbs Post, Grand Army of the Republic, of Warsaw, N. Y., against restoration of the Army canteen; to the Committee on Military Affairs.

Also, memorial of New York State Legislature, for improvement of the inlet of Lake Champlain; to the Committee on Rivers and Harbors.

By Mr. SMITH of New York: Petition of Business Men's Bible Class of the First Congregational Church of Buffalo, N. Y., favoring the Kenyon-Sheppard bill; to the Committee on the Judiciary.

Also, memorial of Chamber of Commerce and Manufacturers' Club, of Buffalo, N. Y., urging amendment of the corporation tax law; to the Committee on Ways and Means.

By Mr. STERLING: Petition of citizens of Bloomington, Ill., for parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr. TILSON: Petition of Harwinton Grange, No. 45, Torrington, Conn., favoring a parcel post; to the Committee on the Post Office and Post Roads.

Also, petition of Harwinton Grange, No. 45, of Torrington, Conn., against sale of oleomargarine colored so as to imitate butter; to the Committee on Agriculture.

By Mr. WHITACRE: Petitions of residents of the State of Ohio, for enactment of House bill 20595, amending the copyright act of 1909; to the Committee on Patents.

Also, petitions of citizens of the eighteenth congressional district of Ohio, for enactment of House bill 20281, repealing the present oleomargarine law; to the Committee on Agriculture.

Also, petition of United Labor Congress of Mahoning County, Ohio, for repeal of the tax on oleomargarine; to the Committee on Agriculture.

Also, petition of Youngstown (Ohio) Printing Pressmen and Assistants' Union, No. 205, for increase of compensation to pressmen and assistants in the Government Printing Office; to the Committee on Printing.

Also, petition of a group of the Polish National Alliance, protesting against further restrictions on immigration; to the Committee on Immigration and Naturalization.

By Mr. WILLIS: Petition of William B. Ross and 15 other citizens of Delaware County, Ohio; and John L. Shawver and 30 other citizens of Logan County, Ohio, asking for the extension of the parcel-post service; to the Committee on the Post Office and Post Roads.

By Mr. WOOD of New Jersey: Petitions of Rev. W. W. Case, D. D., of Trenton, N. J., and the Presbyterian Church of Titusville, Mercer County, N. J., for the passage of the Kenyon-Sheppard liquor bill; to the Committee on the Judiciary.

Also, memorial of the New Jersey Chapter of the American Institute of Architects, in reference to the proper placing of the Lincoln memorial; to the Committee on the Library.

Also, petition of Trenton Lodge, No. 398, International Association of Machinists, of Trenton, N. J., urging the passage of the bill providing old-age pensions for deserving men and women over 60 years of age; to the Committee on Pensions.

By Mr. YOUNG of Texas: Petition of J. C. Rhodes and other citizens of Van Zandt County, Tex., in favor of old-age pensions; to the Committee on Pensions.

Also, petitions of J. H. Stigall and sundry citizens of Henderson and Van Zandt Counties, Tex., for parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, memorial of Camp No. 1770, United Confederate Veterans, for relief of those who had cotton and other property taken by Federal authority after the Civil War; to the Committee on War Claims.