

Also, petition of the Star Expansion Bolt Co., of New York, N. Y., protesting against the reduction of the duty on sugar; to the Committee on Ways and Means.

Also, petition of Baer Bros., of New York, N. Y., against the reduction of the duty on bronze powders; to the Committee on Ways and Means.

By Mr. FITZGERALD: Resolutions of the Pennsylvania Millers' State Association, urging that if a tariff be placed on grain an equalizing tariff be placed on the products of grain, etc.; that if products of grain be admitted free, grain be admitted free; to the Committee on Ways and Means.

By Mr. GERRY: Petition of the Rhode Island Association Opposed to Woman Suffrage, protesting against enfranchisement of women; to the Committee on the Judiciary.

Also, petition of sundry employees of the Warwick and Phenix Lace Mills, of Riverpoint, R. I., against the reduction of the tariff on laces and lace curtains; to the Committee on Ways and Means.

Also, petition of the Rhode Island State Federation of Women's Clubs, protesting against the placing of forest reservations in the control of individual States; to the Committee on the Public Lands.

Also, petition of the Rhode Island State Federation of Women's Clubs, favoring the passage of legislation prohibiting importation of wild-bird plumage; to the Committee on Ways and Means.

By Mr. GOULDEN: Petitions of 35 citizens of the twenty-third New York district, against including mutual life insurance companies in the income-tax bill; to the Committee on Ways and Means.

Also, petition of 1,000 public-school teachers and students of the city of New York, favoring the passage of section 438 of the tariff bill; to the Committee on Ways and Means.

By Mr. GRIEST: Petition of the Pennsylvania Millers' Association, urging the establishment of a just parity in the tariff between the raw material and the manufactured products of grain; to the Committee on Ways and Means.

By Mr. MAGUIRE of Nebraska: Petition of the Commercial Club of Gering, Nebr., protesting against the proposed reduction of the tariff on sugar; to the Committee on Ways and Means.

By Mr. METZ: Petition of sundry employees of the Moehle Lithographic Co., Brooklyn, N. Y., protesting against the reduction of the tariff on lithographed articles; to the Committee on Ways and Means.

By Mr. NORTON: Petition of Daniel Freeman, Alice B. Sargent, and others, favoring the passage of legislation prohibiting the importation of the plumage of wild birds for the use of milliners; to the Committee on Ways and Means.

By Mr. REILLY of Connecticut: Petition of Cigarmakers' Union, No. 42, of Hartford, Conn., against free trade in tobacco and cigars with the Philippine Islands; to the Committee on Ways and Means.

Also, petition of the Woman's Club of Ansonia, Derby, and Shelton, Conn., favoring the clause in the tariff act prohibiting importation of birds for plumage, etc.; to the Committee on Ways and Means.

Also, petition of the Board of Trade of Hartford, Conn., against the location of the headquarters of the customs service at Bridgeport; to the Committee on Ways and Means.

By Mr. SCULLY: Petition of W. Strother Jones, favoring an amendment to the income-tax section of the tariff bill exempting mutual life insurance companies from taxation; to the Committee on Ways and Means.

Also, petition of the National Association of Window Glass Manufacturers, of Pittsburgh, Pa., against the reduction of the duty on window glass; to the Committee on Ways and Means.

Also, petition of the Pencil Exchange, Jersey City, N. J., favoring tariff reduction in Schedule N, paragraph 473, leads not in wood; to the Committee on Ways and Means.

Also, memorial of sundry citizens of California, favoring an appropriation for the construction of a Millennial Dawn Temple in California in 1915; to the Committee on Appropriations.

Also, petition of the Bronze Powder Works Co., of Elizabeth, N. J., and George Benda, of New York, against the reduction of the duty on bronze powder; to the Committee on Ways and Means.

By Mr. STEPHENS of California: Petition of Paul Rieger & Co., of San Francisco, Cal., against the reduction of the duty on perfume materials; to the Committee on Ways and Means.

Also, petition of Field & Cramer, of San Francisco, Cal., against making proceeds of life insurance policies paid upon death of person insured income and liable to tax; to the Committee on Ways and Means.

Also, petition of M. A. Newmark & Co., of Los Angeles, Cal., against the tariff on oats and letting in the manufactured article free; to the Committee on Ways and Means.

Also, petition of the San Francisco Labor Council, of San Francisco, against the proposed reduction of salaries of custom-house employees of the port of San Francisco, Cal.; to the Committee on Ways and Means.

By Mr. WALLIN: Petition of sundry residents of the thirteenth congressional district of New York, protesting against the proposed income tax on mutual life insurance companies; to the Committee on Ways and Means.

## SENATE.

THURSDAY, April 24, 1913.

The Senate met at 2 o'clock p. m.

Prayer by the Chaplain, Rev. Forrest J. Prettyman, D. D.

The Journal of the proceedings of Monday last was read and approved.

### DISPOSITION OF USELESS PAPERS.

The VICE PRESIDENT. The Chair lays before the Senate a communication from the Secretary of the Interior, transmitting, pursuant to law, a schedule of papers, documents, and so forth, on the files of the Interior Department, which are not needed in the transaction of public business and have no permanent value or historical interest. The communication and accompanying papers will be referred to the Joint Committee on the Disposition of Useless Papers in the Executive Departments. The Chair appoints as the committee on the part of the Senate the Senator from Vermont [Mr. PAGE] and the Senator from Oregon [Mr. LANE]. The Secretary will notify the House of Representatives of the appointment of the committee on the part of the Senate.

### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed the following bills and joint resolution, in which it requested the concurrence of the Senate.

H. R. 1917. An act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1914;

H. R. 2441. An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1914, and for other purposes;

H. R. 2973. An act making appropriations for certain expenses incident to the first session of the Sixty-third Congress, and for other purposes; and

H. J. Res. 62. Joint resolution making an appropriation for defraying the expenses of the committees of the Senate and House of Representatives authorized to attend and represent the Senate and House at the unveiling and dedication of the memorial to Thomas Jefferson at St. Louis, Mo.

### HOUSE BILLS REFERRED.

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

H. R. 2441. An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1914, and for other purposes; and

H. R. 2973. An act making appropriations for certain expenses incident to the first session of the Sixty-third Congress, and for other purposes.

H. R. 1917. An act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1914, was read twice by its title and referred to the Committee on Indian Affairs.

### THE JEFFERSON MEMORIAL COMMITTEE.

The joint resolution (H. J. Res. 62) making an appropriation for defraying the expenses of the committees of the Senate and House of Representatives authorized to attend and represent the Senate and House at the unveiling and dedication of the memorial to Thomas Jefferson at St. Louis, Mo., was read the first time by its title.

Mr. STONE. Mr. President, I rise to make a request for unanimous consent to take up at this point this joint resolution, appropriating \$2,500, \$1,000 to be expended on behalf of the Senate and \$1,500 on behalf of the House, to pay the expenses of the committees appointed by the Senate and House to attend and participate in the ceremonies incident to the dedica-

tion of the splendid memorial structure erected in St. Louis to the memory of Thomas Jefferson.

The ceremonies are to take place on the 30th of this month, and if the House joint resolution making the appropriation is to be acted upon and the sum to become available it should be acted upon by the Senate to-day.

I hope there will be no objection to the consideration of the joint resolution. I make that request, Mr. President.

The VICE PRESIDENT. The Senator from Missouri asks unanimous consent for the present consideration of the joint resolution, which will be read at length.

The joint resolution was read the second time at length, as follows:

*Resolved, etc.*, That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the following sum:

For defraying the expenses of the members of the committees of the Senate and House of Representatives authorized to attend and represent the Senate and House at the unveiling and dedication of the memorial to Thomas Jefferson at St. Louis, Mo., on April 30, 1913, \$2,500, or so much thereof as may be necessary, of which sum \$1,000 shall be accreted to the Senate, to be expended under the direction and by the order of the Sergeant at Arms of the Senate, and \$1,500 accreted to the account of and expended under the direction and by the order of the Sergeant at Arms of the House of Representatives, upon vouchers to be approved by the Committee to Audit and Control the Contingent Expenses of the Senate, and by the Committee on Accounts of the House, respectively.

Mr. SMOOT. Mr. President, I am not going to object to the immediate consideration of the joint resolution. I merely wish to state that I would not care to have it understood that this is to be pointed to as a precedent, and that bills and resolutions coming from the House will be acted upon without reference to the appropriate committees.

Mr. STONE. I think they ought not to be.

Mr. SMOOT. That is all I desire to say.

Mr. STONE. The exigency in this case is peculiar.

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

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

Mr. GALLINGER subsequently said: Some time ago I was appointed a member of the committee to attend the Jefferson memorial exercises at St. Louis on the 30th of this month. I find it will be utterly impossible for me to leave at that time, I therefore ask to be excused from service on the committee, and that the Senator from Vermont [Mr. PAGE] be substituted as a member of the committee.

The VICE PRESIDENT. The Senate has heard the request. Without objection, it will be so ordered.

Mr. BACON. Mr. President, I should like to say just a word on the same matter in regard to which the Senator from New Hampshire has addressed the Senate. I am in the same position as that stated by the Senator from New Hampshire for himself. I was appointed, and I find it impossible to go. I can not leave the business which I have here; and I desire to resign the appointment, and to have some one else appointed in my place. I am not prepared to say whom it will be, but I will bring the matter to the attention of the Chair a little later.

Mr. NELSON. Mr. President, I was one of the Senators designated to go to St. Louis. I find that I can not very well serve upon the committee. I therefore ask to be excused, and that the President of the Senate appoint some other Senator in my place.

The VICE PRESIDENT. The Chair appoints the Senator from Washington [Mr. JONES] to serve as a member of the Jefferson memorial committee in place of the Senator from Georgia [Mr. BACON], who was relieved at his own request.

The Chair also appoints the Senator from Iowa [Mr. KENYON] to serve on the Jefferson memorial committee in place of the Senator from Minnesota [Mr. NELSON], who has been excused from service on that committee.

Mr. STONE, at his own request, was excused from further service on the Jefferson memorial committee, and Mr. HUGHES was appointed in his place.

Mr. Root, at his own request, was excused from further service on the Jefferson memorial committee, and Mr. ASHURST was appointed in his place.

Subsequently Mr. ASHURST, on his own request, was excused from service on the Jefferson memorial committee.

#### PETITIONS AND MEMORIALS.

Mr. NEWLANDS presented a memorial of the Elko County Cattle Association, of Nevada, remonstrating against placing meat and wool on the free list, which was referred to the Committee on Finance.

Mr. WORKS. I present the memorial of James Leonard, of Monrovia, Cal., relative to the duty on citrus fruits. I ask that the memorial be printed in the Record and referred to the Committee on Finance.

There being no objection, the memorial was referred to the Committee on Finance and ordered to be printed in the Record, as follows:

MONROVIA, CAL.

As a general proposition, it will be conceded that the final and highest development of agriculture means the utilization of land for the crops which it is best adapted to produce. A beneficent autocratic power possessed of a comprehensive knowledge of world agricultural resources and a like inclusive grasp of industrial and transportation factors could so direct operations as to maintain an average of prices, equitable to consumers and agrarians, and could minimize reduplication of labor and eliminate wasteful periodic overproduction on the one hand and periodic scarcity on the other. Such a culmination of the growing recognition of social unity lies very far in the future, but a step in that direction was taken when David Lubin, a former Californian, founded the bureau of world crop reports under the auspices of the Italian Government.

With modifications incident to climate, territorial extent, and culture status, the same general proposition that land areas should be devoted to purposes for which they are especially qualified by inherent characteristics holds good with national divisions.

An import duty acting to create monopoly or entailing excessive cost of farm commodities to consumers would be a rank injustice and an inciting cause to social disturbance, the more so since its action would be insidious and the ultimate effect difficult to trace back to the motive cause.

An import duty functioned merely to establish a domestic agricultural industry is simply a temporary offset against the handicap of a similar foreign industry, fully matured, and as concerns any country of the Old World compared with the United States, operating under the different social conditions of denser populations. The basic justification of such an impost would be the probable resultant establishment of a domestic industry warranted by natural attributes and by home-market demands and which would hold rational promise of permanent adequate development.

If justified by fact as well as by theory, the more obvious effects of such an impost would be:

1. To preserve equilibrium of production by differentiating land areas according to capabilities and thus tend to equalize through long periods average returns for all farm produce.

2. To furnish consumers the particular product affected at a cost at least as low as that of the foreign article and to fully and equitably supply the domestic markets.

Judging the citrus tariff by the above conditions, we find, first, that it is not prohibitive. It hardly compensates for the difference in labor cost of production between domestic and imported fruit. Mediterranean growers still possess the immense advantage of a fully developed industry, cheaper freight rates of steamer shipments, and the practical subsidization of the industry resulting from the Italian Government's support of the manufacture of citrate of lime. The tariffs, therefore, do not debar Mediterranean growers from competing in United States markets on favorable terms, so far as concerns the ultimate cost of placing the orchard product before the consumer. This being a demonstrated fact, the question arises, How have the tariffs conduced to foster domestic citrus culture?

The answer, in general terms, is that they effect all that the American growers ask, namely, such a balancing of productive costs as will enable them through their superior talents for organization and better fruit to meet foreign competitors on fairly even terms in the home markets. Specifically the tariffs have minimized the importation of inferior fruit. Grades that would have been shipped on speculation to an open market, and which could have been put on the eastern seaboard at a figure less than the bare cost of production of domestic fruit, did not warrant risk in a protected market. In a word, the tariffs removed the American markets from the list of dumping grounds for the periodic surpluses of the Mediterranean crop. A market stability followed which encouraged American growers to extend their planting. Prices no longer fluctuated between absurd extremes, because the imposts acted in restraint of import gambling.

Taking up the specialization of land as the second justification for the citrus tariffs, we find that in California alone there are approximately 100,000 acres bearing groves owned by 12,000 orchardists. In years of normal weather conditions the yield will approach 40,000 carloads and is estimated to reach 75,000 carloads in the next decade. The annual freight revenues resulting to the benefit of thousands of stockholders and several hundred thousand railroad employees and dependants approximate \$20,000,000. Land in citrus culture is permanently removed from competition with every other agricultural industry in this country. Without the tariffs most of this land would have been devoted to products competing with those of the Southern, Middle Western, and Eastern States. Because of the imposts which encourage citrus planting the farmer of the Middle West has received more for his grain than he otherwise would, the southern farmer more for his staples and the eastern farmer more for his. In addition, railroads and their multifarious interests have benefited by the best paying freight traffic of anything like equal volume in the world. Interstate commerce as a whole has benefited because the citrus freight revenues became of such magnitude as to promote the reduction of other freight rates. Here again the mid-western and southern producer has benefited.

Taking up the low cost to consumer as the third justification for the citrus tariffs, we find:

1. The average retail price has been as low, if not lower, than before the present tariff enactment. To properly estimate the significance of this fact it must be remembered that the retail prices of all commodities, taken as a whole, have increased in the United States during this period about 60 per cent and throughout the world about 30 per cent owing to the decreased purchasing power of gold.

2. With regard to the adequacy of the domestic citrus supply, there has resulted a year round equitable distribution to all sections never paralleled under the régime of the importers. As fruit is an essential part of a rational dietary and conducive to the general health, the importance of this perennial and even distribution merits consideration. Recapitulating citrus tariff effects:

1. Specialization of land, removing great areas from competition with other sections.

2. Relatively cheaper fruit to consumers by about 30 per cent, and this in spite of the fact that the orchardists' labor and material expense has increased about 35 per cent.

3. A pronounced and far-reaching effect on freight rates, which has directly benefited stock, wheat, cotton, and general-produce shippers. Under the Interstate Commerce Commission railroad rates are made to bear a close relation to total traffic volume and total revenues. A reduction of citrus tariffs which would act to permanently check the ex-

pansion of an industry so productive of freight revenues as the citrus industry, must logically act to increase rates on other commodities to make up the difference.

While citrus tariffs have acted to benefit all agricultural interests and the public in general, they have not fostered monopoly. The area in the Southwest suitable for citrus culture is too vast to permit monopoly. In addition to the existent acreage of young and bearing groves, there are approximately 200,000 in California alone which are suitable for citrus culture. With conditions favoring market stability—and that implies an adequate tariff—domestic production for generations to come will be in excess of demand, with a constant tendency toward lower retail prices.

Returns: Considering the investment and constant risk, orchard returns will not average more than those of other lines of agriculture. The initial cost of putting citrus land under irrigation and preparing it for trees makes \$500 per acre a reasonable valuation. In some sections cheaper land is available, but invariably there are offsets, such as distance from transportation lines, lack of handling and packing facilities, etc. A valuation of \$1,000 per acre for a 6-year-old grove is a conservative total of the grower's actual investment and does not include his risk.

Growers' risk: The risk from orchard menaces are constant and arise from many causes, any one of which may effect widespread injury and loss. Sometimes a tree disease affecting bark or roots will sweep through a great territory entailing heavy loss. Again, some parasitic pest may threaten the whole industry with disaster. For instance, three years ago the discovery of a pest in one section of this State caused all the groves and all other feeding trees for the pest to be cut back to the bare trunk, entailing at least a three years' loss of crop. During the past two years the unprecedented cold has caused enormous loss. It is doubtful if citrus growers as a body have received enough during these two years to meet cultural expenses. This Duarte-Monrovia district, though small, is considered one of the very best, and has been regarded as practically immune from frosts. In the past two seasons the frost damage in this small foothill district will fall but little short of \$1,000,000. Scores of growers have received no income at all from their orchards, and most other sections were much more severely injured than this. It is improbable that such extreme cold will occur again in many years. Still there is the chance that it will, and to cope with the possible emergency orchardists are installing heating apparatus at a cost of from \$100 to \$200 per acre.

Panama Canal: The advantage of the Panama Canal is frequently urged as compensation for a reduced tariff. That has yet to be demonstrated. It is now estimated that about 25 per cent of the California citrus crop will be shipped through the canal. Inland waterways do not complement the canal and are, in fact, in a shameful state of unpreparedness and inefficiency. About the only advantage from the canal discernible at present will be cheaper rates to the eastern seaboard for one-quarter of the California citrus yield and one-half of the crop is marketed west of Chicago.

Market security: Remove the sense of security arising from the tariff offset against cheaper production and cheaper shipment of Mediterranean fruit—which feeling of security induced citrus orchardists to expand the industry—and there will be no such increased production as will eventually restore to transcontinental carriers the freight volume diverted to the Panama Canal.

Effect of reduced citrus tariffs on freight rates: Owing to increasing expense of operation and maintenance, not a few railroad lines are hard pressed to meet fixed charges and provide for necessary betterments. The decreasing value of gold has a cumulative force with railroads. On the one hand shippers are fighting through the Interstate Commerce Commission for lower rates, and on the other labor unions demand and receive higher wages. Largely for a like reason supply companies demand and get higher prices for materials. If so large a revenue is permanently diverted from transcontinental carriers as the Panama Canal seems likely to accomplish eventually, and an inadequate citrus tariff tends to discourage such an extension of the citrus industry as looks toward a restoration of the freight volume through increased midland shipments, there must inevitably result a rise in short-haul freight rates over a vast inland section which can least afford it. The same argument is applicable to the tariffs on other Pacific coast fruits.

Disturbance of agricultural equilibrium: In earlier stages of national development it was impossible, even had there been a desire, to view agricultural resources as an entity. The result has been that whenever a new section was settled older sections have stagnated, often retrograded, until the compensation of a denser local population restored equilibrium by augmenting the home markets. The abandoned farms of New England attest this. The Middle Atlantic States are dotted with abandoned grain mills, which were driven out of business when the great western wheat lands were opened and eastern farmers could buy flour cheaper than they could produce it. Eastern stock farming became moribund when the droves of the western range found access to markets. In many sections hop farming languished and then died when the hop fields of the Pacific coast were developed. It has required decades—if it is even yet accomplished—to restore the agricultural balance. While the disturbance of conditions cited above were the unforeseen and probably unforeseeable results of bringing new areas into competition with sections originally developed from an insulated viewpoint and low horizons, practically the same effect would be produced by diverting the energies of an old settled territory into new channels. Since mortals are not prescient, these industrial readjustments are bound to occur; but it would seem that we were too intelligent a people to invite them needlessly and profitlessly. California is adapted by soil and climate to the production of fruit on an enormous scale, but the same soil and climate will produce an almost infinite variety of other crops. Horticulture requires a very heavy initial investment and the financial ability to wait years before reaping any returns. Furthermore, the California orchardist knows that in any event he must battle for his markets with the peasant fruit grower of the Mediterranean, the age of whose groves is reckoned by generations, and who has back of him his Government, the steamship companies, and the aggressive organization of importers, who, with few exceptions, are his countrymen. Take from the Californian the insurance of tariffs, which, while steadying the markets, are yet not prohibitive, and he will turn to products requiring smaller investments, involving less risk, and yielding quicker returns. Whatever else it may accomplish, it now appears almost certain that the Isthmian Canal will open the way for through steamship immigration to the Pacific coast States. The resultant greater working population will render possible the profitable cultivation of many crops now debarded by scarcity of labor. By the very nature of envolving conditions the intending orchardist will, perforce, turn to southern staples, with the large probability of repeating some oft-repeated history. In this connection it is well to remember that the tariff reductions proposed

affect the character of the future development of an enormous area in addition to the citrus lands.

Lemons: In the matter of lemon culture it is difficult to put into definite, coherent form the many causes which have militated against its proportionate development. A general and fairly adequate statement is that "orchardists have been learning their business for 20 years and only recently have mastered it." It has been necessary to compass through experience the whole industry from start to finish. Orchardists did not have the benefit of generations of familiarity with their undertaking. Naturally they underestimated its difficulties and were long in grasping its problems.

In tabulating my personal experience during 15 years I find:

1. A large proportion of the lemons first planted were of inferior varieties, many seedlings, etc. The fruit was rough, coarse, cured unevenly, and was of poor keeping quality. When this fact was apprehended, orchardists at once began to cut back their trees and bud them to approved varieties. Years were necessary to do this. Not all growers rebudded at the same time. It followed that grades were uneven. Splendid fruit might, in fact did, preponderate in later shipments, but during a long period there was a percentage of inferior fruit marketed.

2. In the beginning it was the usual practice for an orchardist to plant, say, four-fifths of his acreage to oranges and the balance to lemons. It proved a very unfortunate start. Oranges ripened and were shipped in bulk and returns received almost en bloc. Lemons ripened when the orchardist was busy irrigating or cultivating his major crop, and lemon picking was often irregular and hasty. Lemons required more care than oranges and returns dribbled in through a long season. The combination grower frequently came to look upon his lemons as the unremunerative source of trouble. He did not know how to prune and did not appreciate its value. He was a long time learning. He began in the belief that there was little difference between lemon and orange cultivation and was slow to see that his methods were at fault. Under the pressure of orange work, the smaller lemon orchard was slighted. Picking was done at odd times and too little attention paid to "sizing." The American grower was very careless in his handling methods and only after many costly lessons learned that a bruised lemon is a spoiled lemon. Also, that approved varieties picked at standard sizes will cure evenly to standard shipping sizes. When markets were poor he was prone to let his crop hang on the trees; when the markets improved he picked the trees bare and packed a most ridiculous assortment of sizes. Also, tree-cured lemons are inferior in acid content and in keeping quality.

3. In the methods of curing his product the American grower was as innocent of knowledge as in his cultural and field-handling methods. Old-style curing houses, built at great expense, were made dark and with little or no ventilation. He has learned differently, but he has paid the price.

4. In addition to faulty cultural, handling, and curing methods there was a further difficulty in shipping. In nine out of every ten citrus districts lemon culture was subordinate to orange culture. There were relatively few lemon groves of any considerable area. Very frequently it resulted that when lemon shipments were made there were not enough for, say, two cars, but more than enough for one. One carload would be shipped, and the balance held until another carload could be made up. Often a considerable time elapsed before sufficient fruit was received at the packing house to permit this, in which case the lemons that were prime when the first shipment was made had retrograded when the second carload was sent out. Or, as was often the case, the short load of good lemons was eked out with insufficiently cured fruit. In earlier years orange shipping, except Valencias, was finished when the lemon season was at its height, but it sometimes happened that the short car of lemons was picked out with oranges and sent to an orange market.

Unless one has been familiar with the above-described factors, acting all through the lemon sections, it is almost impossible to measure their total effect, which was to discourage planting. The major handicap was complete ignorance of proper cultural, handling, and curing methods. In smaller districts, where the old practice of planting a portion of the orchard to lemons still obtains, it has been found expedient to so differentiate cooperative packing-house handling that one scientifically equipped house handles the output of several adjacent districts. This has been found best even where the hauling distance is considerable. Thus the La Manda Park house handles all the lemons—excepting two large groves, which ship independently—between Pasadena and Azusa. At San Dimas another modernly equipped house serves a like territory. Thus there are no longer the tag ends of shipments to hold over for the next car.

Besides the handicap of apprenticeship lemon growers have had from the first to contend with the hostility of the well-organized importers. When the McKinley bill was under consideration the country was flooded with pamphlets asserting that California lemons were deficient in acid content as compared with Mediterranean fruit. Agricultural Department chemists proved the contrary to be true, but the false claim had its effect. Opposition in many forms originating from the same source has made itself felt through the years. To-day the California lemon grower has mastered his business, and, if properly encouraged to utilize his costly experience, will give his home markets better lemons than the importers, at lower prices and in abundant supply, throughout the year.

JAMES LEONARD.

Mr. WORKS. I present a telegram, in the nature of a joint resolution adopted by the Legislature of California, which I ask may be printed in the RECORD and referred to the Committee on Irrigation and Reclamation of Arid Lands.

There being no objection, the telegram was referred to the Committee on Irrigation and Reclamation of Arid Lands and ordered to be printed in the RECORD, as follows:

SACRAMENTO, CAL., April 23, 1913.

JOHN D. WORKS,

United States Senate, Washington, D. C.

DEAR SIR: Pursuant to the provisions of a senate joint resolution adopted by both houses of the Legislature of the State of California I herewith transmit to you a copy thereof.

Senate joint resolution No. 24, relating to the preservation of the natural conditions of Lake Tahoe and of establishing by judicial decree the conflicting claims to the use of the food waters thereof.

Whereas Lake Tahoe, on account of its great natural beauty, is regarded as a valuable asset of the State of California by the citizens thereof, and many of such citizens have acquired vested interests on the shores of such lake; and

Whereas the State claims title to the major portion of the flood waters of such lake, which waters it hopes and expects in the near future to utilize for the purpose of generating power and of irrigating lands within its border, and for the domestic uses of its citizens; and

Whereas it has become the declared intention of the Reclamation Service of the United States to convert the lake into a reservoir for an irrigation system in the State of Nevada, and to that end to artificially lower the natural rim of the lake and to widen the outlet channel of the same, thereby making it possible to draw from such lake more water than can be supplied by its average natural rise of 2½ feet per annum; and

Whereas the plans of the Reclamation Service, if carried into effect, will infringe upon the vested legal rights of the State of California and its citizens, to their irreparable damage: Now, therefore, be it

*Resolved by the senate and assembly jointly,* That the Legislature of the State of California does hereby protest against any interference on the part of the Federal Government or its agents with the natural conditions of Lake Tahoe; and be it further

*Resolved,* That the President of the United States be, and he is hereby, respectfully requested to cause legal proceedings to be instituted in some court of competent jurisdiction in order to determine the respective rights of all persons claiming title to the flood waters of Lake Tahoe, and particularly to determine the rights of the United States of America, the State of Nevada, the State of California, and the Truckee General Electric Co.; and be it further

*Resolved,* That the attorney general of the State of California be, and he is hereby, respectfully requested to institute and prosecute as speedily as possible any action in the Supreme Court of the United States on behalf of the State of California and against the State of Nevada and such other claimants to the use of the waters of Lake Tahoe as may be properly joined as parties, in order to determine the respective rights of such parties to the use of such waters; and be it further

*Resolved,* That a copy of these resolutions be forwarded to the President of the United States, to the Secretary of the Interior of the United States, to the United States Reclamation Service, and to each member of the United States Senate and House of Representatives.

Respectfully, yours,

W. N. PARRISH,  
Secretary of Senate.

Mr. WORKS. I present a telegram, in the nature of a joint resolution adopted by the Legislature of California, which I ask may be printed in the RECORD and referred to the Committee on Irrigation and Reclamation of Arid Lands.

There being no objection, the telegram was referred to the Committee on Irrigation and Reclamation of Arid Lands and ordered to be printed in the RECORD, as follows:

SACRAMENTO, CAL., April 23, 1913.

HON. JOHN D. WORKS,  
United States Senate, Washington, D. C.

DEAR SIR: Pursuant to the provisions of a senate joint resolution adopted by both houses of the Legislature of the State of California, I herewith transmit to you a copy thereof.

Senate joint resolution 1, relative to the continuation by the United States of surveys for the construction of storage reservoirs for the impounding of flood waters in the Sierra Nevada Mountains in the State of California, and asking that an appropriation be made for forwarding the work as speedily as possible.

Whereas the United States Government has for several years past been securing data, through the Geological Survey and the Reclamation Service, concerning the watershed of the west slope of the Sierra Nevada Mountains and the construction of storage reservoirs for the conservation of flood waters in the winter and spring; and

Whereas the Sacramento and San Joaquin Valleys, of which these watersheds form the eastern rim, constitute a large body of the most fertile land to be found in any country, rivaling the far-famed Valley of the Nile in productivity and capable of supporting a population of several millions when properly reclaimed and settled; and

Whereas in times of heavy snowfall and rainfall the volume of water coming down into the valleys is a continual menace to the rich lands adjacent to the Sacramento and San Joaquin Rivers, thousands of acres of which are flooded in years of heavy rainfall; and

Whereas in the report of the Reclamation Service for the year 1907 the statement is made that if storage reservoirs were constructed at the sites surveyed it would greatly simplify the drainage problems of the Sacramento and San Joaquin Rivers and the lower Sacramento Valley by reducing the flood flow in the rivers; and

Whereas the flood waters so impounded would be of the greatest value to the Sacramento and San Joaquin Valleys and the State of California by being used for irrigation instead of being allowed to flow to the ocean, often doing incalculable damage to the valleys, 800,000 acres of the lowlands of which having been flooded in 1904: Therefore be it

*Resolved by the senate and the assembly jointly,* That the Legislature of the State of California memorializes the Congress of the United States for the continuation of said work of surveying and constructing storage reservoirs in the watersheds of the western slope of said Sierra Nevada Mountains on the tributaries of the Feather, Yuba, and American Rivers and other tributaries of the Sacramento and San Joaquin Rivers, carrying out all measures necessary for such work and making an appropriation of sufficient size to forward it as the more speedily solved; and be it further

*Resolved,* That the Secretary of the Interior be requested to take the necessary measures for hastening the survey and construction of such reservoirs in order to impound such flood waters and enable the problem of improvement and restraint of the Sacramento and San Joaquin Rivers to be more speedily solved; and be it further

*Resolved,* That our Senators in Congress be instructed and our Representatives be requested to use all honorable means to secure the action desired in this matter for the purpose aforesaid; and be it further

*Resolved,* That a copy of these resolutions be forwarded to the President of the United States, the Secretary of the Interior, the Secretary of Agriculture, the respective Houses in Congress, and to each of our Senators and Representatives in Congress, including those to assume office on March 4, 1913.

Respectfully, yours,

W. N. PARRISH,  
Secretary of Senate.

Mr. WORKS. I present a telegram, in the nature of a joint resolution adopted by the Legislature of California, which I ask may be printed in the RECORD and referred to the Committee on Agriculture and Forestry.

There being no objection, the telegram was referred to the Committee on Agriculture and Forestry and ordered to be printed in the RECORD, as follows:

SACRAMENTO, CAL., April 23, 1913.

HON. JOHN D. WORKS,  
United States Senate, Washington, D. C.

DEAR SIR: Pursuant to the provisions of a senate joint resolution adopted by both houses of the Legislature of the State of California, I herewith transmit to you a copy thereof.

Senate joint resolution 12, relative to action by Congress in directing an investigation through the Department of Agriculture of measures for protection of fruit from frost damage.

Whereas the great citrus belt of California has been visited by an unprecedented damaging frost involving a loss of many millions of dollars in the crop alone, as well as great damage to trees; and

Whereas great advancement has been made by both public and private experimentation in the protection of orchards all over the United States from the damaging effect of cold waves by means of heating pots and other methods of raising temperatures, the use of which has given perfect protection in some groves and has been of little benefit in others. The effect of frost damage on many fruits, particularly the citrus, is but little known and it is believed that large sums may be saved in this and other horticultural branches by a more thorough knowledge of the prevention of frost damage and the best means of determining to what extent citrus or other fruits have been rendered unfit for marketing. Large losses have been sustained which might have been prevented were more proper methods known; and

Whereas the interests of the whole country demand a thorough investigation of this question by the Department of Agriculture through the most competent experts obtainable. Such work adequately supported and ably conducted will save many millions of dollars losses to the Nation: Now, therefore, be it

*Resolved,* That this being a Nation-wide problem we appeal to Congress to authorize and empower the Department of Agriculture to at once take up this question and employ the ablest and most competent men to be had for carrying on this work until a thorough knowledge shall be had of this question in its bearing on all branches of horticulture; and be it

*Resolved,* That upon the passage of this resolution the secretary of state be, and he is hereby, directed to forward a copy thereof to the Senators and Representatives of the State of California in Congress, and that a copy of the resolution be also transmitted to the governor of each fruit-growing State in the Union, requesting them to urge legislatures now in session to consider and take action in accordance with this resolution.

Respectfully, yours,

W. N. PARRISH,  
Secretary of Senate.

Mr. WORKS. I present a telegram, in the nature of a joint resolution adopted by the Legislature of California, which I ask may be printed in the RECORD and referred to the Committee on Finance.

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

SACRAMENTO, CAL., April 23, 1913.

HON. JOHN D. WORKS,  
United States Senate, Washington, D. C.

DEAR SIR: Pursuant to the provisions of a senate joint resolution adopted by both houses of the Legislature of the State of California, I herewith transmit to you a copy thereof.

Senate joint resolution 25, relative to memorializing Congress regarding the citrus fruit industry of the State of California, and requesting our Senators and Representatives in Congress to use all honorable means to prevent a reduction in duties on citrus fruits below the point where the difference in the cost of production of the same would be equalized.

Whereas the citrus fruit industry is one of the great and important enterprises of this State, representing an investment of \$200,000,000 and materially contributes to the upbuilding thereof; and

Whereas the rates of duty on citrus fruits should equalize the difference in cost of production between the United States and foreign countries; and

Whereas the present rates of duty bring to the Government a substantial revenue that has increased in recent years; and

Whereas a material reduction of the duties on citrus fruits would hamper and retard the growth and development of the State of California: Now, therefore, be it

*Resolved by the Senate and Assembly of the State of California jointly,* That we respectfully memorialize the Congress of the United States not to reduce the duties on citrus fruits below a point equalizing the difference in the cost of production of the same in the United States and foreign countries, and we earnestly request our Senators and Representatives in Congress to use every honorable means to prevent such reduction; be it further

*Resolved,* That the governor of the State of California be requested to appoint five citizens of California to present this memorial to Congress in behalf of this State; and be it further

*Resolved,* That a copy of this resolution be telegraphed to the President and to each of our Senators and Representatives in the Congress of the United States.

Respectfully, yours,

W. N. PARRISH,  
Secretary of Senate.

Mr. WORKS. I present a telegram, in the nature of a joint resolution adopted by the Legislature of California, which I ask may be printed in the RECORD and referred to the Committee on Public Health and National Quarantine.

There being no objection, the telegram was referred to the Committee on Public Health and National Quarantine and ordered to be printed in the RECORD, as follows:

SACRAMENTO, CAL., April 23, 1913.

HON. JOHN D. WORKS,  
United States Senate, Washington, D. C.

DEAR SIR: Pursuant to the provisions of a senate joint resolution adopted by both houses of the Legislature of the State of California, I herewith transmit to you a copy thereof.

Senate joint resolution 26, relative to making investigations and experiments as to nature and cure of tuberculosis.

Whereas it appears that the loss of life and the suffering occasioned by the ravages of tuberculosis in its various forms in the United States are of such magnitude as to make the discovery of adequate means of eradicating that disease a matter of national concern; and

Whereas the greatest facilities, opportunities, and inducements should be afforded capable investigators with a view to discovering some practicable means for its control and cure: Therefore be it

*Resolved by the Senate of California and the Assembly jointly,* That we respectfully urge on the Congress of the United States the immediate enactment of such laws and an appropriation from the Treasury of the United States of such sums as may seem advisable to Congress to afford to properly trained experts adequate means and opportunities to make the most exhaustive investigations and experiments as to the nature and cure of tuberculosis and as to alleged cures thereof, and that we further urge upon the Congress of the United States an appropriation of an adequate sum to be given as a reward to the discoverer or discoverers of effective means of curing tuberculosis on satisfactory proof of the effectiveness of such discovery and on a full and complete revelation of the effective means thus employed, so that the fullest publicity may be given thereto for the general benefit of the medical profession; be it further

*Resolved,* That each Senator and each Representative in Congress from the State of California be, and he is hereby, requested to use all honorable means to secure the enactment of such legislation; and be it further

*Resolved,* That a copy of this resolution be forthwith transmitted by the chief clerk of the senate to the President of the Senate of the United States and to the Speaker of the House of Representatives of the United States and a copy hereof to each Member of Congress from the State of California.

Respectfully, yours,

W. N. PARRISH,  
Secretary of Senate.

Mr. WORKS presented a petition of sundry inmates of the Soldiers' Home at Santa Monica, Cal., praying for the enactment of legislation transferring the Pacific Branch of the Soldiers' Home to the War Department, which was referred to the Committee on Military Affairs.

He also presented a memorial of the Chamber of Commerce of Los Angeles, Cal., remonstrating against the submission to arbitration of the question of exempting American coastwise shipping passing through the Panama Canal from the payment of tolls, which was referred to the Committee on Inter-oceanic Canals.

Mr. JOHNSON of Maine. I have received memorials from Henry S. Burrage, late chaplain Western Branch, National Home for Disabled Volunteer Soldiers, of Cambridge, Mass.; from Joseph S. Smith, manager, National Soldiers' Home of Bangor, Me.; from Maj. William Warner, manager, National Home for Disabled Volunteer Soldiers, of Washington, D. C.; from the Board of Managers of the National Soldiers' Home; and from Col. Edwin P. Hammond, manager, National Home for Disabled Volunteer Soldiers, of La Fayette, Ind., remonstrating against reducing the number of the Board of Managers of the National Home for Disabled Volunteer Soldiers to five. I move that the memorials be referred to the Committee on Appropriations.

The motion was agreed to.

Mr. SMITH of Arizona. I present a joint memorial of the Legislature of Arizona, which I ask may be printed in the RECORD and referred to the Committee on the Library.

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

House joint memorial 1.

To the Senate and House of Representatives of the Congress of the United States of America in Congress assembled:

Your memorialists, the First Legislature of Arizona, in special session convened, respectfully represent:

That the title and possession of Monticello, the home place of Thomas Jefferson, is vested in Mr. Levy, a private citizen of the State of New York, and the place is now practically in a state of ruin and decay;

That the title to the grave of Jefferson, wherein lie the remains of the author of the Declaration of American Independence and those of his beloved wife, and which grave is embraced within a space about 100 feet square of the grounds of Monticello, is vested in the descendants of Jefferson;

That access to the grave of Jefferson is open to his descendants but not to the general public, except upon the payment of a fee to Mr. Levy, thus commercializing one of the most sacred spots in America; but no admission to the house of this great apostle of humanity is allowed to any person;

Now, therefore, it is peculiarly appropriate that this place should not be in private ownership, and it is peculiarly appropriate that Monticello, the home-in life as it is the home in death of this great American, should be the common heritage of the people of this country.

It is especially fitting now for the people of the United States to obtain this hallowed place that they may keep and beautify and adorn

it as a shrine to which every lover of liberty may go at will to pay his tribute of respect: Therefore be it

*Resolved by the Senate and the House of Representatives of the Legislature of the State of Arizona,* That the Congress of the United States be, and it is hereby, urged to enact such legislation as may be necessary to vest in the United States the title and possession to the home and grave of Thomas Jefferson; and

*Resolved further,* That a copy of this memorial and these resolutions be forwarded to the President of the United States, the President of the Senate, the Speaker of the House of Representatives, and to the Representatives of Arizona in Congress; and that our Representatives in Congress be, and they are hereby, requested to do all in their power to accomplish the enactment of such legislation.

MARCH 22, 1913.

Read the third time in full and passed by the following vote: 29 ayes, 3 nays, 1 absent, 2 excused.

H. H. LINNEY,  
Speaker of the House.

Passed the senate April 7, 1913, by a vote of 17 ayes, 2 excused.

M. G. CUNIFF,  
President of the Senate.

Mr. HOLLIS presented petitions of sundry citizens of Hanover, Exeter, Concord, and Manchester, all in the State of New Hampshire, praying for the submission to arbitration of the question exempting American coastwise shipping from the payment of tolls through the Panama Canal, which were referred to the Committee on Inter-oceanic Canals.

Mr. MARTINE of New Jersey presented a petition of the Pennsylvania Millers' State Association, praying that if a duty be placed on grain an equalizing duty be placed on the products of grain, etc., which was referred to the Committee on Finance.

Mr. PERKINS. I present a telegram, in the nature of a joint resolution adopted by the Legislature of California, which I ask may be printed in the RECORD and referred to the Committee on Finance.

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

SACRAMENTO, CAL., April 22, 1913.

HON. GEORGE C. PERKINS,  
Senate Chamber, Washington, D. C.:

I have the honor to hand you herewith copy of assembly joint resolution No. 18, adopted by senate and assembly and approved by the governor:

APRIL 18, 1913.

To the Governor:

Assembly joint resolution 18, relative to the protection of the California beet-sugar industry in the enactment by Congress of laws affecting tariffs on imports into the United States.

Whereas in the process of tariff revision by Congress the indicated tendency is toward an abolition of all duties on imported sugar; and Whereas such a policy would be calamitous to the cane and beet-sugar industry of the Nation at large, and especially to the beet-sugar business of the State of California, which produces 165,000 tons per annum, or one-quarter of the beet-sugar output of the United States; and

Whereas the annual consumption of sugar in our country is now 3,500,000 tons per annum, supplied, viz, from domestic cane grown in Porto Rico, Louisiana, and Sandwich Islands, 1,100,000 tons; from beet sugar manufactured in 16 States, 650,000 tons; 1,750,000 tons, the balance, being purchased from foreign countries and refined by a few corporations on the Atlantic seaboard, who are clamoring for "free sugar" in order that they may check the further invasion of their markets by the constantly growing beet-sugar industry; and

Whereas our Nation's beet-sugar output has increased from 40,000 tons in 1897 to 650,000 tons in 1912—a rate of increase greater than can be shown in any country in Europe during an equal period of time—while our cane-producing districts have apparently reached the limit of their productivity; and

Whereas this country should, and can, become self-sustaining in the matter of sugar through the development of the beet-sugar industry, now involving the use of only 450,000 acres of land against 274,000,000 acres adapted to the cultivation of the sugar beet; and

Whereas the development of the industry is checked by the menace of a free-sugar bill, which will subject this product to competition with cane and beet sugar produced under the low-wage conditions in the Tropics and Europe, and at prices delivered at our seaboard lower than, under our conditions, is paid to the farmers of our State for the sugar in the beet before it is manufactured: Now, therefore,

*Resolved,* That the Legislature of the State of California (a majority of all members elected to senate and assembly voting for the adoption of this resolution and concurring therein) requests the Senate and House of Representatives of Congress at Washington and the President of the United States that due regard be had, in the consideration of tariff revision, for the claims of the beet-sugar industry, which is so full of promise to our Nation, and that the principle governing the revision of the tariff in this regard be that the tariff should equalize the difference between the cost of production of sugar at home and abroad.

*Resolved,* That a copy of these resolutions be forwarded to each of the Members of Congress from the State of California, to be presented to the President and Congress.

L. B. MALLORY,  
Chief Clerk of Assembly.

Mr. PERKINS presented a telegram, in the nature of a joint resolution adopted by the Legislature of California, remonstrating against an undue reduction of the duty on citrus fruits, which was referred to the Committee on Finance.

He also presented a telegram, in the nature of a joint resolution adopted by the Legislature of California, praying that an appropriation be made for the study of tuberculosis and the

alleged cures thereof, which was referred to the Committee on Public Health and National Quarantine.

He also presented a telegram, in the nature of a joint resolution adopted by the Legislature of California, praying that an investigation be made to prevent damage to crops by frost, which was referred to the Committee on Agriculture and Forestry.

He also presented a telegram, in the nature of a joint resolution adopted by the Legislature of California, remonstrating against any interference by the Government with the natural conditions of Lake Tahoe, Cal., which was referred to the Committee on Irrigation and Reclamation of Arid Lands.

He also presented a telegram, in the nature of a joint resolution adopted by the Legislature of California, praying for the construction of storage reservoirs to impound the flood waters of the Sacramento and San Joaquin Rivers, in that State, which was referred to the Committee on Irrigation and Reclamation of Arid Lands.

Mr. GALLINGER presented a petition of sundry citizens of Concord, N. H., and a petition of sundry citizens of Nashua, N. H., praying for the repeal of the clause in the Panama Canal act exempting American coastwise shipping from the payment of tolls, which were referred to the Committee on Inter-oceanic Canals.

Mr. BURTON presented a resolution of members of the Woman's Franchise League of Bellefontaine, Ohio, favoring the adoption of an amendment to the Constitution granting the right of suffrage to women, which was referred to the Committee on Woman Suffrage.

Mr. SMITH of Maryland presented a petition of members of the Park View Citizens' Association of the District of Columbia, praying for the enactment of legislation limiting the issuing of permits for the erection within the fire limits of dwellings of less than 16 feet frontage, which was referred to the Committee on the District of Columbia.

Mr. LODGE presented petitions of W. H. Whiting and 117 other citizens of Barre, Charlton, Leicester, New Salem, Peter-sham, Princeton, and Spencer; of Norman S. Waite and 20 other citizens of Allston; of Charles H. Stearns and 38 other citizens of Brookline; of Frederick W. Mowatt and 20 other citizens of Lynn; of William C. Buck and 60 other citizens of Reading; of 51 citizens of East Douglas, Grafton, and North Uxbridge; and of the congregation of the Universalist Church of Beverly, all in the State of Massachusetts, praying for the repeal of the clause in the Panama Canal act exempting American coastwise shipping from the payment of tolls, which were referred to the Committee on Inter-oceanic Canals.

Mr. McLEAN presented the memorial of James T. Fitton, of Rockville, Conn., remonstrating against the adoption of the proposed income-tax amendment to the pending tariff bill, which was referred to the Committee on Finance.

Mr. KENYON presented petitions of sundry citizens of Blackhawk and Ringgold Counties, in the State of Iowa, praying for an adjustment of the pay of railway mail clerks on account of the conditions brought about by the parcel-post law, which were referred to the Committee on Post Offices and Post Roads.

Mr. PAGE presented a petition of Local Union No. 43, Pulp, Sulphite, and Paper Mill Workers, of Bellows Falls, Vt., remonstrating against the passage of the pending tariff bill, which was referred to the Committee on Finance.

Mr. GALLINGER. I present a telegram relating to a feature of the proposed tariff law, which I ask may be read and referred to the Committee on Finance.

There being no objection, the telegram was read and referred to the Committee on Finance, as follows:

NEW YORK, N. Y., April 23, 1913.

Hon. JACOB H. GALLINGER,  
Washington, D. C.:

Representatives of workmen affiliated with lithographic labor organizations, consisting of pressmen, transferers, engravers, artists, press feeders, stone grainers, and paper cutters, request a hearing before your committee on the proposed Underwood tariff bill. Trade much disturbed. Our representatives are opposed to radical reduction in the tariff incorporated in the Underwood bill. We represent 50,000 workmen.

W. E. COAKLEY,  
Representative, 200 East Twenty-third Street, New York, N. Y.

JACOB M. COOPER.

Mr. KENYON, from the Committee on Military Affairs, to which was referred the bill (S. 754) for the relief of Jacob M. Cooper, reported it without amendment and submitted a report (No. 12) thereon.

#### AGRICULTURAL CREDIT AND LIVE-STOCK INSURANCE.

Mr. FLETCHER, from the Committee on Printing, to which was referred Senate resolution 52, submitted by himself on the 17th instant, reported it without amendment, submitted a re-

port (No. 14) thereon, and it was considered by unanimous consent and agreed to, as follows:

*Resolved*, That the report to the British Board of Agriculture and Fisheries of an inquiry into agricultural credit and agricultural co-operation in Germany, with some notes on German live-stock insurance, by J. R. Cahill, which was presented to both Houses of Parliament of Great Britain, be printed as a Senate document, together with the accompanying illustrations and letter.

#### SOIL SURVEY OF ESCAMBIA COUNTY, FLA.

Mr. FLETCHER, from the Committee on Printing, to which was referred Senate resolution 46, submitted by Mr. BRYAN on the 15th instant, reported it without amendment, submitted a report (No. 15) thereon, and it was considered by unanimous consent and agreed to, as follows:

*Resolved*, That there shall be reprinted 1,000 additional copies of the Soil Survey of Escambia County, Fla., for the use of the Senate document room.

#### CONTROL OF MONEY AND CREDIT.

Mr. FLETCHER. From the Committee on Printing, to which was referred Senate resolution No. 16, providing for the printing of 10,000 copies of the report of the Money Trust investigation, I report back a concurrent resolution, and I submit a report (No. 16) thereon. I ask unanimous consent for the present consideration of the resolution. There is quite a demand for this report.

The concurrent resolution (S. Con. Res. 1) was read, considered by unanimous consent, and agreed to, as follows:

*Resolved by the Senate (the House of Representatives concurring)*, That there be printed 6,000 additional copies of House Report No. 1593, Sixty-second Congress, on the "Concentration of control of money and credit," of which 2,000 copies shall be for the use of the Senate document room and 4,000 copies for the use of the House document room.

#### AMENDMENT OF THE RULES.

Mr. OVERMAN. I report from the Committee on Rules an amendment to Rule XII and ask that it be read, printed, and go over one day (S. Res. 64).

The VICE PRESIDENT. The Senator from North Carolina, from the Committee on Rules, submits a report, which he asks be read. The Secretary will read as requested.

The Secretary read as follows:

*Resolved*, That Rule XII be amended as follows:  
"3. Immediately after and before the result of each roll call is ascertained and announced the Clerk shall call the names of the absentees."

The VICE PRESIDENT. The resolution will lie over one day under the rule.

#### REPORT OF PARK COMMISSION (S. DOC. NO. 16).

Mr. GALLINGER. Mr. President, on the 15th instant I submitted a document, being an abridgment of the Park Commission report of the District of Columbia, which, on my motion, was referred to the Committee on Printing for consideration. I am directed by that committee to report a resolution which I send to the desk, and for which I ask present consideration. I also submit a report (No. 17) thereon. The document to be printed accompanies the resolution.

The VICE PRESIDENT. The Senator from New Hampshire reports from the Committee on Printing a resolution and asks unanimous consent for its present consideration. The resolution will be read.

The Secretary read the resolution (S. Res. 63), as follows:

*Resolved*, That an abridgment of the report of the Park Commission and of the report of the Senate Committee on the District of Columbia, submitted to the Senate on January 15, 1902, be printed as a Senate document, with accompanying illustrations, and that 3,350 additional copies be printed for the use of the Senate document room.

The VICE PRESIDENT. Is there objection to the immediate consideration of the resolution?

Mr. WILLIAMS. Reserving the right to object, I ask what is the document referred to in the resolution?

Mr. GALLINGER. It is the report of the Park Commission. Very likely the Senator from Mississippi is familiar with it. It deals with the development of the city of Washington, so far as our parks are concerned. It is quite a large volume. It has been printed several times. It has been thought desirable, inasmuch as there are many calls from all over the country for the document, that we should print an abridged edition. To print the number named in the resolution will only cost \$500.

Mr. WILLIAMS. I have no objection.

The resolution was considered by unanimous consent and agreed to.

#### CLAIMS AGAINST MEXICO.

Mr. SMITH of Arizona, from the Committee on Foreign Relations, to which was referred Senate resolution 62, submitted by himself on the 21st instant, reported it without amendment and submitted a report (No. 13) thereon, and it was considered by unanimous consent and agreed to, as follows:

*Resolved*, That the President is respectfully requested, if not incompatible with the public interest, to cause to be transmitted to the Senate—

First. A full list of the names of claimants, if any, and the nature and amount of the claims for damages to person or property made by citizens of the United States of America against the Republic of Mexico and filed or deposited with the Department of State at Washington, D. C., since the beginning of the Madero revolution in Mexico to the present time, together with the statement of fact on which said claims are based.

Second. A full list of the names of all citizens of these United States, if any, who while leading lawful and peaceful lives in Mexico have been killed or wounded in Mexico or driven out of Mexico by Mexican soldiers or other armed bands on Mexican soil, together with the facts and circumstances attending such killing, wounding, or forceful deportation.

Third. A full list, if any, of such peaceful citizens of the United States of America as have been forcibly seized and held prisoners for ransom in the Republic of Mexico during the time first mentioned, and what sums of money, if any, have been paid by any person or persons to secure the release of anyone so imprisoned or held.

Fourth. What redress, if any, has been offered by Mexico in the premises, or demanded by the United States of America, and the result of such offer or demand, and what assurance of protection to the lives and property of our peaceful, law-abiding citizens in Mexico does that Republic offer.

COL. RICHARD H. WILSON.

Mr. MYERS. Mr. President, the Senator from Florida [Mr. BRYAN], the chairman of the Committee on Claims, is not present, but I see the Senator from North Carolina [Mr. OVERMAN], who is second on that committee, in his seat, and I think what I intend to propose will be agreeable to him. The bill (S. 662) for the relief of Col. Richard H. Wilson, Fourteenth Infantry, United States Army, when introduced, was referred, inadvertently, I believe, to the Committee on Claims. It does not appropriately belong to that committee, and I ask unanimous consent that the Committee on Claims be discharged from the further consideration of the bill and that it be referred to the Committee on Military Affairs.

Mr. OVERMAN. The bill properly belongs to the Committee on Military Affairs and not to the Committee on Claims.

Mr. JOHNSTON of Alabama. The bill was referred during the last session of Congress to the Committee on Military Affairs, and I think it is proper that it should go there now.

The VICE PRESIDENT. In the absence of objection, the Committee on Claims will be discharged from the further consideration of the bill, and it will be referred to the Committee on Military Affairs.

#### COMMITTEE ON BANKING AND CURRENCY.

Mr. OWEN. Mr. President, on the 17th of March Senate resolution No. 13, relative to the employees of the Committee on Banking and Currency, was considered, amended, and agreed to. The chairman of that committee was not then present, and I ask unanimous consent that the vote by which the resolution was agreed to be reconsidered.

Mr. WILLIAMS. What is the resolution?

Mr. OWEN. It relates to the employees of the Committee on Banking and Currency, and was reported from the committee of which, I believe, the Senator from Mississippi is chairman.

Mr. WILLIAMS. I ask, then, that the matter go to the Committee to Audit and Control the Contingent Expenses of the Senate.

Mr. OWEN. It has heretofore been reported by that committee.

Mr. WILLIAMS. But there was an amendment to the resolution made on the floor.

Mr. OWEN. I desire it to be reconsidered. I agree, however, that it should go to the committee.

Mr. WILLIAMS. Very well.

The VICE PRESIDENT. If there is no objection, the vote by which the resolution was agreed to will be reconsidered, and it will be recommitted to the Committee to Audit and Control the Contingent Expenses of the Senate.

#### AMENDMENT TO HOMESTEAD LAW.

Mr. BORAH. On April 9 I introduced a bill (S. 598) to amend an act entitled "An act to amend sections 2291 and 2297 of the Revised Statutes of the United States relating to homesteads," which I asked to lie on the table. I move that the bill be taken from the table and referred to the Committee on Public Lands.

The motion was agreed to.

#### BILLS AND JOINT RESOLUTIONS INTRODUCED.

Bills and joint resolutions were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. MYERS:

A bill (S. 1348) to allow additional entries under the enlarged homestead act; to the Committee on Public Lands.

By Mr. THOMPSON:

A bill (S. 1349) admitting to citizenship and fully naturalizing George Edward Lerrigo, of the city of Topeka, in the State of Kansas; to the Committee on Immigration.

By Mr. PITTMAN:

A bill (S. 1350) authorizing the Secretary of the Interior to designate certain tracts of land in the State of Nevada upon which continuous residence shall not be required under the homestead laws; to the Committee on Public Lands.

By Mr. SHEPPARD:

A bill (S. 1351) for the relief of Mollie Richardson, heir of Stanford Mims, deceased; to the Committee on Claims.

By Mr. JONES:

(By request.) A bill (S. 1352) to extend the time for the completion of the Alaska-Northern Railway, and for other purposes; to the Committee on Territories.

A bill (S. 1353) to authorize the board of county commissioners of Okanogan County, Wash., to construct and maintain a bridge across the Okanogan River at or near the town of Malott; to the Committee on Commerce.

A bill (S. 1354) relating to the election of United States Senators; to the Committee on the Judiciary.

A bill (S. 1355) relating to easements in connection with reclamation projects; to the Committee on Irrigation and Reclamation of Arid Lands.

By Mr. BURTON:

A bill (S. 1356) to amend section 4 of an act entitled "An act to amend an act entitled 'An act to regulate the construction of dams across navigable waters,' approved June 21, 1906," approved June 23, 1910, and to repeal said original section; to the Committee on Commerce.

By Mr. CUMMINS:

A bill (S. 1357) granting a pension to Halle W. Dale; to the Committee on Pensions.

By Mr. BRISTOW:

A bill (S. 1358) granting an increase of pension to Jefferson Hurst; to the Committee on Pensions.

By Mr. MARTINE of New Jersey:

A bill (S. 1359) to amend section 1244, Revised Statutes; and a bill (S. 1360) granting an honorable discharge to John D. Durie; to the Committee on Military Affairs.

A bill (S. 1361) for the relief of the heirs of Marianne Sainte Ana Schrepper; to the Committee on Private Land Claims.

By Mr. CHILTON:

A bill (S. 1362) granting an increase of pension to Laura B. Hess; to the Committee on Pensions.

By Mr. CHAMBERLAIN:

A bill (S. 1363) making lands within the State of Oregon that have been withdrawn or classified as oil lands subject to entry under the homestead or desert-land laws; and

A bill (S. 1364) to amend section 2322 of the Revised Statutes of the United States relating to mineral locations; to the Committee on Public Lands.

A bill (S. 1365) to appoint Brig. Gen. Thomas M. Anderson, United States Army, retired, to the grade of major general on the retired list of the Army; to the Committee on Military Affairs.

A bill (S. 1366) to adjust the claims of certain settlers in Sherman County, Oreg.; to the Committee on Claims.

By Mr. McCUMBER:

A bill (S. 1367) for the relief of the estate of Richard W. Meade, deceased;

A bill (S. 1368) for the relief of Capt. Frank B. Watson, United States Army;

A bill (S. 1369) for the relief of the Snare & Triest Co.;

A bill (S. 1370) authorizing and directing the Secretary of State to examine and settle the claim of the Wales Island Packing Co.;

A bill (S. 1371) for the relief of the heirs of Lieut. R. B. Calvert, deceased;

A bill (S. 1372) for the relief of Capt. Frederick B. Shaw; and

A bill (S. 1373) for the relief of the estate of John Stewart, deceased; to the Committee on Claims.

(By request.) A bill (S. 1374) granting an increase of pension to Stella May Dixon; to the Committee on Pensions.

By Mr. KENYON:

A bill (S. 1375) to amend the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies"; to the Committee on Interstate Commerce.

By Mr. BORAH:

A bill (S. 1376) for the relief of Jacob Mull (with accompanying paper); and

A bill (S. 1377) for the relief of Alfred S. Lewis (with accompanying papers); to the Committee on Military Affairs.

A bill (S. 1378) granting an increase of pension to William H. H. Morris (with accompanying papers);

A bill (S. 1379) granting a pension to James Heavrin (with accompanying papers);

A bill (S. 1380) granting a pension to George W. Moore (with accompanying paper);

A bill (S. 1381) granting an increase of pension to Franklin R. Simmons (with accompanying papers); and

A bill (S. 1382) granting a pension to Lulu E. Springer; to the Committee on Pensions.

By Mr. SMOOT:

A bill (S. 1383) granting to the State of Utah 1,000,000 acres of public land within the State, to reimburse the State for expenses incurred in suppressing Indian disturbances from 1865 to 1868; and

A bill (S. 1384) granting to the State of Utah 1,000,000 acres of land to aid in the construction and maintenance of public roads in the State of Utah; to the Committee on Public Lands.

A bill (S. 1385) granting a pension to E. H. Maxfield, alias Hiram Maxfield;

A bill (S. 1386) granting a pension to Barbara B. Haws; and

A bill (S. 1387) granting a pension to Charles H. Hipp (with accompanying papers); to the Committee on Pensions.

By Mr. DU PONT:

A bill (S. 1388) granting a pension to Ernest Hattier (with accompanying papers); and

A bill (S. 1389) granting an increase of pension to William T. Warrington; to the Committee on Pensions.

By Mr. NORRIS:

A bill (S. 1390) granting a pension to Phoebe J. Burrows; to the Committee on Pensions.

By Mr. McLEAN:

A bill (S. 1391) granting a pension to Frances M. Trippe (with accompanying papers);

A bill (S. 1392) granting an increase of pension to Franklin Comstock (with accompanying papers); and

A bill (S. 1393) granting an increase of pension to Antoinette Platt (with accompanying papers); to the Committee on Pensions.

By Mr. WORKS:

A bill (S. 1394) granting a pension to William Irwin (with accompanying papers); to the Committee on Pensions.

By Mr. MARTIN of Virginia:

A bill (S. 1395) for the erection of a memorial on the grounds of William and Mary College, Williamsburg, Va., in honor of Hon. Peyton Randolph, first President of the Continental Congress;

A bill (S. 1396) for the erection of a monument to the memory of Matthew Fontaine Maury, of Virginia;

A bill (S. 1397) for the erection of a statue to John Marshall;

A bill (S. 1398) for the erection of a monument to the memory of Gen. William Campbell;

A bill (S. 1399) to aid in the erection of a monument to Pocahontas at Jamestown, Va.; and

A bill (S. 1400) providing for the construction of an iron picket fence around the monument at Jamestown, Va.; to the Committee on the Library.

A bill (S. 1401) providing for the improvement of the roadway from the railroad depot at Fredericksburg, Va., to the national cemetery near Fredericksburg;

A bill (S. 1402) to correct the military record of Charles Anderson;

A bill (S. 1403) to place Dr. Henry Smith on the retired list of the Army;

A bill (S. 1404) to establish the Fredericksburg and Adjacent National Battle Fields Memorial Park, in the State of Virginia; and

A bill (S. 1405) for the correction of the military record of Capt. Dorsey Cullen; to the Committee on Military Affairs.

A bill (S. 1406) to reimburse the estate of Gen. George Washington for certain lands of his in the State of Ohio lost by conflicting grants made under the authority of the United States; to the Committee on Private Land Claims.

A bill (S. 1407) for the relief of John F. Wingfield; to the Committee on Post Offices and Post Roads.

A bill (S. 1408) granting permission to the Lynnhaven Terminal Corporation to improve the lower Chesapeake and Lynnhaven Bay by the construction of a breakwater; and

A bill (S. 1409) to promote the efficiency of the Life-Saving Service; to the Committee on Commerce.

A bill (S. 1410) for the promotion of Carpenter Joseph A. O'Connor, United States Navy, retired, to the rank of chief carpenter on the retired list;

A bill (S. 1411) providing for the promotion of Chief Boatswain Patrick Deery, United States Navy;

A bill (S. 1412) for the relief of James C. Hilton; and

A bill (S. 1413) to authorize and direct the President of the United States to place upon the retired list of the United States

Navy late Midshipman John Benton Ewald with the rank of ensign; to the Committee on Naval Affairs.

A bill (S. 1414) for the relief of Granville J. Kelly;

A bill (S. 1415) for the relief of Joseph T. Chance and the heirs of John R. Burton, deceased;

A bill (S. 1416) for the relief of Thomas Johnson or his legal representatives;

A bill (S. 1417) for the relief of the heirs of Lemmus J. Spence, deceased;

A bill (S. 1418) for the relief of Joseph C. Boggs;

A bill (S. 1419) for the relief of the heirs of William Samuel Custis;

A bill (S. 1420) for the relief of John Henry Edwards;

A bill (S. 1421) for the relief of R. H. Hayden and Emma Hayden, executrix of the estate of Logan F. Hayden, deceased;

A bill (S. 1422) to provide for the payment of certain moneys advanced by the States of Virginia and Maryland to the United States Government to be applied toward erecting public buildings for the Federal Government in the District of Columbia;

A bill (S. 1423) for the relief of the heirs and estate of Joseph Blosser, deceased;

A bill (S. 1424) for the relief of the estate of William A. Coffman, deceased;

A bill (S. 1425) for the relief of the estate of H. F. Cocke, deceased;

A bill (S. 1426) for the relief of the heirs of Robert L. Martin;

A bill (S. 1427) for the relief of Bolivar Sheild;

A bill (S. 1428) for the relief of the estate of Simeon H. Wootton, deceased;

A bill (S. 1429) for the relief of the estate of Mary N. Cox, deceased;

A bill (S. 1430) for the relief of Bland Massie;

A bill (S. 1431) for the relief of Wesley Rankins;

A bill (S. 1432) for the relief of the heirs of William Walton, deceased;

A bill (S. 1433) for the relief of John W. Ritenour;

A bill (S. 1434) for the relief of Harrison Capp;

A bill (S. 1435) for the relief of James H. Hottel;

A bill (S. 1436) for the relief of Robert E. Jackson;

A bill (S. 1437) for the relief of the heirs of John E. Lewis, deceased;

A bill (S. 1438) for the relief of the estate of Bronon Thatcher, deceased;

A bill (S. 1439) for the relief of Joseph E. Funkhouser;

A bill (S. 1440) for the relief of the estate of Jacob Cook, deceased;

A bill (S. 1441) for the relief of C. N. Rash;

A bill (S. 1442) for the relief of the heirs or estate of Samuel Sheetz, deceased;

A bill (S. 1443) for the relief of the legal representative of William C. Read;

A bill (S. 1444) for the relief of Abraham Kellar;

A bill (S. 1445) for the relief of heirs and estate of James Jones, deceased;

A bill (S. 1446) for the relief of Elise Trigg Shields;

A bill (S. 1447) for the relief of the heirs of John A. Jones, deceased;

A bill (S. 1448) for the relief of the estate of John Jett, deceased;

A bill (S. 1449) for the relief of the estate of Brandt Kinchloe, deceased;

A bill (S. 1450) for the relief of the heirs of J. D. Makely, deceased;

A bill (S. 1451) for the relief of the estate of George P. Loehr, deceased;

A bill (S. 1452) for the relief of Hulda V. Coffey;

A bill (S. 1453) for the relief of Mary E. Collier;

A bill (S. 1454) for the relief of the legal representatives of Alexander K. Phillips, deceased;

A bill (S. 1455) for the relief of Adam Carpenter;

A bill (S. 1456) for the relief of the heirs of William Downs;

A bill (S. 1457) for the relief of Edward B. Fox, administrator of the last surviving partner of the firm of Child, Pratt & Fox;

A bill (S. 1458) for the relief of the heirs of Richard S. Rew, deceased;

A bill (S. 1459) for the relief of the legal representatives of the estate of Charles E. Mix;

A bill (S. 1460) for the relief of the heirs of Powhatan Perkins;

A bill (S. 1461) for the relief of the estate of John Anderson, deceased;

A bill (S. 1462) for the relief of H. L. Briscoe, heir of Sarah Briscoe;

A bill (S. 1463) for the relief of the heirs of Amanda M. James, deceased;

A bill (S. 1464) for the relief of the estate of Richard Wiseman, deceased;

A bill (S. 1465) for the relief of the heirs of John D. Rawlings, deceased;

A bill (S. 1466) for the relief of the estate of William Benton, deceased;

A bill (S. 1467) for the relief of the heirs of John Wescott;

A bill (S. 1468) for the relief of Emma C. Franner, George W. Seaton, Hiram K. Seaton, Howard Seaton, Mary Seaton, Blanche Seaton, George W. Taylor, Edward Taylor, and Catharine Pomeroy;

A bill (S. 1469) for the relief of the estate of Thomas Lee, deceased;

A bill (S. 1470) for the relief of C. A. Sprinkel;

A bill (S. 1471) for the relief of Edgar M. Wilson, administrator of Thomas B. Van Buren, deceased;

A bill (S. 1472) for the relief of William Corcoran;

A bill (S. 1473) for the relief of Frank Hoskins;

A bill (S. 1474) for the relief of Benjamin P. Loyall;

A bill (S. 1475) for the relief of Martin Maddux;

A bill (S. 1476) for the relief of A. O. Tucker;

A bill (S. 1477) for the relief of Tilman Jeter;

A bill (S. 1478) for the relief of Laura V. Phipps;

A bill (S. 1479) for the relief of Mary Cornick;

A bill (S. 1480) for the relief of the estate of Murray Mason, deceased;

A bill (S. 1481) for the relief of the estate of William J. Conner, deceased;

A bill (S. 1482) for the relief of the estate of Mary G. Temple, deceased;

A bill (S. 1483) for the relief of the estate of John Ivy, deceased;

A bill (S. 1484) for the relief of J. N. Whittaker;

A bill (S. 1485) for the relief of L. L. Scherer;

A bill (S. 1486) for the relief of S. W. Niemeyer;

A bill (S. 1487) for the relief of the heirs at law of Capt. John Lewis;

A bill (S. 1488) for the relief of the Richmond Locomotive Works, successor of the Richmond Locomotive & Machine Works;

A bill (S. 1489) for the relief of the Potomac Steamboat Co.;

A bill (S. 1490) for the relief of the estate of Ella P. Williams;

A bill (S. 1491) for the relief of the estate of Maurice T. Smith;

A bill (S. 1492) for the relief of John W. Fairfax;

A bill (S. 1493) for the relief of Ida Banks;

A bill (S. 1494) to reimburse William Van Derveer, of Millboro, Va., for excess revenue taxes assessed against and collected from him;

A bill (S. 1495) to compensate the Old Point Improvement Co. for the demolition and removal of the Hygeia Hotel property from the Government reservation at Old Point, Va.;

A bill (S. 1496) for the relief of Mary Eliza Woodhouse;

A bill (S. 1497) for the relief of Norval Cox and heirs of Robert Rollins, deceased;

A bill (S. 1498) for the relief of William Allman and others;

A bill (S. 1499) to reimburse J. H. Whealton for moneys paid by him as surety for C. W. Fullerton, late postmaster of Whealton, Va.;

A bill (S. 1500) for the relief of the heirs of Matthew Smith, deceased;

A bill (S. 1501) for the relief of Tyree Bros.;

A bill (S. 1502) for the relief of Luther H. Potterfield;

A bill (S. 1503) for the relief of Mrs. C. N. Graves, widow of R. F. Graves, jr., deceased;

A bill (S. 1504) conferring jurisdiction on the Court of Claims to try, adjudicate, and determine certain claims for compensation for carrying the mails and pay for the discontinuance of postal service;

A bill (S. 1505) giving jurisdiction to the Court of Claims to ascertain the interest of Anna M. Fitzhugh, and the value of such interest, in the wood taken from the estate of Ravensworth by the military authorities of the United States;

A bill (S. 1506) to carry out the findings of the Court of Claims in the cases herein enumerated;

A bill (S. 1507) for the relief of the trustees of the Zion Methodist Church, of York County, Va.;

A bill (S. 1508) for the relief of George M. Fry;

A bill (S. 1509) for the relief of G. W. Browder;

A bill (S. 1510) for the relief of the estate of Thomas H. Nelson, deceased;

A bill (S. 1511) for the relief of William T. Miles;

A bill (S. 1512) for the relief of the estate of Arthur F. Cliff, deceased;

A bill (S. 1513) for the relief of the legal heirs of the late L. Claiborne Jones;

A bill (S. 1514) for the relief of the heirs of James-Bowles, deceased;

A bill (S. 1515) for the relief of the estate of James G. Hodges, deceased;

A bill (S. 1516) for the relief of the legal representatives of the estate of John Heater;

A bill (S. 1517) for the relief of E. A. R. Wyatt, heir of Edward A. Wyatt, deceased;

A bill (S. 1518) for the relief of the trustees of Carmel Baptist Church, Caroline County, Va.;

A bill (S. 1519) for the relief of the trustees of Urbanna Episcopal Church, Middlesex County, Va.;

A bill (S. 1520) for the relief of the trustees of Lebanon Evangelical Lutheran Church, of Shenandoah County, Va.;

A bill (S. 1521) for the relief of the estate of Peter McEnery, deceased;

A bill (S. 1522) for the relief of John S. Mann and the estate of Lewis W. Mann, deceased;

A bill (S. 1523) for the relief of W. T. Flippin, administrator of John F. Flippin, deceased;

A bill (S. 1524) for the relief of the estate of William D. Wright, deceased;

A bill (S. 1525) for the relief of Joseph H. Shafer;

A bill (S. 1526) for the relief of the Seaboard Air Line Railway; and

A bill (S. 1527) for the relief of Bella Crouse and other heirs of the estate of James Bell, deceased (with accompanying papers); to the Committee on Claims.

A bill (S. 1528) granting an increase of pension to George W. Brown;

A bill (S. 1529) granting a pension to Joseph H. Mayo;

A bill (S. 1530) granting a pension to R. H. Catlett;

A bill (S. 1531) to restore to the pension roll the name of Jordan T. Fletcher;

A bill (S. 1532) granting a pension to James J. Boothe;

A bill (S. 1533) granting a pension to Lucy W. Lockwood;

A bill (S. 1534) granting a pension to George E. Harrison;

A bill (S. 1535) granting a pension to Mildred J. Almond;

A bill (S. 1536) granting an increase of pension to Florence P. Percy;

A bill (S. 1537) granting an increase of pension to Rachael Chambers;

A bill (S. 1538) granting an increase of pension to Sherwood C. Bowers;

A bill (S. 1539) granting a pension to Walter S. Buchanan;

A bill (S. 1540) granting a pension to Richard L. Miller; and

A bill (S. 1541) granting a pension to Roland B. Horsley; to the Committee on Pensions.

By Mr. SHIVELY:

A bill (S. 1542) to place on the retired list of the Army the names of the surviving officers who were mustered out under the provisions of the act of Congress approved July 15, 1870; and

A bill (S. 1543) for the relief of Richard Hogan; to the Committee on Military Affairs.

By Mr. BRADLEY:

A bill (S. 1544) for the relief of the estate of William Claunch, deceased;

A bill (S. 1545) for the relief of the estate of Ben Whitaker, sr., deceased;

A bill (S. 1546) for the relief of Joseph Ballou;

A bill (S. 1547) for the relief of Anthony, Eubanks & Co.;

A bill (S. 1548) for the relief of the estate of Jonathan B. Polk, deceased;

A bill (S. 1549) for the relief of the heirs or estates of William McClure and Margaret McClure, deceased;

(By request.) A bill (S. 1550) for the relief of William A. Kinsolving;

A bill (S. 1551) for the relief of the estate of David W. Settle, deceased;

A bill (S. 1552) for the relief of the estate of Mary H. S. Robertson, deceased;

A bill (S. 1553) for the relief of the estate of George Vaught, deceased;

A bill (S. 1554) for the relief of the estate of William Thomas Lowe; and

A bill (S. 1555) for the relief of Gilbert Wilkerson and Jeremiah Sparks, alias Dave Sparks; to the Committee on Claims.

By Mr. OWEN (by request):

A bill (S. 1556) forbidding the importation, exportation, or the carriage in interstate commerce of watchcases made, in

whole or in part, of an inferior metal having deposited or plated thereon, or brazed, or otherwise affixed thereto, platings, coverings, or sheets composed of gold, or of an alloy thereof, bearing words or marks importing a guaranty or wear for a specified time, and of watchcases of less than 9 carat, bearing the word "gold," and of watch movements not properly marked in respect to the number of their jewels and their adjustment, and for other purposes; to the Committee on Interstate Commerce.

By Mr. CUMMINS:

A joint resolution (S. J. Res. 26) proposing an amendment to the Constitution of the United States; to the Committee on the Judiciary.

By Mr. MARTIN of Virginia:

A joint resolution (S. J. Res. 27) authorizing the Librarian of Congress to return to Williamsburg Lodge, No. 6, Ancient Free and Accepted Masons, of Virginia, the original manuscript of the record of the proceedings of said lodge; to the Committee on the Library.

By Mr. JONES:

A joint resolution (S. J. Res. 28) authorizing the appointment of a board to ascertain and report to Congress the probable cost of acquiring lands on each side of Pennsylvania Avenue as sites for buildings necessary for the transaction of present and prospective governmental business; to the Committee on Public Buildings and Grounds.

By Mr. HUGHES:

A joint resolution (S. J. Res. 29) authorizing the President to appoint a member of the New Jersey and New York Joint Harbor Line Commission; to the Committee on Commerce.

#### AMENDMENTS TO APPROPRIATION BILLS.

Mr. MYERS submitted an amendment proposing to appropriate \$25,000 for the establishment of a fish-cultural station in the State of Montana, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

He also submitted an amendment providing that the act of August 24, 1912, be extended to apply to the Reclamation Service, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

He also submitted an amendment intended to be proposed by him to the bill (H. R. 2973) making appropriations for certain expenses incident to the first session of the Sixty-third Congress, and for other purposes, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. SMITH of South Carolina submitted an amendment proposing to appropriate \$5,000 for the construction of a rostrum at the national cemetery at Florence, S. C., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. SHEPPARD submitted an amendment proposing to appropriate \$6,850 for expenses of the delegates to be designated by the President to the Fourteenth International Congress on Alcoholism, at Milan, Italy, September, 1913, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. CHILTON submitted an amendment proposing to appropriate \$1,491.92, to be paid to the Citizens Trust & Guaranty Co. of West Virginia, being the amount withheld by the Navy Department in making settlements under contracts Nos. 1008 and 1106, September 3 and November 1, 1902, intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. CHAMBERLAIN submitted an amendment intended to be proposed by him to the bill (H. R. 2973) making appropriations for certain expenses incident to the first session of the Sixty-third Congress, and for other purposes, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. KENYON submitted an amendment proposing to appropriate \$75,000 to investigate and encourage the adoption of improved methods of farm management and farm practice, and for farm demonstration work, intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. GRONNA submitted an amendment proposing to appropriate \$1,000 for a fair at Fort Totten, to be expended under the direction and supervision of the superintendent at that fort, etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

He also submitted an amendment proposing to appropriate \$1,000 for examination of the land embraced in Sullys Hill Park,

to determine whether it contains valuable minerals, etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

He also submitted an amendment proposing to increase the appropriation for the suppression of the traffic in intoxicating liquors and peyote among Indians from \$75,000 to \$125,000, intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

Mr. WILLIAMS submitted an amendment proposing to appropriate \$10,000 for placing the Government approach roadway to the Vicksburg National Cemetery, Vicksburg, Miss., in a state of permanent repair, etc., intended to be proposed by him to the sundry civil appropriation bill, which was ordered to be printed and, with the accompanying paper, referred to the Committee on Appropriations.

Mr. SHIVELY submitted an amendment proposing to appropriate \$1,000 to pay O. M. Euyart for moneys paid and expended by him for the purchase of the copyright of Ben Perley Poore's Political Register and Congressional Directory of the United States, etc., intended to be proposed by him to the sundry civil appropriation bill, which was ordered to be printed and, with the accompanying paper, referred to the Committee on Appropriations.

#### THE TARIFF.

Mr. BURTON submitted five amendments intended to be proposed by him to the bill (H. R. 3321) to reduce tariff duties and to provide revenue for the Government, and for other purposes, which were referred to the Committee on Finance and ordered to be printed.

Mr. GALLINGER submitted an amendment intended to be proposed by him to the bill (H. R. 3321) to reduce tariff duties and to provide revenue for the Government, and for other purposes, which was referred to the Committee on Finance and ordered to be printed.

#### WITHDRAWAL OF PAPERS—W. T. RICE.

On motion of Mr. WORKS, it was

*Ordered*, That W. T. Rice be authorized to withdraw from the files of the Senate all papers accompanying Senate bill 7920, Sixty-second Congress, third session, entitled "A bill for the relief of W. T. Rice," no adverse report having been made thereon.

#### INVESTIGATIONS OF BANKING AND CURRENCY.

Mr. OWEN submitted the following resolution (S. Res. 66), which was read and referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

*Resolved*, That the Committee on Banking and Currency be, and they are hereby, authorized and directed, by subcommittee or otherwise, to make investigations of banking and currency matters and to compile and prepare statistics relative thereto such as may be necessary, and to report from time to time to the Senate the result thereof, and for this purpose they are authorized to sit, by subcommittee or otherwise, during the sessions of the Senate or recesses thereof at such times and places as they may deem advisable, to send for persons and papers and administer oaths, and to employ such stenographic and clerical assistance, or otherwise, as may be necessary, the expense of such investigation to be paid for from the contingent fund of the Senate, and the committee is authorized to pay for such printing and binding as may be necessary for its use.

#### CLERK TO COMMITTEE ON BANKING AND CURRENCY.

Mr. OWEN submitted the following resolution (S. Res. 67), which was read and referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

*Resolved*, That the clerk to the Committee on Banking and Currency, whose employment was authorized by resolution of March 17, 1913, be paid at the rate of \$3,000 per annum from miscellaneous items, contingent fund of the Senate.

#### STATISTICS RELATING TO WAGE EARNERS.

Mr. SHEPPARD submitted the following resolution (S. Res. 68), which was referred to the Committee on Education and Labor:

*Resolved*, That the Secretary of Labor be, and he is hereby, directed to investigate and report, as far as it is practicable, upon the mortality and the disability by accident or by disease incident to or resulting from the various occupations in which the wage earners of the United States are engaged.

#### AMENDMENT OF THE RULES.

Mr. ASHURST. I submit a resolution for appropriate reference.

The resolution (S. Res. 69) was read and referred to the Committee on Rules, as follows:

*Resolved*, That in accordance with the notice given on April 21, 1913, proposing an amendment to the standing rules of the Senate, there be added the following, to be known as Rule —:

"*Resolved*, That no committee of the Senate shall sit behind closed doors: *Provided, however*, That this rule shall not apply to any committee considering treaties, executive business, or matters affecting foreign relations."

## DIPLOMATIC AND CONSULAR SERVICE.

Mr. JOHNSTON of Alabama. Mr. President, I wish to present a resolution and then I wish to ask unanimous consent for its present consideration. In this connection I desire to say that I have certain information in regard to the men employed in the Diplomatic and Consular Service which is very astounding to me.

In the Diplomatic Service of the United States there are 10 ambassadors—2 from the District of Columbia, 2 from New York, and 1 each from Massachusetts, Pennsylvania, Ohio, Michigan, Missouri, and Washington—the salary of each being \$17,500.

In the same service there are two classes of envoys extraordinary and ministers plenipotentiary, one class receiving a salary of \$12,000, and the other \$10,000.

Of the first class of ministers there are 8—2 each from New York, Maryland, and Illinois, and 1 each from Vermont and Pennsylvania.

Of the second class there are 27—5 from New York, 4 each from New Jersey and Illinois, 3 from the District of Columbia, 2 each from Pennsylvania and Minnesota, and 1 each from Delaware, Indiana, Massachusetts, Kentucky, Missouri, Kansas, and West Virginia.

Thus it will be seen that of the 35 ambassadors and ministers there are none from the South, counting Kentucky as a border State, while the District of Columbia has five.

The Consular Service is divided into classes, with consuls general ranking highest.

The consuls general of Class I, with a salary of \$12,000, are but two in number, located at London and Paris, respectively, one being from Indiana and the other from Ohio.

Of Class II, with a salary of \$8,000, there are 7 in all—2 from the District of Columbia, 2 from Ohio, and 1 each from Pennsylvania, Illinois, and Wisconsin.

Of Class III, with a salary of \$6,000, there are 9 in all—1 each from Indiana, Illinois, Vermont, Missouri, South Dakota, and Washington, with 3 vacancies.

Of Class IV, with a salary of \$5,500, there are 12 in all—2 from Ohio, 2 from Louisiana, 2 from West Virginia, and 1 each from the District of Columbia, New York, Pennsylvania, Rhode Island, North Dakota, Wisconsin, and West Virginia.

Of Class V, with a salary of \$4,500, there are 17 in all—3 each from the District of Columbia and New York, 2 from Massachusetts, and 1 each from Indiana, Virginia, Wisconsin, New Jersey, California, Tennessee, and Oregon, with 1 vacancy.

Of Class VI, with a salary of \$3,500, there are 9 in all—2 from Illinois, and 1 each from Oklahoma, Iowa, and Missouri, with 4 vacancies.

Of Class VII, with a salary of \$3,000, there are 3 in all—1 each from New York, Colorado, and Illinois.

Of consuls general at large, with a salary of \$5,000, there are 5 in all—1 each from New York, Maine, Kansas, and North Carolina, with 1 vacancy.

Out of the 64 consuls general, only 5, or 7 per cent, are from Southern States, while the District of Columbia alone is favored with 6. The aggregate salary of the 5 from the Southern States is \$25,000, while the 6 from the District of Columbia have an aggregate salary of \$45,000.

Under the consuls general there are 241 consuls, divided into 9 classes, with salaries ranging from \$8,000 down to \$2,000. Of those who receive over \$2,000, 23 only are from Southern States, while the District of Columbia has 13, more than half of the least-paid consuls being from Southern States.

The salaries in the aggregate of consuls general and of consuls from all the Southern States amount to \$84,000, while the aggregate salaries of those from Ohio alone amount to \$103,500; those from the District of Columbia alone to \$72,500; New York, \$64,500; Illinois, \$62,000; Pennsylvania, \$57,000.

Posts in the Consular Service held by Democrats, especially southern Democrats, pitifully few in number, notwithstanding the insistent professions of recent Republican administrations of the nonpartisan character of the method employed in the selection of applicants for admission, subjecting them to a fair examination without regard to party affiliation or State of residence, are comparatively insignificant and inconsequential, and most certainly out of keeping with the importance of the communities and Commonwealths from which they come. An investigation of the consular list, with the salary class, will show this. An investigation of the department's method of examination in recent years will show that of 282 persons in the Consular Service, taking no account of vacancies, only 80, or 28 per cent, have ever taken any other than a political or favored examination; while by a special kind of examination brought into vogue by the Roosevelt administration and prac-

ticed under the Taft administration, the test has been so severely rigid as fully to warrant the suspicion that it was conceived and constructed to protect the favorites of those two administrations. An impartial and common-sense scrutiny of the practices of the Republican administrations and of the State Department must be convincing not only to that effect, but persuasive that the intent was also to hamper and discourage worthy and highly competent southern Democrats from aspiring to positions in the foreign service.

In short, over 200 of the persons now in the Consular Service have never taken any kind of examination to test their real fitness for their posts; and 95 per cent of that number are Republicans from Northern States, or from the District of Columbia, where residence in the social center in the vicinity of the White House has given them, through Republican Presidents, an open sesame to the best in the foreign service of the Government, from ambassadors to the cream of the Consular Service.

Mr. President, I wish now to call attention to the appointments from the States.

From Alabama there are only three consuls, the aggregate of the salaries of the three being \$6,500. There are none in the Diplomatic Service.

From Florida there is only one, with a salary of \$2,000.

From Mississippi there are four, with aggregate salaries of \$7,400.

Mr. WILLIAMS. Mr. President, the one from Florida is in the Consular Service, is he not?

Mr. JOHNSTON of Alabama. Yes; in the Consular Service.

Mr. WILLIAMS. There is no one at all from Florida in the Diplomatic Service.

Mr. JOHNSTON of Alabama. I am including both the Consular and the Diplomatic Service in the statement I am now making.

From the District of Columbia there are 65, with salaries amounting to \$205,350.

From Illinois there are 38, with salaries aggregating \$157,300.

From New York there are 79, with salaries of \$278,700.

From Ohio there are 39, with salaries of \$142,000.

From Pennsylvania there are 60, with salaries of \$194,100.

Taking this list by sections, Mr. President, from the Northeastern States there are 156, with salaries of \$550,000; from the border States 52, with salaries of \$182,225; from the Middle Western States 145, with salaries of \$498,650; from other Western States 75, with salaries of \$218,475; from the District of Columbia 65, with salaries of \$205,350; from the 11 Southern States, with a population of over 23,000,000 people, there are only 80, with salaries amounting to \$167,300, less than several of the States I have mentioned.

It must be remembered, Mr. President, that these consuls are supposed to represent not so much the diplomatic interests of the country but its business and trade. In my section of the country there is an immense development in manufactures and an immense sale of the products of our soil—perhaps the largest of any part of the United States when you take cotton and its products—yet there are only 80 consuls to serve us and not a single ambassador.

Mr. BACON. Mr. President, I want to say to the Senator that he gives a little too much credit to these consuls when he says their duties are not so much diplomatic. They are not at all diplomatic.

Mr. JOHNSTON of Alabama. That is true; they are not at all diplomatic; they are purely of a business nature. That being the fact, I do not see why such an immense number should be appointed from the District of Columbia, which has no manufacturing or export interests whatever.

Mr. GALLINGER. Mr. President, will the Senator permit me an inquiry?

Mr. JOHNSTON of Alabama. Certainly.

Mr. GALLINGER. I will ask the Senator if it is not true that so far as ambassadors and ministers are concerned as a rule they have tendered their resignations to the President?

Mr. JOHNSTON of Alabama. I am talking about the present situation.

Mr. GALLINGER. Yes; but will it not be remedied by the Senator's President when he reaches that point?

Mr. JOHNSTON of Alabama. I hope it will be remedied, but it seems to be going along very slowly. [Laughter.]

Mr. President, I ask leave to print in the RECORD the table I have prepared, so that Senators may see exactly what the situation is.

The VICE PRESIDENT. If there be no objection, leave will be granted.

The table is as follows:

Officers and employees of the State Department in Washington and in the Diplomatic and Consular Service abroad, with their number and aggregate compensation, by States.

	Num-ber.	Compen-sation.
Alabama.....	3	\$6,500
Arizona.....	0	0
Arkansas.....	1	1,000
California.....	23	72,225
Colorado.....	3	6,000
Connecticut.....	16	27,800
Delaware.....	2	12,000
District of Columbia.....	65	205,350
Florida.....	1	2,000
Georgia.....	6	13,900
Idaho.....	1	4,000
Illinois.....	38	157,300
Indiana.....	16	50,300
Iowa.....	16	37,000
Kansas.....	8	24,200
Kentucky.....	9	31,700
Louisiana.....	8	19,900
Maine.....	12	36,900
Maryland.....	31	46,425
Massachusetts.....	29	94,000
Michigan.....	13	37,500
Minnesota.....	13	40,925
Mississippi.....	4	7,400
Missouri.....	16	72,500
Montana.....	2	5,000
Nebraska.....	6	26,600
Nevada.....	1	2,000
New Hampshire.....	5	11,500
New Jersey.....	15	65,200
New Mexico.....	3	11,000
New York.....	79	278,700
North Carolina.....	6	18,200
North Dakota.....	2	8,500
Ohio.....	39	142,000
Oklahoma.....	3	7,650
Oregon.....	3	9,500
Pennsylvania.....	60	194,100
Rhode Island.....	9	23,225
South Carolina.....	10	20,200
South Dakota.....	4	14,500
Tennessee.....	10	27,200
Texas.....	7	12,800
Utah.....	3	7,000
Vermont.....	6	29,100
Virginia.....	24	38,200
Washington.....	12	42,300
West Virginia.....	6	31,500
Wisconsin.....	10	33,625
Wyoming.....	1	5,000
New England States.....	77	222,525
North-East States—		
New York.....	79	278,700
New Jersey.....	15	65,200
Delaware.....	2	12,000
Pennsylvania.....	60	194,100
Total.....	156	550,000
Border States—		
Maryland.....	21	46,425
West Virginia.....	6	31,500
Kentucky.....	9	31,700
Missouri.....	16	72,500
Total.....	52	182,125
Middle Western States—		
Ohio.....	39	142,000
Michigan.....	13	37,500
Indiana.....	16	50,300
Illinois.....	38	157,300
Wisconsin.....	10	33,625
Minnesota.....	13	40,925
Iowa.....	16	37,000
Total.....	145	498,650
Other Western States.....	75	218,475
District of Columbia.....	65	205,350
Southern States—		
Alabama.....	3	6,500
Arkansas.....	1	1,000
Florida.....	1	2,000
Georgia.....	6	13,900
Louisiana.....	8	19,900
Mississippi.....	4	7,400
North Carolina.....	6	18,200
South Carolina.....	10	20,200
Tennessee.....	10	27,200
Texas.....	7	12,800
Virginia.....	24	38,200
Total.....	80	167,300
Vacancies.....	26	101,500
Grand total.....	676	2,145,928

Mr. JOHNSTON of Alabama. I ask unanimous consent that the resolution may be adopted.

Mr. POMERENE. Mr. President, may I ask the Senator a question?

Mr. JOHNSTON of Alabama. Certainly.

Mr. POMERENE. Has the Senator's investigation gone to the extent of enabling him to state what is the political faith of these consular officers?

Mr. JOHNSTON of Alabama. My information has been that they are almost wholly Republicans.

Mr. THOMAS. Since or before the election?

Mr. JOHNSTON of Alabama. Both before and since. There have been very few changes. I ask that the resolution be read, and I ask unanimous consent for its present consideration.

The VICE PRESIDENT. The Senator from Alabama asks unanimous consent for the immediate consideration of the resolution, which will be read by the Secretary.

The Secretary read the resolution (S. Res. 65), as follows:

Resolved, That the Committee on Foreign Relations is hereby directed to inquire into and report to the Senate the number of men in the Diplomatic Service of the United States and in the Consular Service, the States from which appointed, and the aggregate salaries of the appointees from the several States and the District of Columbia.

The VICE PRESIDENT. Is there objection to the present consideration of the resolution?

Mr. CUMMINS. Mr. President, before the resolution is adopted I should like to ask its author a question. The Consular Service is entered, I understand, through competitive examinations. I should like to know whether it is the desire of the Senator from Alabama to abolish the custom or rule of the department with regard to the Consular Service, and open it up to purely political appointments?

Mr. JOHNSTON of Alabama. In reply, Mr. President, I will say that I stated that over 200 of these consuls have never submitted to any examination whatever. They are in the service without an examination. I am not opposed to an examination to show the fitness of the men, but I am heartily in favor of every section of the United States having a fair and equal proportion of the officers who are appointed.

Mr. CUMMINS. Mr. President, so am I. I understand that there are a certain number—I have no doubt the Senator from Alabama has given the number correctly—who were in the service at the time the rule was promulgated by the State Department. I have suggested what I have solely to avoid any interpretation by my silence that I favor the abolition of the rule of merit which has been established and which I understand is now being enforced in the State Department. I hope that rule will continue, although in the very nature of things it ought to afford each geographical community or section of the United States a fairly equal representation in the service. That is true because men are very much alike all over the country.

Mr. JOHNSTON of Alabama. Yes; and I want to say, Mr. President, that it will hardly be considered possible by anyone on this floor that out of the 23,000,000 people in the South there are only 87 who are qualified to enter the Consular Service.

Mr. CUMMINS. I do not think so; but it may be that the men from the South have not applied for entry to the Consular Service under this rule. I do not know whether they have or not. But if they have, and if competent men from the South have been denied appointment in order to appoint incompetent men, or less competent men, from the North, I should be the first to condemn a practice of that kind.

Mr. WILLIAMS. The two statements of the Senator from Iowa are not in accord with one another. If this has been a service based upon competitive examination, then of course the question who has applied is irrelevant. It seems that by some queer coincidence of politics with civil-service merit seven-eighths of the employees in the Diplomatic and Consular Service are Republicans. It seems that by some queer coincidence of politics with civil-service merit about three-fourths of the employees of the departments are Republicans.

Mr. CLARK of Wyoming. Mr. President, will the Senator yield for a question?

Mr. WILLIAMS. Certainly.

Mr. CLARK of Wyoming. Does the Senator speak from investigations that he has made in regard to the politics of these men?

Mr. WILLIAMS. I am speaking from the facts with regard to the Diplomatic and Consular Service just presented by the Senator from Alabama.

Mr. CLARK of Wyoming. I do not understand that the Senator from Alabama drew any distinction as to the politics of the men now in that service.

Mr. WILLIAMS. The Senator from Wyoming is right about that; my inference was an inference; but they all come from the Northern States, and they do not come from the Southern States. They all come from the Republican geography of the

country, and none of them come from the Democratic geography of the country, and I drew the inference. I would suggest that the Senator from Alabama add something else to his resolution of inquiry, to wit, to find out what is the political faith of the men holding these places.

Mr. JOHNSTON of Alabama. I have no objection at all to that.

Mr. WILLIAMS. I notice the Senator from Iowa spoke about competitive examinations. I have been here a pretty good long while. I have seen two men break into the Diplomatic Service from Mississippi on what are called competitive examinations. They are not competitive in any proper sense at all.

Then, as far as I am concerned, I believe that if the present administration does not change that, the confirmation of appointments ought to be resisted in this body. There is no use telling me that southerners are not just as fit for public employment in the Diplomatic and Consular Service as men north of the line. So far in the history of this country they have shown their equality in the field, in the forum, before the bench, and everywhere else, and they are equal with them.

I suggest to the Senator from Alabama that he add to the resolution a further inquiry as to the political faith of the incumbents of these offices.

Mr. JOHNSTON of Alabama. I am perfectly willing to do that.

I wish to say further that I have never seen any notice of any vacancies that were about to occur and calling for men to stand an examination. I have had three men examined for the service from Alabama and only two of them were passed. I think if there had been notice when there was going to be a vacancy in the Consular Service there would have been a great many applications from Alabama or Mississippi or Florida of highly qualified men, graduates of universities, familiar with the manufacturing and industrial interests of the whole country.

Mr. WILLIAMS. At the suggestion of the Senator from Oregon, I want to add to my suggestion, in order to avoid complications, in view of the character of men who can change their politics quicker than any administration, that the inquiry be directed to their political faith at the time of their appointment.

Mr. JOHNSTON of Alabama. There have been no appointments since the present administration came in that I know of, except two or three. I am perfectly willing to have the amendment suggested by the Senator from Mississippi added to the resolution.

Mr. WARREN. May I interrupt the Senator for a moment?  
Mr. JOHNSTON of Alabama. Certainly.

Mr. WARREN. I think I can speak rather freely on the subject, because the State I have the honor of representing in part has no representation whatever in either the Diplomatic or the Consular Service, aside from one secretary of legation.

Regarding the examination, my understanding has been that the departments have not called for examinations for specific places, but they have called for examinations of classes, and when those who apply have passed they are graded, and the places that may be open are filled by selection and acceptance from that class. In fact, there is a waiting list most of the time of those who have satisfactorily passed the prescribed examination.

I presume the Senator may be differentiating between those appointed under the old system and those appointed since the period of examinations began.

Mr. JOHNSTON of Alabama. No; I am speaking of the present system.

Mr. WARREN. I hope the resolution will be antedated to cover the previous time, so that we may know what percentage have gone into the service through the examinations and acceptance on their merits, supposed to be regardless of their political faith.

Mr. SMITH of Georgia. I should like to ask the Senator from Wyoming if it is not true that some kind of a certificate is required from a Senator or official in order that the applicant may stand this examination.

Mr. WARREN. I think he has to give references as to his character and standing.

Mr. BACON. The rule is that he shall present a request from the Senator or Representative that he be allowed to stand an examination.

Mr. WARREN. Still he can present it without the indorsement of a Senator or Representative.

Mr. SMITH of Georgia. It requires the recommendation of a Senator to get the examination. That, I am sure, has been the rule. The result was, as the Senate was largely Republican, that those requests came from the other side of the Chamber.

Mr. JOHNSTON of Alabama. What I complain about is that Senators did not know when vacancies were going to occur and never heard of them so as to be able to advise their constituents. It is only when they make special requests that the privilege is granted. In the instance in my State, three or four men were examined, and I succeeded in getting two appointed. They passed the examination at a very high grade.

Mr. SMOOT. I should like to ask the junior Senator from Georgia whether if at any time a Democratic Senator indorsed anyone for an examination that indorsement did not go just as far with the department as though it had been an indorsement by a Republican?

Mr. SMITH of Georgia. I have not the detailed information to be able to answer.

Mr. SMOOT. The Senator from Alabama has just testified to the fact that, as far as he was concerned, it had.

Mr. JOHNSTON of Alabama. No; I said I had recommended some four gentlemen from Alabama for examination and only two who were permitted to take the examination passed.

Mr. SMOOT. Utah has not any representation in the Diplomatic Service. I find that, as far as the West is concerned, representation in both services is not very much greater than in the South; but there is a cause for that, Mr. President. The expense of coming here, where the examination takes place, from the Pacific coast is very great indeed. A great many people can not afford to incur the expense to come here and take the examination when they are not positive of an appointment after the examination is taken. I really believe that that is a part of the reason. Of course—

Mr. SMITH of Georgia. I am satisfied that is not true as to my own State, because the distance is not very great.

Mr. SMOOT. I am not speaking of the South.

Mr. SMITH of Georgia. The people in our section are very fond of coming to Washington.

Mr. SMOOT. Particularly at the present time.

Mr. BACON. Mr. President, I do not think the criticism that is best founded is that which relates to the matter of the requirement of an examination. That is of recent origin, and the representation in the Consular Service as a result of that examination is a very small percentage of the consuls representing the United States in foreign countries. I doubt if there is one in fifty now serving who got there through that examination. Consequently that question does not materially affect the situation, so grossly unjust, which has been disclosed by the paper read by the Senator from Alabama. That situation has been caused by appointments under an altogether different system. That situation, with its gross inequality in representation among the consuls of the different sections of the country, has been caused by appointments outside of any examination, and that is an evil. The question is, How is it to be remedied? Everyone will recognize that it is an evil; everyone will recognize that it is a condition that should not exist, and which should not be allowed to continue to exist if there is any way to reach it.

So far as that particular order is concerned, I do not think there is anything in it that is to be very much criticized. I have had occasion myself to look upon it with favor. I think that possibly it is not an order which should be universal in its application and enforcement. I think it is very frequently the case that a man who could not stand the examination which is required by that order would make a first-class consul. I think it is very frequently the case that some man could be found who would make a better consul than any man who stood the examination. The best consular representative is not always the man who can stand the examination in foreign branches, because that is a very severe examination. I have had occasion to look at it, and it is one that, I am frank to say, I could not pass successfully; and I do not believe that any Senator here, unless he went back to school for a month or two and reviewed his studies, could pass it.

There are many young men who can pass that examination who have no peculiar qualifications for the Consular Service. On the other hand, there are a great many men, men of affairs, men of business experience, men of energy, men of initiative, who would make very excellent consuls—the best of consuls—who could not possibly pass the examination.

Therefore I think a better system would be one which, while adhering to the order of examinations as a general thing, would admit the propriety of making exceptions whenever it appeared it was to the interest of the public service that some man should be appointed to the Consular Service who did not possess the necessary familiarity with the higher branches of mathematics and other branches of knowledge which are required by that examination.

Mr. LODGE. Will the Senator allow me?

Mr. BACON. With pleasure.

Mr. LODGE. I did not know that the applicants were examined in mathematics. I think of much more importance is the requirement that they should know one language besides their own. I think that must keep a great many very valuable men out of the service.

Mr. BACON. It does keep a great many out. I have had occasion to correspond at various times with the Department of State about that fact. In this country the knowledge of foreign languages is not general. It is extremely difficult for a man to know practically a foreign language who lives in America, because he hears but one language. A man may make himself quite proficient in a language while a student in college, but if he does not keep it up by mingling with those who speak that language in a few years he practically loses it. There is no question about that whatsoever.

Therefore, as suggested by the Senator from Massachusetts, that does debar a very large number of men who would make efficient consuls. While a knowledge of the language of the country in which the consul is to perform his duties is very important it is not essential. I think the rule ought to be relaxed.

Mr. OVERMAN. Will the Senator allow me to state a case right there that happened within my own knowledge?

Mr. BACON. With pleasure.

Mr. OVERMAN. A clerk in a department here who knew nothing about business except to do clerical work came to me and said he would like to get into the Consular Service. I asked him if he could speak a foreign language. He said, "No; but I am going to a night school here in Washington, and I think I can learn it." He went to the night school, learned the foreign language, and succeeded in passing the examination and was appointed. He knew nothing about the business matters of the country; he was purely a clerk; and yet he passed the examination. It is a rule that I think ought to be relaxed in some way.

Mr. BACON. I think the spirit which prompted that order, which was passed in the administration of Mr. Roosevelt, is to be applauded. It in a measure took the Consular Service out of politics. It did not altogether do so, because those who had to administer the law naturally were influenced in some degree by those who were in political affiliation with them, and there is a discretion even after the examination has been passed as to who shall be selected. So it did not entirely eliminate politics, but it did very largely do so. I think the purpose and spirit of the order are to be applauded.

Now, I do not think that in the administration of that order there has been any marked injustice. I think the Senator from Alabama does injustice to the department in the particular in which he mentions, to wit, that parties were not upon notice as to a vacancy and that therefore they had not an opportunity to make application for examination to fill that vacancy.

Mr. JOHNSTON of Alabama. I said, if the Senator from Georgia will permit me, I did not know why it was, but we had no notice of the fact that there were any vacancies in the places of consuls, and therefore we had no opportunity of knowing, unless we went to the department and found out privately, whether there was to be a change in the future. Then there would be only one or two men appointed, so that there could not be any general system by which they could qualify themselves under the rules of the department.

Mr. BACON. I am in entire sympathy with the general purpose of the Senator from Alabama that there should be a change in this matter, and I am trying to show that the particular feature to which attention has been directed is not that of which there can be such criticism as, if sustained, will correct the evil. What I was about to say when the Senator interrupted me is that under this order no one is examined for any particular position. He is not examined, when it is found out that there is a vacancy in Bombay, for an appointment to Bombay. There is a general examination for the purpose of securing the names of those who will be deemed eligible by the President as proper men to appoint whenever there is a vacancy, just like there is, for instance, in the civil service. It is true that in the civil service there is some classification; the men stand an examination for clerks in some subdivision, or something of that kind. But in this order there is a general standing program under which the President designates men for examination upon the recommendation of Senators and, I think, also of Representatives; I am not sure about that, I think so, however. In other words, he gives permission to them to stand an examination in order that by and under the evidence furnished by those examinations he may be in a position to judge whether the applicant is a man proper to be appointed

or not. The names of the men who have passed the examination are put upon the list. They do not have to wait for a vacancy until the examination is ordered. Their names are put upon the list and then when vacancies occur men are selected from those lists and appointed to fill the places.

Mr. SMOOT. Mr. President—

Mr. BACON. If the Senator will pardon me a minute, I repeat it is of course perfectly natural when there are 100 men on a list and a dozen of them to be appointed that the element of personal influence should have some controlling effect. I have no doubt that it does. The order has in a great measure eliminated from the Consular Service the political feature, but, as I said, that does not reach the present evil.

Mr. SMITH of Georgia. Before my colleague passes from that will he let me ask him a question? Is it not the entire difference between the examinations for the Consular Service and the ordinary civil-service examinations that under the ordinary civil-service examination each State receives its due quota and three who stood the best examination are selected to the service, while under this examination quite a long list is made and the selection is made which pleases the appointing power best?

Mr. BACON. There is undoubtedly more opportunity for that to be done.

Mr. JOHNSTON of Alabama. I wish to ask the Senator in this connection whether when such an examination is ordered the Secretary of State should not take the applicants from States that have not their pro rata of appointments?

Mr. BACON. The Senator anticipates me in that. I am trying to get to that.

Mr. SMITH of Georgia. We were so anxious to hear the Senator on it that we wanted it before he got to it.

Mr. LODGE. Mr. President, if the Senator will allow me to make the suggestion, I think there is one thing passed over in his very natural desire to improve the Consular Service by getting the valuable men who can not pass the examination. There is one great obstacle now in the present regulations. As Senators are well aware, all the consulates are graded. They are graded according to salaries. There are seven grades. Under the present regulations new appointments are made only to the two lowest grades. That is a thing which I think will, unless changed, interfere very seriously with getting the valuable men who can not pass the examination.

Mr. BACON. The Senator is entirely correct. The only mistake he made was in saying that I had passed it over. I had not got to it. I have been struggling for some time trying to reach it.

Mr. LODGE. I have no doubt that by the time the Senator gets through—

Mr. BACON. It will all be covered.

Mr. LODGE. He will have gotten every one of what he calls these valuable men, who can not pass the examination, out of the service.

Mr. BACON. That is not the purpose which I have in view. It is really difficult for me to continue the thread of what I am saying, not only because of the interruption but because of the different views presented by the different Senators who have made the interruption.

I was about to say that I am sorry the senior Senator from New York [Mr. Root] is not here, because I think he is really the author of that order. I had correspondence with him at the time he was Secretary of State and I have had conversation with him since then. I think the purpose was a laudable one.

I want to say as to the matter which was suggested by my colleague, and about which I intended to speak, that while there is no such hard and fast rule as is attempted to be laid down in the civil-service law with reference to the distribution of these officers among the States, I know that there has been expressed, and I believe honestly expressed, a desire through this examination in a measure to distribute these consular appointments in the different States.

But the difficulty is, as I said in the outset, that this affects a mere small fractional percentage of those who are in the Consular Service, and it would take half a century—certainly a quarter of a century—with the most rigid adherence to the purpose, to distribute them to the different States through this method of examination and to correct the evil as it now stands. The question is, What is to be done now? Ought it to remain as it is? Ought it to remain with one section of the country almost exclusively filling up the Consular Service, or ought it to be distributed?

I am very frank to say that while I believe that as a general rule there ought to be some relaxation of this order, and men who do not pass the examination ought to be appointed, I think in the present condition of affairs it ought to be very severely relaxed; and I believe it is the duty, not simply of a Democratic

administration, but that it would be the duty of a Republican administration if it were in power, to so change the present Consular Service as in some degree, at least, to make a due proportion of representation in this service for one part of the country as well as for the other.

Mr. GALLINGER. Mr. President—

Mr. BACON. I yield to the Senator from New Hampshire.

Mr. GALLINGER. I do not desire to interrupt the discussion, but I rise for the purpose of saying that when I get an opportunity to do so I shall ask that the resolution go over under the rule. I want to look into it a little more carefully.

Mr. BACON. Then, Mr. President, I have no desire to occupy the floor further.

Mr. THOMAS. Mr. President—

Mr. GALLINGER. I object to the present consideration of the resolution.

Mr. WORKS. Since we are still under the order of business of bills and joint resolutions, I want to offer—

Mr. THOMAS. I was under the impression that the order of morning business had closed.

Mr. WORKS. Morning business has not yet been closed, as I understand. I send to the desk an amendment which I desire—

Mr. GALLINGER. If the Senator from California will permit, I ask that the resolution go over under the rule.

The VICE PRESIDENT. If the Senator will permit the resolution to be read as it now stands, it will then go over under the rule. The resolution will be read.

The Secretary read the resolution as follows:

*Resolved*, That the Committee on Foreign Relations is hereby directed to inquire into and report to the Senate the number of men in the Diplomatic Service of the United States and in the Consular Service, the States from which appointed, the aggregate salaries of the appointees from the several States and the District of Columbia, and the political party with which such appointees were affiliated at the time of their appointment.

The VICE PRESIDENT. The resolution will go over and be printed.

#### WASHED PAPER MONEY.

Mr. MARTINE of New Jersey. Mr. President, if this is the proper stage of proceeding, I desire to present correspondence from 587 bank presidents and cashiers, representing every State in the Union, protesting against what is known as "washed money." I desire to ask that this correspondence be printed as a public document. My prompting in making this motion I feel is richly justified from this large amount of correspondence. I put myself in communication with the various banks of the country, and I have received protests, as I say, from 587 of them in every State of the Union, insisting that the method should be discontinued. For myself I feel that the country can not have too much of good, fresh, clean money.

I insist that after the Government having secured, as it has, the best art in the matter of engraving, thereby obtaining the deepest and most permanent colors, it ill becomes us to go through a Chinese laundering process of washing and fading out our money. This is the universal protest of bank presidents and cashiers throughout our country against this process of soap-suds and caustic soda by which the fine lines, the work of the artist and the engraver, have been practically obliterated and the colors destroyed so that it is impossible to detect whether or not notes are counterfeit.

I introduced some time since a paper, which was published as a document, entitled "Counterfeiters' delight," and its sentiments have been reechoed from one end of this country to the other. I feel that the United States Government, at least, is called upon to do as much as does the Government of Great Britain and the Governments of many other countries in turning out clean, fresh, crisp money. I have no sympathy with any process—

Mr. THOMAS. Mr. President—

Mr. MARTINE of New Jersey. One moment. I have no sympathy with any process that shall keep alive and circulate among the people greasy, filthy rags, such as many that are now in circulation. I do insist that it should not be the business of a few men in the Treasury Department to establish machines to wash our paper money or to curtail its size. That is a matter which should be left with the people of the United States. Apropos of what I have said, I ask that this correspondence may be published as a document.

Mr. THOMAS. I do not like to interrupt the Senator from New Jersey, but I must insist upon the regular order.

Mr. MARTINE of New Jersey. I thought I had assent from the Vice President. I asked him if this were the proper stage at which to present this proposition, and, hearing nothing to the contrary, I assumed that it was.

The VICE PRESIDENT. May the Chair inquire whether the Senator's proposition is accompanied by a resolution?

Mr. MARTINE of New Jersey. By only a verbal resolution, Mr. President.

Mr. SMOOT. It is a request from the Senator from New Jersey that certain letters which he has received be printed as a public document. The correspondence is all upon one subject, and, as I understand, there are 587 letters.

Mr. MARTINE of New Jersey. There are 587 letters, representing every State in the Union.

Mr. SMOOT. Mr. President, I hardly think that it is necessary to have those 587 letters printed as a public document, especially they being all one way and all protesting against one single object. I believe the Senator will secure just as much publicity for the statement—

Mr. MARTINE of New Jersey. I am not looking for publicity. The Senator from Utah is entirely in error. I want to say that there are four banks in the State of Utah, the Senator's own State, that protest most vehemently against this process. I want to present to you—and I think the Senator will not object—a letter signed by a former Member of this body, W. M. Kavanaugh, of Little Rock, Ark.

Mr. THOMAS. Mr. President, I must again insist upon the regular order. This is all out of the regular order.

The VICE PRESIDENT. If there is objection to the request, and it is not accompanied by a resolution—

Mr. MARTINE of New Jersey. Well, I will reserve my privilege, and present the matter again.

The VICE PRESIDENT. If there are not further concurrent or other resolutions, morning business is closed.

#### ASSISTANT CLERKS OR MESSENGERS TO SENATORS.

Mr. WILLIAMS. Mr. President, I desire to call up Senate resolution 15.

The VICE PRESIDENT. The Chair lays before the Senate the resolution referred to by the Senator from Mississippi [Mr. WILLIAMS], which was reported by the Committee to Audit and Control the Contingent Expenses of the Senate, with an amendment in the nature of a substitute. The proposed substitute will be read.

The Secretary read as follows:

*Resolved*, That the Committees on Coast and Insular Survey, on Enrolled Bills, on Expenditures in the Agricultural Department, on Expenditures in the Departments of Commerce and Labor, on Standards, Weights, and Measures, on Expenditures in the Department of State, on Forest Reservations and the Protection of Game, on National Banks, on Public Health and National Quarantine, on Geological Survey, to Investigate Trespassers upon Indian Lands, on the Mississippi River and its Tributaries, on Pacific Railroads, on Railroads, on Transportation Routes to the Seaboard, on the University of the United States, on Woman Suffrage, to Examine the Several Branches of the Civil Service, on Indian Depredations, on Transportation and Sale of Meat Products, on Engrossed Bills, on the Five Civilized Tribes of Indians, on Additional Accommodations for the Library of Congress, on Private Land Claims, on Disposition of Useless Papers in the Executive Departments, on Revolutionary Claims, on Corporations Organized in the District of Columbia, on conference of the minority of the Senate be, and they are hereby, authorized to employ one assistant clerk each, at \$1,200 per annum, to be paid from "miscellaneous items" of the contingent fund of the Senate until otherwise provided for by law: *Provided*, That if any of the committees recited above already have three employees the resolution shall not apply to them, except that this proviso shall not apply to the conference of the minority of the Senate.

Mr. WILLIAMS. I am informed by the Senator from Utah [Mr. SMOOT] that the Senator from North Dakota [Mr. McCUMBER] will not further insist upon the amendment which he offered at the last session of the Senate. I therefore move to lay the amendment on the table.

Mr. SMOOT. Mr. President, I will say that that will be perfectly agreeable to the Senator from North Dakota. He asked me to make the same motion, and I want to explain to the Senate, inasmuch as he is absent from the Chamber at this time, that it is satisfactory to him.

The VICE PRESIDENT. The Secretary will state the amendment heretofore proposed by the Senator from North Dakota to the amendment of the committee in the nature of a substitute.

The SECRETARY. The amendment proposed by Mr. McCUMBER was, on page 2, line 19, to amend the amendment by striking out "\$1,200" and inserting "\$1,400."

The VICE PRESIDENT. The question is on the motion of the Senator from Mississippi to lay the amendment to the amendment on the table.

The motion was agreed to.

Mr. SMOOT. I move that the words "assistant clerk," in line 19, page 2, be stricken out and that the word "messenger" be inserted.

Mr. WILLIAMS. I accept the amendment, so far as I can.

The VICE PRESIDENT. The amendment to the amendment will be stated.

The SECRETARY. On page 2, line 19, after the word "one," it is proposed to strike out the words "assistant clerk" and in lieu thereof to insert the word "messenger."

The VICE PRESIDENT. The question is on the amendment of the Senator from Utah to the amendment reported by the committee in the nature of a substitute.

The amendment to the amendment was agreed to.

The VICE PRESIDENT. The question is on agreeing to the amendment reported by the committee in the nature of a substitute as amended.

Mr. BACON. Mr. President, I think we ought to have a statement as to what the status of the measure will be as amended. The matter was before the Senate the other day, and there seemed to be very great differences of opinion as to what was the proper construction of this proposed measure. I should like to have it stated now what will be the status.

Mr. WILLIAMS. I suggest that the Secretary read the resolution as reported from the committee. The Senator can get the information he wants from that. It is perfectly plain.

Mr. SMOOT. Omitting the long list of committees.

Mr. WILLIAMS. Inasmuch as the Senator from Georgia wants to know what it is, the Secretary can read them.

Mr. BACON. Mr. President, I am induced to make the request from the fact that there was such a difference of opinion on a former occasion among Senators who are in favor of this measure as to what it meant. I want to know if they are now agreed upon it, and what it does include. Some Senators were of the opinion that it reduced all of these clerks or messengers, whichever you may choose to call them, to \$1,200; but other Senators said that it only reduced a certain number of them to \$1,200. Now, which is correct?

Mr. WILLIAMS. I suggest that the resolution explains itself, and, if the Senator desires the information, the resolution may be read. There is not a particle of doubt about what it means.

Mr. LODGE. The resolution, Mr. President, if I may say so, does not explain itself. It cuts down a certain number of men who are now receiving as messengers \$1,440.

Mr. WILLIAMS. There is no doubt about that fact. It is perfectly plain.

Mr. LODGE. That does not appear on the face of the resolution.

Mr. WILLIAMS. It does appear on the face of the resolution.

Mr. LODGE. It is an inference naturally from it.

Mr. WILLIAMS. Oh, no; what the resolution does is this: There are now upon the rolls of the Senate 10 so-called special messengers, who have been detailed at the request of Senators to serve certain committees. This resolution does away practically with the details, and enables Senators to appoint those men as messengers to their committees, whereupon they cease to be special messengers upon the general roll of the Senate, and immediately thereupon their salaries are reduced from \$1,440 to \$1,200, and all the nominal committees of the Senate, some of which now have \$1,200 men and some have \$1,440 men, are put upon an equal footing. These men were named to the special-messengers' roll by the Senators who wanted them, and the Senators who wanted them will want them again; but now they go off of that roll and go on the roll as messengers of particular committees, and they go off the special roll at \$1,440 and go on a committee roll as \$1,200 men.

Mr. LODGE. Precisely.

Mr. WILLIAMS. What I meant in saying that there could be no doubt about the resolution, was simply that there could be no doubt about that fact. The only danger is that the Sergeant at Arms might reappoint other men to fill the places of these men; but this is a party matter; it is done under the dictates of a majority caucus. I will say, by the way, that as an original proposition I was not in favor of giving any other assistance to seven or eight of these committees; but I am obeying that behest, and of course the Sergeant at Arms will obey it, and there will be no appointments to fill the vacancies upon the special list made by these appointments.

Mr. CLARK of Wyoming. Mr. President, I should like to ask the Senator a question. He speaks of a list of special messengers. Are not all messengers carried upon a general messenger roll or messenger list?

Mr. WILLIAMS. They are; but these 10 or 11 men, or whatever the number may be—I have forgotten the exact number—have already been detailed to serve these committees. Nobody will be appointed to fill their places as messengers.

Mr. CLARK of Wyoming. I understand that; but the Senator was not strictly accurate when he said there was a special messenger list.

Mr. WILLIAMS. I meant a detailed messenger list.

Mr. CLARK of Wyoming. Is there a detailed messenger list? Are not these men detailed from the general messenger list?

Mr. WILLIAMS. Yes.

Mr. CLARK of Wyoming. That is what I wanted to know. Now, will the Senator inform us how many are on the messenger list of the Senate?

Mr. WILLIAMS. I do not know.

Mr. SMOOT. Thirty-seven.

Mr. WILLIAMS. I know that these 11 are there, and these 11 have been detailed.

Mr. SMOOT and Mr. LODGE. There are 37.

Mr. CLARK of Wyoming. Thirty-seven?

Mr. WILLIAMS. Thirty-seven. This will reduce the messenger list from 37 to 26, and we will take care of them when we come to the appropriation bill later.

The VICE PRESIDENT. The question is upon agreeing to the amendment reported by the committee in the nature of a substitute for the original resolution as amended on motion of the Senator from Utah [Mr. SMOOT].

Mr. VARDAMAN. I should like to have the resolution as amended read, so that we may understand exactly what it is.

The VICE PRESIDENT. The Secretary will read as requested.

The Secretary read as follows:

*Resolved*, That the Committees on Coast and Insular Survey, on Enrolled Bills, on Expenditures in the Agricultural Department, on Expenditures in the Departments of Commerce and Labor, on Standards, Weights, and Measures, on Expenditures in the Department of State, on Forest Reservations and the Protection of Game, on National Banks, on Public Health and National Quarantine, on Geological Survey, to Investigate Trespassers upon Indian Lands, on the Mississippi River and its Tributaries, on Pacific Railroads, on Railroads, on Transportation Routes to the Seaboard, on the University of the United States, on Woman Suffrage, to Examine the Several Branches of the Civil Service, on Indian Depredations, on Transportation and Sale of Meat Products, on Engrossed Bills, on the Five Civilized Tribes of Indians, on Additional Accommodations for the Library of Congress, on Private Land Claims, on Disposition of Useless Papers in the Executive Departments, on Revolutionary Claims, on Corporations Organized in the District of Columbia, on conference of the minority of the Senate be, and they are hereby, authorized to employ one messenger each, at \$1,200 per annum, to be paid from "miscellaneous items" of the contingent fund of the Senate until otherwise provided for by law: *Provided*, That if any of the committees recited above already have three employees, the resolution shall not apply to them, except that this proviso shall not apply to the conference of the minority of the Senate.

Mr. WILLIAMS. Mr. President, I want to make one explanation to the Senate about the last clause of the substitute. The minority conference have always had four employees. That is something that always has been granted by the majority to the minority, and of course we want to grant it now. Therefore this exception was made from the proviso.

Mr. SMOOT. That is the case, Mr. President.

The VICE PRESIDENT. The question is upon agreeing to the amendment in the nature of a substitute, reported by the Committee to Audit and Control the Contingent Expenses of the Senate, for the original resolution as amended.

The amendment as amended was agreed to.

The resolution as amended was agreed to.

#### ADJOURNMENT TO MONDAY.

Mr. KERN. I move that when the Senate adjourns to-day it adjourn to meet on Monday next at 12 o'clock meridian. The motion was agreed to.

#### ADDITIONAL CIRCUIT JUDGE.

Mr. THOMAS obtained the floor.

Mr. CHILTON. Mr. President, will the Senator yield to me for a moment?

Mr. THOMAS. I yield for a moment to the Senator from West Virginia.

Mr. CHILTON. I desire to move at this time what would be the regular order, as I understand—that we take up Senate bill 577, authorizing the President to appoint an additional circuit judge for the fourth circuit, and consider it.

Mr. BRISTOW. Mr. President, I understand that the Senator from Colorado has given notice that he desires to speak to-day immediately after the routine morning business.

Mr. CHILTON. That is true, and he has kindly allowed me to make this motion.

Mr. BRISTOW. The bill will cause considerable debate before it can be passed.

Mr. CHILTON. How much time will it take?

Mr. BRISTOW. I do not know. I want the Senate to understand just what it is doing. I think we had better let the bill go over and take it up some other day.

Mr. CHILTON. No; that does not suit me at all. This is the regular order, and I do not want it to go over. Of course, if it is going to take up the Senator's time, I will give notice that when the Senator finishes his remarks I will make this

motion. I do not intend to have the bill keep going over all the time. It is the regular order; it is on the calendar; it is the only bill on the calendar; and I certainly can move to take it up or proceed with the regular order. I do not wish to disturb the Senator from Colorado, but I give notice that when he shall have finished, no matter when that time may be, I shall make this motion.

Mr. BRISTOW subsequently said: Mr. President, recurring to the bill to which the Senator from West Virginia has referred, I desire to say that I do not care to take any great length of time in discussing it. A very few minutes will satisfy me. If the Senator from Colorado is willing for it to be taken up now, I am perfectly willing that it shall be taken up and considered.

Mr. THOMAS. I was willing at the outset, Mr. President, but so much time has been consumed that I feel as though I should not be asked to yield the floor, because the matter might take more time than seems probable.

The VICE PRESIDENT. The Senator from Colorado has the floor.

#### AMENDMENT OF ANTITRUST ACT.

Mr. THOMAS. Mr. President, I call up the bill S. 112, striking out the words "unreasonable or undue" inserted by the Supreme Court of the United States into section 1 of the act of Congress of July 2, 1890.

The VICE PRESIDENT. The bill is before the Senate, and the Senator from Colorado will proceed.

Mr. THOMAS. Mr. President, I ask the Secretary to read Senate bill No. 112.

The Secretary read the bill (S. 112) to restore section 1 of the act of Congress of July 2, 1890, chapter 647, Twenty-sixth Statutes at Large, to its original form as enacted by striking out the words "unreasonable or undue," inserted therein by a decision of the Supreme Court of the United States, introduced by Mr. THOMAS April 7, 1913, as follows:

*Be it enacted, etc.,* That the words "unreasonable or undue," inserted by the Supreme Court of the United States on May 15, 1911, by its decision of the case entitled "Standard Oil Co. of New Jersey et al. v. The United States," between the words "in" and "restraint of trade or commerce," where these words occur in section 1 of the act of Congress of July 2, 1890, chapter 647, Twenty-sixth Statutes at Large, page 209, commonly known as the antitrust act, be, and the same are hereby, stricken out and repealed, and that the said section of said statute be restored to its original form, structure, and meaning as the same was enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Sec. 2. That in all actions, civil or criminal, now pending or to be instituted against any person or corporation for a violation of the provisions of said act, and in all appeal from or writs of error to review any judgment, decree, or conviction rendered or secured therein, against any person or corporation by the United States, or by any person or corporation, the courts of the United States shall interpret and apply the said act according to its terms, language, and provisions as the same was originally enacted and as the same will read as hereby amended, and not otherwise.

Mr. THOMAS. Mr. President, I am not accustomed to speaking from written manuscript. I prefer the more direct and satisfactory method of oral statement and discussion. I have made an exception, however, to the rule which I have generally followed, because of the importance, in my opinion at least, of the proposition which is involved in this bill, and also because I think it is a subject which requires precision of statement. I shall therefore trespass upon the patience of the Senate by reading what I have to say.

On the 15th day of May, 1911, the Supreme Court of the United States announced its opinion in the case of the Standard Oil Co. of New Jersey and others versus The United States. The case had been submitted on March 16, 1910, after an oral argument of three days' duration. It was restored to the docket on April 11 following, and was reargued on January 12, 13, 16, and 17, 1911.

On May 29, 1911, the same court handed down its decision in the case of United States versus American Tobacco Co., which had also been twice argued and submitted. These decisions wrote qualifying words into a Federal statute which profoundly altered its meaning and restricted its purpose.

On July 26, 1911, the Senate referred to the Committee on Interstate Commerce a resolution:

That the Committee on Interstate Commerce is hereby authorized and directed, by subcommittee or otherwise, to inquire into and report to the Senate at the earliest date practicable what changes are necessary or desirable in the laws of the United States relating to the creation and control of corporations engaged in interstate commerce, and for this purpose they are authorized to sit during the sessions or recesses of Congress, at such times and places as they may deem desirable or practicable; to send for persons or papers; to administer oaths; to summon and compel the attendance of witnesses; to conduct hearings and have reports of same printed for use; and to employ such clerks, stenographers, and other assistants as shall be necessary, and any expense in connection with such inquiry shall be paid out of the contingent fund of the Senate upon vouchers to be approved by the chairman of the committee.

In obedience to the requirements of this resolution, the committee conducted hearings extending over a period of more than three months, took much testimony, and made its report to the Senate on February 26, 1913. Its work was comprehensive. Its report is brief, concise, and illuminating. Whatever view may be entertained of the recommendations of the majority of its members, there can be but one sentiment as to the tremendous and immediate importance of the subject and the necessity for national legislation concerning it at the present session of Congress if possible—at the ensuing regular session in any event. And it is equally certain that this legislation should be comprehensive in its scope and unmistakable in its character; that it should be applicable to all persons and corporations engaged in interstate commerce; that it should be applied and enforced by executive agencies with promptness and efficiency, and that it should be relieved as far as Congress can relieve it from those perils of judicial decree which the existing law has encountered, with unfortunate results to it and to those whom it was designed to serve. Otherwise the enforcement of the antitrust laws, however complete in their purpose and clear in their details, will drift from the executive into the judicial department of the Government and, like some of their predecessors, be lost in the shoals and quicksands of construction and interpretation.

Believing that until the substance and the form of our scheme of government shall have undergone radical changes, some of which are concededly desirable, the power to legislate is vested in Congress, subject only to the Executive power of veto, I assert it to be both our right and our duty to make that power effective. It is our right under the Constitution. It is our duty if we would continue the right unimpaired and make our laws operative in the manner and to the extent that we enact them. The Federal courts long ago assumed the prerogative of pronouncing upon the validity of national statutes and have exercised it since the decision in *Marbury against Madison*. They have also exercised the right of construction, which is a perfectly legitimate one when confined to instances where language has been at fault with resulting ambiguities. And they have more recently changed the phraseology of a statute, which means legislation by decree. It is no reflection upon the integrity, the character, or the motives of judges to say this, for it is a self-evident fact and one which calls for counteraction by Congress if we would give effect to the popular demand as expressed in legislation. To do less is to renounce our powers in passive assent to their invasion by another department.

It was said many years ago that the power to interpret laws is the power which legislates. This is true, because the power may be and, in fact, is frequently applied to laws which are wholly free from ambiguity and which, therefore, interpret themselves. To undertake the construction of such a law is to distort its meaning and to change its application. This is but saying that such a law when interpreted is not the law as enacted; it is a different one, and becomes so by a process which is nothing less than legislation.

And the power to legislate by interpretation involves the power to interpret the same statute more than once and in more than one direction, so that the same law may be subject to change with every controversy that appeals to it for final solution. This is not a healthy condition of things, but it is far less dangerous to our institutions than one which rests upon the assumption of power to insert words and phrases into the body of a law by judicial decree. That is something more than interpretation; it is interpolation; it is legislating directly and specifically. And the power to interpolate words and phrases includes the power to strike out or subtract them whenever that may be the preferable or more expedient method of procedure. When one department of any government has authority to declare the laws of that government to be unconstitutional, to interpret their provisions when interpretation is to alter their meaning, to enforce them as interpreted to add words to or subtract words from them, and expound and enforce them as thus reconstructed, that department is supreme. It is a department in name only. Its attributes are sovereign in scope and character. It is the government for all essential purposes; and it is not a republican or representative government. It may be that the power to set aside laws of Congress because they are believed to be unconstitutional is indispensable to the integrity of our institutions. While I do not concede it, I enter upon no discussion of the question at this time. I shall content myself by referring to the historic fact that four attempts were unsuccessfully made by some of its framers to insert into the Constitution this power to declare laws invalid, each of which was rejected by decided majorities. From this I naturally infer that it has no place in our National Charter except as it has been located there by what is called "necessary implication." I maintain, however, that the common practice of

interpreting statutes and the later one of adding words to them by the courts are the natural offspring of this assumed power to set them aside altogether. I am mindful of the fact that the courts have always declared that they can not invalidate a statute if they can construe it conformably with constitutional requirements; that is to say, to their view of such requirements. This not only suggests—it invites construction, and precedent begets precedent; so that construction is frequently invoked, whether the statute impinges upon the Constitution or not. One canon of construction is to ascertain and then apply the legislative intent which will not be presumed to be in conflict with the limitations of the Constitution, and such intent must be gleaned from the phraseology of the law. But this may prove a difficult task, in which case the judges sometimes recast the statute. And so the latest phase of the development of this prerogative, where the meaning of a statute is challenged, is that if the intent can not be ascertained from the language employed, or if such intent does not conform to the judicial view of what it should be, the addition of a word or two by the court will supply the intent as the court determines it should be, and the decree is entered accordingly. In its last analysis the statute is changed to suit the views of the court, although there may be nothing ambiguous or unconstitutional about it. Is it extravagant to assert that through the evolution of this power to invalidate the laws of Congress we are being transformed from a republican to a judicial system of government?

Congress is frequently compared to the British Parliament, and as frequently contrasted with it. The House of Representatives is supposedly analogous to the House of Commons. The American Senate is sometimes facetiously, sometimes seriously, called the American House of Lords. But apart from the fact that money bills must originate with the House of Representatives, there is little resemblance between it and the House of Commons. Our powers are now limited, not only by a written Constitution, but by another department which asserts and exercises the power to examine, to construe, to approve, to change, or to invalidate the laws we enact. They become effective at the pleasure of the courts. The real analogy to the British Parliament, therefore, is furnished by the Supreme Court of the United States. Its laws, like those of the Parliament, are supreme. Its decrees, like those of Parliament, are not subject to change unless itself shall so declare. The President may veto what we do here, but we can override his veto. And he, with all his authority, can not lawfully insert a punctuation point between two words in any act of Congress, while the courts, under the exercise of a jurisdiction which, though conferred by the Constitution, is regulated by Congress, may declare its meaning and amend or set it aside at discretion.

If these conditions are to continue, if they are to be treated as a permanent feature of our national polity, I can perceive no certain relief from the evils which the so-called Sherman Act was designed to mitigate through any additional legislation which Congress in its wisdom may enact. For we can not safely assume that such legislation, however framed, will not suffer the same judicial surgery so recently administered to the parent law. We may safeguard our action by every known precaution that language vouchsafes; we may declare what construction that language shall receive, and yet awake some morning to learn from the courts that we never meant what we said, or never said what we meant, or did not mean to say what we said, or should have said something more or something less than what we actually said, and which is said for us, because we did not say what we should have said. And this final pronouncement becomes the law, not for all the people, but for those involved in the particular case. It is subject to readjustment in successive stages of future litigation. We may again resort to legislation and thus seek to reach the evil, but reach instead the same or more undesirable result.

Mr. Jefferson foresaw and deplored these conditions. In 1820 he declared that if the judges became the ultimate arbiters of all constitutional questions, we would be placed under the despotism of an oligarchy. A year later he thus wrote to a friend:

It has long been my opinion that the germ of dissolution of our Federal Government is in the constitution of our Federal judiciary, an irrepressible body (for impeachment is scarcely a scarecrow) working by gravity by day and by night, gaining a little to-day and a little to-morrow, and advancing its noiseless steps like a thief over the field of jurisdiction.

But Mr. Jefferson's wisdom, though beyond that of nearly all his contemporaries, could not foresee that the judiciary, though working like gravity, would ever assume the power to write into an act of Congress words that were never meant to be there, and which Congress deliberately refused to put there, thus profoundly changing its scope and meaning and thereby

transferring to itself the authority to execute or suspend its provisions.

Such a power is more than arbitrary. It savors of despotism. It is incompatible with free institutions. The courts of no other nation ever dared to exercise it. The people of no other nation would tolerate it. Plato said that government, by whatever name it might be called, would always be the government of the strongest man. We may paraphrase this aphorism by asserting that our Government, though called republican, is the government of the Supreme Court. Clothed with authority to set aside, to construe, and to make laws, it is above Congress, above the President, above the Constitution, and above the people. It is omnipotent.

Nothing more vividly illustrates the constant extension of judicial authority, and the far-reaching scope of its overshadowing prerogative, than the history of the fourteenth amendment. This child of the Civil War was designed above all other things to confirm and guarantee the civil rights of the negro, and to safeguard him against the menace of unfriendly State legislation. But for this reason it probably would not have been presented, and certainly would not have been ratified by the States.

I am familiar, in a general way, with the debates which attended its course through Congress, and with the emphasis which the courts have in more recent times placed upon the larger field it was designed to cover, that property as well as life and liberty was insecure and needed the protection of the Federal authority. I know that Senator Conkling reminded the circuit court of the ninth judicial circuit, in 1882, that when the amendment was first considered individuals and joint-stock companies were appealing for congressional and administrative protection against insidious and discriminating State and local tax laws. But such considerations were in those days of reconstruction as chaff before the wind.

The rights of the newly emancipated negro appealed to the dominant political party for adequate protection. That party desired to enfranchise him and use his vote to perpetuate its power. It responded by presenting and ultimately forcing the passage and ratification of the fourteenth amendment. Its beginnings are found in a resolution offered in the House by Thaddeus Stevens on December 5, 1865, proposing an amendment in these terms:

All National and State laws shall be equally applicable to every citizen, and no discrimination shall be made on account of race and color.

From this germ sprang the celebrated amendment whose several provisions were unfolded as discussion of the subject proceeded in committee and on the floor. Throughout all the deliberations of that memorable period the civil rights of the freedman was the dominant note, the cardinal subject of consideration. These found expression in various forms and finally in that which became effective by adoption and ratification. Of this I think there can be no dispute. I shall therefore refer but very briefly to the debates which attended its course through the Congress.

Senator Howard, of the Reconstruction Committee, said:

It establishes equality before the law, and it gives to the humblest, the poorest, the most despised of the race the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, the most haughty. Without this principle of equal justice to all men and equal protection under the shield of the law there is no republican government and none that is really worth maintaining.

Senator Poland, in urging the provision for the equal protection of the laws, said:

It is the very spirit and inspiration of our system of government, the absolute foundation upon which it was established. It is essentially declared in the Declaration of Independence and in all the provisions of the Constitution. Notwithstanding this, we know that State laws exist, and some of them of very recent enactment, in direct violation of these principles. It certainly seems desirable that no doubt should be left existing as to the power of Congress to enforce principles lying at the very foundation of all republican governments if they be denied or violated by the States.

Similar expressions from the lips of leading statesmen of that eventful era might be quoted, but it is unnecessary. We know that human rights were the transcendent issue, and that property rights were entirely secondary to their consideration. It may be that the property interests quietly but effectively made a Trojan horse of the amendment, whereby they might sometime gain access to the heart of the citadel. Subsequent events justify this assertion, for they have been the chief if not the sole beneficiaries of the amendment. It is indeed a striking commentary upon the wisdom and forethought of man that a fundamental addition made to the Constitution of the United States to protect and to preserve and enforce the civil and political rights of 3,000,000 of newly made freedmen has by judicial construction and application for nearly 50 years been converted into an effective agency for the accomplishment of almost

every end save that for which it was designed, and but for which it would never have been enacted.

The unfortunate people whom this amendment was chiefly intended to serve have been excluded from the ballot box and from juries. They have been subjected to discrimination in every direction. They have never been equal before the law. I say this in no spirit of criticism. I merely state a solemn truth. And these people have vainly appealed to the fundamentals of the fourteenth amendment and prayed for their vindication by the Federal courts many times through the intervening years. They have been told judicially that Congress was not empowered by the fourteenth amendment to enact so much of the civil-rights act of 1875 as was intended to secure equal accommodations at inns, places of public amusement, and in public conveyances without distinction of race or color, since the applicable provisions of the amendment have reference solely to State action (Civil Rights cases, 109 U. S., 3); that a State statute providing for separate railway carriages for the white and colored races and the assignment of passengers thereto according to their race deprived a colored person of no rights under the fourteenth amendment (*Plessy v. Ferguson*, 163 U. S., 537); that the equal protection of the laws is not denied to colored persons by a State constitution which makes no discrimination against them in terms, but which grants a discretion to certain officers which can be used to the abridgment of the right of colored persons to vote and serve on juries, but it is not shown that its actual operation is evil, but only that evil is possible under it. (*Williams v. Mississippi*, 170 U. S., 213.)

These and kindred decisions largely conclude the application of the amendment to personal guaranties. Their reasonings are the result of earnest contention and quite as earnest consideration. I pass them with two reflections. The first is that they chronologically follow the cases of *Bowman v. Lewis* (101 U. S., 22), the *Slaughter House* cases (16 Wall., 36), and *Re Virginia* (100 U. S., 313), which held in effect that the main purpose of the last three amendments was the freedom of the African race, the security and perpetuation of that freedom, their protection from the white men who had formerly held them in slavery, and the prohibition of the States by the fourteenth amendment from abridging the privileges and immunities thereby granted.

The other reflection is that the decisions denying the application of the fourteenth amendment to the colored race challenged the vigorous disapproval of Justice John M. Harlan. He insisted in toto from the conclusions of his associates, and insisted upon giving to the amendment that effect which its framers designed, extending its provisions for the protection of life and liberty, and the vindication at all times of the privileges and immunities of the citizen.

But those who invoked the provisions of the amendment for the protection of property rights and the vindication of property claims were more fortunate. The story is a long one, too long for this discussion, perhaps, yet most illustrative of its purpose; for it is a history of construction, whereby the whole scope, purpose, and effect of a constitutional provision have been transformed.

It begins with the *Slaughter House* cases, reported in Sixteenth Wallace, page 36, where a monopoly sought to evade the regulations of a State statute by invoking the shelter of the fourteenth amendment through the claim of taking property without due process of law. The Supreme Court, in this the first important controversy involving the amendment, declared the primary purpose of the first clause thereof to have been designed to confer citizenship on the negro race, and, secondly, to give definitions of citizenship of the United States and citizenship of the States, recognizing by these definitions the distinction between them. That the second clause protects from hostile legislation the privileges and immunities of citizens of the United States as distinguished from those of citizens of the States. That it was not necessary to inquire into the full force of the clause forbidding a State to enforce any law which deprives a person of life, liberty, or property without due process of law, since that phrase had often been the subject of judicial construction and was under no admissible view of it applicable to the present case.

It also held that the clause which forbids a State to deny to any person the equal protection of the laws was clearly intended to prevent the hostile discrimination against the negro race, so familiar in the States where he had been a slave, and for that purpose the clause conferred ample power upon Congress to secure his rights and his equality before the law. The right of the Louisiana butchers to protection against the operation of the Louisiana statute from the fourteenth amendment was denied, and the slaughterhouse monopoly was destroyed.

This great case was heard and decided in 1872 by judges occupying the bench when, or immediately after, the amendment was adopted. They were personally cognizant of its history, its causes, and its objects. They were conversant with its authors, its advocates, and its opponents. The opinion was delivered by Justice Miller, one of the greatest judges who ever adorned the bench. In his conclusions he thus disposed of the complainants' contention as to their rights under the amendment:

It would be the vainest show of learning to attempt to prove by citations of authority that up to the adoption of the recent amendments no claim or pretense was set up that those rights depended on the Federal Government for their existence or protection beyond the very few express limitations which the Federal Constitution imposed upon the States, such, for instance, as the prohibition against ex post facto laws, bills of attainder, and laws impairing the obligations of contracts. But with the exception of these and a few other restrictions the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States and without that of the Federal Government. Was it the purpose of the fourteenth amendment by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States to transfer the security and protection of all the civil rights which we have mentioned from the States to the Federal Government? And when it is declared that Congress shall have power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States? All this and more must follow, if the proposition of the plaintiffs in error be sound. The argument, we admit, is not always the most conclusive which is drawn from the consequences urged against the adoption of a particular construction of an instrument. But when, as in the case before us, the consequences are so serious, so far-reaching and pervading, so great a departure from the structure and spirit of our institutions, when the effect is to fetter and degrade the State governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character; when, in fact, it radically changes the whole theory of the relations of the State and Federal Governments to each other, and of both these governments to the people, the argument has a force that is irresistible, in the absence of language which expresses such a purpose too clearly to admit of doubt. The argument has not been much pressed in these cases that the defendants' charter deprives the plaintiff of their property without due process of law, or that it denies to them the equal protection of the law. The first of these paragraphs has been in the Constitution since the adoption of the fifth amendment as a restraint upon the power of the States. The law, then, has practically been the same as it now is during the existence of the Government, except as far as the present amendment may place the restraining power over the States in this matter in the hands of the Federal Government. We are not without judicial interpretation therefore, both State and National, of the meaning of this clause and it is sufficient to say that under no construction of that provision that we have ever seen or any that we deem admissible can the restraint imposed by the State of Louisiana upon the exercise of their trade by the butchers of New Orleans be held to be a deprivation of property within the meaning of that provision:

"Nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

In the light of the history of these amendments and the pervading purpose of them, which we have already discussed, it is not difficult to give a meaning to this clause. The existence of laws in the States where the newly emancipated negroes resided which discriminated with gross injustice and hardship against them as a class was the evil to be remedied by this clause, and by it such laws are forbidden.

Four years afterwards *Munn* against *Illinois* was decided. In that great case it was held that down to the time of the adoption of the fourteenth amendment it was not supposed that statutes regulating the use or even the price of the use of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. That the amendment does not change the law in this particular; it simply prevents the States from doing that which will operate as such deprivation. That when the owner of property devotes it to a use in which the public has an interest he, in effect, grants to the public an interest in such use and must, to the extent of that interest, submit to be controlled by the public for the common good as long as he maintains the use. He may withdraw his grant by discontinuing the use. That rights of property, and to a reasonable compensation for its use, created by the common law, can not be taken away without due process; but the law itself, as a rule of conduct, may, unless constitutional limitations forbid, be changed at the will of the legislature. That the great office of statutes is to remedy defects in the common law as they are developed and to adapt it to the changes of time and circumstances. That the limitation by legislative enactment of the rate of charge for services rendered in a public employment, or for the use of property in which the public has an interest, establishes no new principle in the law, but only gives a new effect to an old one. (94 U. S., 113.)

The doctrine of these two cases seems incontrovertible. Its steady application to subsequent controversies involving them would have made trusts and combinations impossible. There could have been no trust question at this time to vex the liberties of the people or confound the faculties of statesmen. It was recognized and enforced in the so-called *Granger* cases and some others, but the decisions were obnoxious to the purposes

and developments of the great property interests. They were analyzed, criticized, dissented from, and denounced by certain sections of the press, by some of the law magazines, by lawyers, by laymen, and by some of the judges on the bench. Capital expressed concern, as it always does when laws and constitutions are expounded and enforced in opposition to its purposes, "lest investments be impaired and progress halt."

These tactics and influences have long since prevailed, and the principle announced and applied in the Slaughterhouse and Illinois cases have been asphyxiated by a continued process of adverse construction. It is true that no subsequent opinion expressly disapproves them. They are still occasionally quoted with that solemn dignity that is the due of the living to the dead, but their force and vitality are gone. They gradually but surely yielded to the lingering and lethal malady of construction. Step by step the inflowing tide of new decisions, which defined, confined, distinguished, modified, and attenuated, has overwhelmed them. In the process State courts, State statutes, the rules of the common law, the ordinances of great municipalities, the checks and balances of State constitutions, and solemn enactments of the Congress of the United States have been swept away. In consequence the authority of the Federal courts has been stretched over the entire domain of civil and criminal jurisprudence. The humblest controversies of these days are magnified into alleged transgressions of the sacred restrictions of the fourteenth amendment, relating to property rights, and Federal jurisdiction therefore attaches. All known forms of litigation either knock at the door of the Nation's courts or are carried there for determination under the far-reaching arm of the fourteenth amendment. It is said that 30 per cent of the business of these courts relies on that amendment for their jurisdiction, about 15 per cent of which involves its application to the facts in controversy. Every institution operating under charter, every person enjoying a franchise and claiming immunity from taxation or from local interference, every emigrant corporation from another State or from across the sea which fears or challenges the regulation of the local authority, every overcapitalized enterprise drowsical with watered bonds and stocks, demanding the right to tax its patrons without regard to its actual investment, every promotion dreading the inquisitorial powers of State tribunals operating under State laws, seek and find shelter under the protecting aegis of the fourteenth amendment as it has been defined, enlarged, and extended by the judicial authority of the Nation.

I shall not trace the development of this polity in detail. Anyone can do so who cares to arm himself with a digest of the Federal decisions. I feel impelled, however, to refer to some of its earlier stages.

As Justice Harlan dissented from the decisions invoking the principles of the amendment to safeguard the rights of persons, so Justice Field dissented from those in the Slaughterhouse case and in *Munn v. Illinois*, which involved the rights of things. That dominating personality declared at the outset for every demand of property under the amendment. His resentment toward the prevailing opinions of his brethren in these early cases breathes through every line of his vigorous protests. They are written in the spirit and with the zeal of the partisan. Those who challenged the soundness of the majority opinions found ample material for their opposition in his virile periods, and doubtless had an abiding faith in his ability to make them ultimately effective.

The opportunity came in California in 1882, in the case of *San Mateo County v. The Southern Pacific Railway Co.* (13 Fed., 722.) The railway company there contested the validity of certain taxes assessed by some of the counties of California against its property, and invoked the so-called property clause of the fourteenth amendment for the defeat of the tax. Mr. Justice Field journeyed to San Francisco to hear and decide it. The railway company employed illustrious counsel to defend its contention. Among them were Roscoe Conkling and George F. Edmunds, who were Senators of the United States when the fourteenth amendment was enacted. These noted lawyers gave all their great talents to the cause. Their arguments were historical as they were legal. The accounts they then gave of the amendment's history have been since quoted in arguments and in the decisions in subsequent controversies. They prevailed in the instant case, and Justice Field incorporated them in a zealous opinion followed by judgment for the railway company. The following year this opinion was duplicated by the same justice in the cases of *Santa Clara County v. Southern Pacific Co.* (16 Fed., 385.) These decisions were written in deliberate disregard of the doctrines of the Supreme Court in the Slaughterhouse and Illinois cases. Mr. Justice Field in his last opinion did not so much as refer to either of them, although he quoted copiously from the arguments of Conkling and Edmunds in the San Mateo case.

Both were taken to the Supreme Court. The first was dismissed upon the ground that there no longer existed a cause of action. (116 U. S., 138.) The second was a series of cases which were affirmed because the tax complained of was void under the constitution and laws of California, in consequence of which the fourteenth amendment to the Constitution of the United States was not involved at all, hence Justice Field's elaborate dissertations upon it in the court below were entirely outside the record. (118 U. S., 394, 417.)

To this result he submitted, but with poor grace.

I regret—

Said he (p. 422)—

that it has not been deemed consistent with its (the court's) duty to decide the important constitutional questions involved, and particularly the one which was so fully considered in the circuit court, and elaborately argued here, that in the assessment upon which the taxes claimed were levied an unlawful and unjust discrimination was made between the property of the defendant and the property of individuals, to its disadvantage, thus subjecting it to an unequal share of the public burdens, and to that extent depriving it of the equal protection of the laws guaranteed by the fourteenth amendment of the Constitution.

The learned justice then proceeds very frankly to say why his regret is so profound. He continues:

At the present day nearly all the great enterprises are conducted by corporations. Hardly an industry can be named that is not in some way promoted by them, and a vast portion of the wealth of the country is in their hands. It is therefore of the greatest interest to them whether their property is subject to the same rules of assessment and taxation as like property of natural persons, or whether elements which effect the valuation of property are to be omitted from consideration when it is owned by them and considered when it is owned by natural persons, and thus the valuation of property be made to vary, not according to its conditions or use, but according to its ownership. The question is not whether the State may not claim for grants of privileges and franchises a fixed sum per year or a percentage of earnings of a corporation—that is not controverted; but whether it may prescribe rules for the valuation of property for taxation which will vary according as it is held by individuals or by corporations.

Mark, now, the prediction:

The question is of transcendent importance, and it will come here and continue to come until it is authoritatively decided in harmony with the great constitutional amendment which insures to every person, whatever his position, the equal protection of the laws.

The learned justice was not content with the decision of the court that the things he clamored against were prohibited by the constitution and laws of the State of California. He was eager to crystallize his construction of the amendment into the law of the land, and impatient of his inability to do so in the instant case, while prophesying with truth that the corporate interests of the land would persevere in their efforts until their interests and ambitions rested under the shadow of the "great amendment."

It is an axiom of the law that those parts of a decision which are obiter dicta or unessential to the decision itself are outside the case. They are not authoritative. They may be persuasive but nothing more. Hence Justice Field's pronouncements in the California Tax cases in the circuit court have no place in the domain of case law. Yet I do not hesitate to affirm that they have for over 30 years been the magazine from which most of the weapons have been drawn for the demolition of the Slaughterhouse and Illinois decisions. During that period I have tried many cases and read many briefs involving the Protean phases of the fourteenth amendment, and have yet to be confronted with one which does not find its ultimate lodgment in these opinions. They prevailed long before Justice Field passed away. He lived to see them triumphant, to see the fourteenth amendment "authoritatively decided in harmony" with his conclusions. And he also lived to invalidate the decisions of his own court for a hundred years sustaining the power of Congress to levy an income tax, and to deny that authority to the National Government. This he regarded as an assault on capital. He said in the Income Tax cases (157 U. S., 607):

The present assault on capital is but the beginning. It will be but the stepping-stone to others larger and more sweeping till our political contests become a war of the poor against the rich, a war constantly growing in intensity and bitterness. If the purely arbitrary limitation of \$4,000 in the present law can be sustained, none having less than that amount of income being assessed or taxed for the support of the Government, the limitation of future Congresses may be fixed at a much larger sum—at five or ten or twenty thousand dollars—parties possessing an income of that amount alone being bound to bear the burdens of government, or the limitation may be designated at such an amount as a board of walking delegates may deem necessary.

The learned justice thus clamored against the exercise of a legislative power which through the exigencies of war or insurrection might become indispensable to the Nation's very existence; a power wielded by every other nation in the world, a power sustained by the court itself from the beginning of its history. But it was wholly inconsistent with his own point of view, which long before had become the standard of his judicial utterances.

The contrast between himself and his great associate is graphically portrayed in Justice Harlan's comment upon the majority view of the court in these cases:

I can not assent to an interpretation of the Constitution that impairs and cripples the great powers of the National Government in the essential matter of taxation and at the same time discriminates against the greater part of the people of our country. The practical effect of the decision to-day is to give to certain kinds of property a position of favoritism and advantage inconsistent with the fundamental principles of our social organization, and to invest them with power and influence that may be perilous to that portion of the American people upon whom rests the larger part of the burdens of the Government, and who ought not to be subjected to the dominion of aggregated wealth any more than the property of the country should be at the mercy of the lawless.

While my own judgment coincides with the correctness of Justice Harlan's view, I intend no aspersion of the motives or sincerity of those who, like Justice Field, entertained the opposite one. Both these great jurists were men of transcendent ability, of irreproachable character, of undoubted patriotism. Each believed in the integrity of his own and the unsoundness of the other's convictions. Each felt and portrayed the deplorable consequences which in his judgment must ensue from the prevalence of the adverse doctrine, and each asserted in the most vigorous English his own contention. They only represented and expressed from the bench that eternal contest between government by the few and by the many, between oligarchy and democracy, between Hamilton and Jefferson—a conflict which can not be adjusted, which began with the earliest glimmerings of popular government, and which will never end until the last shall wholly triumph.

It is no disparagement of Mr. Justice Field, but rather a tribute to his dominating personality and powerful intellect, to assert that through his persistency the fourteenth amendment to the Constitution of the United States has been largely substituted for the Constitution itself, that it is now far and away the most important if not the most vital portion of that great instrument, and that in exalting it to this position its guaranties of life and liberty have shrunk into comparative unimportance. No word has been written into or taken from its structure. Construction has been the magic wand of its transformation. But who that defends the right to thus change a statute can affirm that the courts may not, should their judgment so decree, thus qualify or enlarge the Constitution itself by the prevailing judicial practice of addition and subtraction? What argument can be advanced to support the one which does not as well apply to the other? Why may not the wisdom or the emergencies of the future demand the same heroic methods of treatment for both statutes and constitutions? Those who regard the courts as sacrosanct may shudder at the thought of such a sacrilege, but I have yet to learn that the usurpation of power by any ruler halts with the first assertion of its exercise. The usurper—executive, legislative, or judicial—never belonged to the stand-pat wing of any party. He is compelled by the very fact of his usurpation to move on. He is a progressive in spite of himself, and his goal is only attainable by repeated acts of added usurpation.

The question is not whether the judicial arm of the Government would or would not exercise so dangerous a prerogative if possessed of it. We may safely assume that it would not, especially as that arm is now constituted. The question is whether the existence of such a power anywhere is compatible with the institutions of the country, and whether modern expansions of judicial power are not leading up to it. Apprehension, suspicion, fear itself are admirable qualities in the citizens of a republic. When aroused by the action of the ruler, they become potent elements for the preservation of the country's institutions. I am always glad to see public sentiment inflamed when anything unusual in government occurs. I rejoice when protests and unfriendly criticism follow the action of the public servant, and more so when they are stimulated by omissions of public duty. These things manifest a healthy condition of the body politic. "Look not for a time," said Wendell Phillips, "when the people are quiet and safe. At such a time despotism like a shrouding mist steals over the mirror of freedom." The sea keeps pure because it is ever in agitation. And republics are possible only when the tides of public comment and criticism ceaselessly ebb and flow.

Nothing in recent years has so powerfully arrested public attention and directed it toward the growing power of the judiciary as the Standard Oil and Tobacco decisions. The average citizen caught his breath when he heard them. The press held them up to the public gaze and turned them around and around so that they could be seen from every direction. Learned lawyers and essayists condemned and commended them. Preceding decisions involving the same statute and announcing totally opposite conclusions became familiar to everyone. The order of their occurrence is so admirably outlined in pages 4 to 10, in-

clusive, of the committee's report that I ask permission to here incorporate them in my remarks.

The VICE PRESIDENT. Without objection, the matter will be printed as requested.

The matter referred to is as follows:

The committee selects for the purpose indicated the following cases, all of which arose under the statute now being considered:

United States v. E. C. Knight Co. (156 U. S., 1).  
 United States v. Trans-Missouri Freight Association (166 U. S., 290).  
 United States v. Joint Traffic Association (171 U. S., 505).  
 Hopkins v. United States (171 U. S., 578).  
 Northern Securities Co. v. United States (193 U. S., 197).  
 Standard Oil Co. v. United States (221 U. S., 1).  
 United States v. American Tobacco Co. (221 U. S., 106).  
 United States v. Union Pacific Railroad Co. (not yet reported, opinion delivered Dec. 2, 1912).

The committee does not give a statement of the facts in each of these cases, for to do so would greatly prolong the report, and it will be taken for granted that those who are interested in the subject are already familiar with the facts as they appear in the Supreme Court reports.

The rule of law announced in *United States v. Knight Co.* and in *Hopkins v. United States* is that a restraint of trade however unreasonable is not prohibited by the antitrust statute, no matter how general or disastrous the interference or restraint may be upon commerce among the States, unless it directly affects such commerce. There is a general understanding among the judges and lawyers of the country that the Knight case has been overruled or modified in subsequent decisions. Undoubtedly it can be fairly inferred from the recent opinions of the court in like cases that, if the facts of the case were now presented, it would be held that the restraint was direct; but the rule of law established has never been questioned by the court and has been emphatically reasserted in every prominent opinion hitherto rendered. The committee does not bring these cases forward for the purpose of disputing the soundness of the rule under existing legislation. Its object is to disclose, as clearly as possible, the scope of judicial discretion, and therefore of business uncertainty which it creates. In every prosecution under the act wherein there is proven or admitted a contract or combination which restrains trade among the States, the first thing that the court must ascertain and declare is whether the restraint is direct or indirect. In the Knight and Hopkins cases, and others of that type, it was held to be indirect. In the Northern Securities Co., Standard Oil Co., and American Tobacco Co. cases it was held to be direct. It is obvious that the opinion of any given man in any given case upon this question, whether he be judge or not, must depend largely, not upon his learning in the law but upon his training and bent in the economy of commerce. The result has been, and necessarily will be, that the law officer of the Government before he institutes a prosecution must determine whether the restraint is direct and immediate, and the court in order to decide the issue must employ the functions of the legislator rather than the lawyer.

The consequence is twofold: First, the Department of Justice will ignore a great many unlawful transactions because there will be doubt as to whether the interference with interstate or international trade is direct or indirect; second, the business community has found itself, and will find itself, in a state of uncertainty as to whether a particular transaction is to be judged by the law of the State or the law of the Nation. It is not claimed that this undefined and undefinable field of judicial discretion can be wholly occupied by legislation, but it is manifest that it is the duty of the legislative branch of the Government to circumscribe it within the closest practicable bounds. The committee will recur to this subject in connection with another aspect of the judicial power, and contents itself now with a statement of its conclusion that there should be further legislation specifically prohibiting certain forms of association, combination, or monopoly which admittedly restrain trade and commerce among the States and with foreign nations, but which may be held by the courts to be indirect or remote interferences.

The committee has first referred to the point just mentioned, not because it is first in importance but because it first arose. It now passes to another and more serious weakness in the law as now interpreted.

In the Trans-Missouri Freight Association case there developed a controversy among the members of the Supreme Court that was carried on with unabated vigor through the 15 years intervening between the opinion in the Freight Association case and the opinion in the Standard Oil Co. case. In this period the vicissitudes of life and the changes upon the bench which necessarily ensued converted the opinion of the court in the Freight Association case into a single dissenting opinion in the Standard Oil Co. case, and the dissenting opinion in the former case into the opinion of the court in the latter case. In the Freight Association case Mr. Justice Peckham, in delivering the opinion of the court, said:

"Second. The next question to be discussed is as to what is the true construction of the statute, assuming that it applies to common carriers by railroad. What is the meaning of the language as used in the statute that 'every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal'? Is it confined to a contract or combination which is only in unreasonable restraint of trade or commerce, or does it include what the language of the act plainly and in terms covers, all contracts of that nature? (p. 327)?"

The learned justice answered the question thus propounded many times and in great variety of phrase in the course of the opinion, and the committee quotes some of these answers.

"When, therefore, the body of an act pronounces as illegal every contract or combination in restraint of trade or commerce among the several States, etc., the plain and ordinary meaning of such language is not limited to that kind of contract alone which is in unreasonable restraint of trade, but all contracts are included in such language, and no exception or limitation can be added without placing in the act that which has been omitted by Congress (p. 328).

"But we can not see how the statute can be limited, as it has been by the courts below, without reading into its text an exception which alters the natural meaning of the language used, and that, too, upon a most material point, and where no sufficient reason is shown for believing that such alteration would make the statute more in accord with the intent of the lawmaking body that enacted it (p. 329).

"The arguments which have been addressed to us against the inclusion of all contracts in restraint of trade, as provided for by the language of the act, have been based upon the alleged presumption that Congress, notwithstanding the language of the act, could not have in-

tended to embrace all contracts, but only such contracts as were in unreasonable restraint of trade. Under these circumstances we are, therefore, asked to hold that the act of Congress excepts contracts which are not in unreasonable restraint of trade, and which only keep rates up to a reasonable price, notwithstanding the language of the act makes no such exception. In other words, we are asked to read into the act by way of judicial legislation an exception that is not placed there by the law-making branch of the Government, and this is to be done upon the theory that the impolicy of such legislation is so clear that it can not be supposed that Congress intended the natural import of the language used. This we can not and ought not to do (p. 340).

"The conclusion which we have drawn from the examination above made into the question before us is that the antitrust act applies to railroads, and that it renders illegal all agreements which are in restraint of trade or commerce as we have above defined that expression, and the question then arises whether the agreement before us is of that nature" (p. 341).

The issue was clearly joined by Mr. Justice White (now Chief Justice), who in his dissenting opinion, in which Justices Field, Gray, and Shiras concurred, thus stated the question:

"To state the proposition in the form in which it was earnestly pressed in the argument at bar, it is as follows: Congress has said every contract in restraint of trade is illegal. When the law says every, there is no power in the courts, if they correctly interpret and apply the statute, to substitute the word 'some' for the word 'every.' If Congress had meant to forbid only restraints of trade which were unreasonable it would have said so; instead of doing this it has said 'every,' and this word of universality embraces both contracts which are reasonable and unreasonable" (p. 345).

The distinguished justice begins his answer to the proposition just quoted as follows:

"I commence, then, with these two conceded propositions, one of law and the other of fact, first that only such contracts as unreasonably restrain trade are violative of the general law, and, second, that the particular contract here under consideration is reasonable, and therefore not unlawful if the general principles of law are to be applied to it" (p. 344).

Again:  
"Its title is 'An act to protect trade and commerce against unlawful restraints and monopolies.' The word 'unlawful' clearly distinguishes between contracts in restraint of trade which are lawful and those which are not. In other words, between those which are unreasonably in restraint of trade, and consequently invalid, and those which are reasonable and hence lawful" (p. 352).

Again:  
"If these obvious rules of interpretation be applied, it seems to me they render it impossible to construe the words 'every restraint of trade' used in the act in any other sense than as excluding reasonable contracts, as the fact that such contracts were not considered to be within the rule of contracts in restraint of trade was thoroughly established both in England and in this country at the time the act was adopted" (p. 354).

Again:  
"Indeed, it seems to me there can be no doubt that reasonable contracts can not be embraced within the provisions of the statute if it be interpreted by the light of the supreme command that the intention of the law must be carried out, and it must be so construed as to afford the remedy and frustrate the wrong contemplated by its enactment" (p. 355).

It will be noted that but once in the dissenting opinion is the word "unreasonable" used to qualify the phrase "in restraint of trade." It is generally employed to qualify the word "contract." There is some difference between saying that there may be a reasonable interference with competition or freedom in trade or freedom to trade which did not, at the common law, constitute a restraint of trade, and saying that there can be, under our statute, a reasonable restraint of trade. But this was only the beginning.

Two years later the suit of the United States v. Joint Traffic Association came on for decision. Again Mr. Justice Peckham delivered the opinion of the court, and upon the point we are considering there seems to have been no change in the attitude of the members of the court toward it. It is instructive to observe, however, that in referring to *Hopkins v. The United States*, in which the opinion was handed down at the same term, the learned justice said:

"In *Hopkins v. The United States*, decided at this term, post, 578, we say that the statute applies only to those contracts whose direct and immediate effect is a restraint upon interstate commerce \* \* \* the effect upon interstate commerce must not be indirect or incidental only" (p. 568).

Five years thereafter the well-known Northern Securities case was decided, and the struggle was renewed with intense earnestness. Mr. Justice Harlan rendered the opinion of the court, and this is the way he stated the question:

"Is the act to be construed as forbidding every combination or conspiracy in restraint of trade or commerce among the States or with foreign nations? Or does it embrace only such restraints as are unreasonable in their nature? Is the motive with which a forbidden combination or conspiracy is formed at all material when it appears that the necessary tendency of that particular combination or conspiracy in question is to restrict or suppress free competition between competing railroads engaged in commerce among the States? Does the act of Congress prescribe, as a rule for interstate or international commerce, that the operation of the natural laws of competition between those engaged in such commerce shall not be restricted or interfered with by any contract, combination, or conspiracy?" (p. 328).

In answering the question he probably goes a little further than Justice Peckham. He states as the conclusion to be drawn from former opinions of the courts:

"That the act is not limited to restraints of interstate and international trade or commerce that are unreasonable in their nature, but embraces all direct restraints imposed by any combination, conspiracy, or monopoly upon such trade or commerce; \* \* \*. That every combination or conspiracy which would extinguish competition between otherwise competing railroads engaged in interstate trade or commerce, and which would in that way restrain such trade or commerce, is made illegal by the act; \* \* \*. That to vitiate the combination, such as the act of Congress condemns, it need not be shown that the combination in fact results or will result in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce or tends to create a monopoly in such trade or commerce and to deprive the public of the advantages that flow from free competition" (p. 331).

"Whether the free operation of the normal laws of competition is a wise and wholesome rule for trade and commerce is an economic ques-

tion which this court need not consider or determine. Undoubtedly there are those who think that the general business interest and prosperity of the country will be best promoted if the rule of competition is not applied. But there are others who believe that such a rule is more necessary in these days of enormous wealth than it ever was in any former period of our history. Be all this as it may, Congress has in effect recognized the rule of free competition by declaring illegal every combination or conspiracy in restraint of interstate and international commerce" (p. 337).

Mr. Justice Brewer was with the majority of the court in the *Trans-Missouri Association* case, and he concurred in the decision in the *Northern Securities Co.* case; but upon the question we are discussing he rejected the reasoning of Justice Harlan and adopted the views expressed by Justice White in the former case. He said:

"Instead of holding that the antitrust act includes all contracts, reasonable or unreasonable, in restraint of interstate trade, the ruling should have been that the contracts there presented were unreasonable restraints of interstate trade, and as such within the scope of the act. That act, as it appears from its title, was leveled at only 'unlawful restraints and monopolies.' Congress did not intend to reach and destroy those minor contracts in partial restraint of trade which the long course of decision at common law had affirmed were reasonable and ought to be upheld. The purpose rather was to place a statutory prohibition with prescribed penalties and remedies upon those contracts which were in direct restraint of trade, unreasonable, and against public policy. Whenever a departure from common-law rules and definitions is claimed, the purpose to make the departure should be clearly shown. Such a purpose does not appear and such a departure was not intended" (p. 361).

The Chief Justice and Justices White, Peckham, and Holmes dissented. Justice White, while discussing many phases of the relation between the General and the State Governments, finally rested his opinion upon the *Knight* case, holding that there was no direct restraint of interstate commerce. Justice Holmes, while concurring with Justice White, took occasion to say, in substance, that the method adopted by the defendants for the suppression of competition did not constitute a restraint of trade in the sense of the antitrust law.

With the *Northern Securities* case there terminated one distinct, striking period in the interpretation and application of the antitrust statute. It is needless to inquire at length whether or not the views of the court, as expressed in the opinions of Justices Peckham and Harlan, were in exact harmony with the common law as to the meaning or definition of the phrase "restraint of trade." Even if these learned judges were not quite successful in distinguishing the difference, at the common law, between a restraint of competition and a restraint of trade it still remains true that for more than 13 years repeated decisions of the highest tribunal of the country had declared that every contract or combination which prevented free competition was a restraint of trade, and that, if the restraint directly affected commerce among the States, then the contract or combination was unlawful, under the first section of the act.

Inasmuch as the committee is of opinion that legislation should be so clear in its terms as not to admit of unlimited judicial discretion, it pauses here a moment to point out just what the range of discretion was under the decisions ending with the *Northern Securities* case. It is manifest that the inquiry that the court was then required to make in each case was this: Has the evidence established a restraint of trade; that is to say, has the evidence established a contract or combination which interfered with free competition?

There was some, but not great, latitude for difference of opinion upon such an inquiry, and the uncertainty in the application of the law was reduced to a minimum; nor would the uncertainty have been much increased if the inquiry had been as to an unreasonable interference with free competition, which would have been the inquiry had the common-law understanding been strictly adopted by the Supreme Court.

If the more recent construction of the statute were in harmony with the earlier decisions, further legislation might nevertheless be required; but it is unnecessary to make the inquiry. That question is purely academic, for the later rulings have completely reversed the former ones, in so far as the phase of the subject now being discussed is concerned.

On the 15th day of May, 1911, the case of the *Standard Oil Co. v. The United States* was passed upon by the Supreme Court. Chief Justice White (formerly Justice White) delivered the opinion and reiterated, as the conclusion of the court, the views that he had so forcibly urged as a dissenter 15 years before. It was not necessary for the court to deal with the question at all, inasmuch as it found the defendants guilty of a restraint of trade under any and every meaning of the term, but for the very purpose, the committee assumes, of advising the country that a new rule had been adopted so that business might be guided by it, it was stated in the most emphatic way imaginable that the statute which declares that "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations is hereby declared to be illegal" means that a contract or combination in order to be illegal must cause an undue restraint of trade. The following quotations from the opinion will need no comment:

"That in view of the many new forms of contracts and combinations which were being evolved from existing economic conditions, it was deemed essential by an all-embracing enumeration to make sure that no form of contract or combination by which an undue restraint of interstate or foreign commerce was brought about could save such restraint from condemnation. The statute under this view evidenced the intent not to restrain the right to make and enforce contracts, whether resulting from combination or otherwise, which did not unduly restrain interstate or foreign commerce, but to protect that commerce from being restrained by methods, whether old or new, which would constitute an interference that is an undue restraint" (pp. 59, 60).

Again:  
"In other words, having by the first section forbidden all means of monopolizing trade—that is, unduly restraining it by means of every contract, combination, etc.—the second section seeks, if possible, to make the prohibitions of the act all the more complete and perfect by embracing all attempts to reach the end prohibited by the first section" (p. 61).

That the Chief Justice intended to announce a rule at variance with the declarations of Justice Peckham and Justice Harlan in the *Trans-Missouri Freight Association* and *Northern Securities* cases is made clear in the following extracts:

"The question is pertinent and must be fully and frankly met, for if it be now deemed that the *Freight Association* case was mistakenly decided or too broadly stated, the doctrine which it announced should be either expressly overruled or limited. \* \* \* And in order not in the slightest degree to be wanting in frankness, we say that in so far, however, as by separating the general language used in the opinion in

the Freight Association and Joint Traffic cases from the context and the subject and parties with which the cases were concerned, it may be conceived that the referred to conflicts with the construction which we give the statute, they are necessarily now limited and qualified" (pp. 68, 69).

The learned Chief Justice contends that this rule of construction, which he repeatedly calls the "rule of reason," must be applied in order to prevent the entire overthrow of the statute.

It is one of the interesting things in our judicial history that so great had been the change in the personnel of the court that when the dissenting opinion of Justice White in 1896 became the opinion of the court in 1911 Justice Harlan was the only member remaining to protest against the reversal. He recorded his dissent in one of the most vigorous opinions that can be found in the reports, but for the purposes which the committee has in view it is not necessary to do more than to mention it.

Justice Harlan has passed away, and it may be assumed that the Supreme Court is now unanimously in favor of the doctrine so often and so ably promulgated by Chief Justice White. The rule was reasserted in the American Tobacco Co. case and has not since been questioned by any member of the court.

It is true that in the important opinion rendered in the suit of the United States v. The Union Pacific Railroad Co., Justice Day says:

"The act is intended to reach combinations and conspiracies which restrain freedom of action in interstate trade and commerce and unduly suppress or restrict the play of competition in the conduct thereof"—

Citing as authority the Joint Traffic Association case. It is true also that the court quotes, with apparent approval, the following extract from Mr. Justice Harlan in the Northern Securities case:

"In all the prior cases in this court the antitrust act has been considered as forbidding any combination which by its necessary operation destroys or restrains free competition among those engaged in interstate commerce; in other words, that to destroy or restrict free competition in interstate commerce was to restrain such commerce."

But thereafter the court says: "In the recent discussion of the history of the meaning of the act in the Standard Oil Co. and Tobacco Co. cases this court declared that the statute should be given a reasonable construction with a view to reaching those undue restraints of interstate trade which are intended to be prohibited and punished."

The fair conclusion is that it is now the settled doctrine of the Supreme Court that only undue or unreasonable restraints of trade are made unlawful by the antitrust act, and that in each instance it is for the court to determine whether the established restraint of trade is a due restraint or an undue restraint.

Whatever may be the opinion of the several members of the committee with respect to the soundness of the rule as now established, the committee as a whole accepts it as the present law of the land. It is profoundly convinced that, in view of the rule and its necessary effect upon the business of the country, the inherent rights of the people, and upon the execution of the statute it has become imperative to enact additional legislation.

Mr. THOMAS. True to his convictions, Justice Harlan again dissented from the reasoning, although accepting the conclusions of his brethren in these later cases. His opinion, Two hundred and twenty-first United States, page 106, should be carefully read by every man and woman in the land. He emphasized the fundamental proposition that Congress alone could amend its laws, that it had expressly refused to make the specific amendment to the antitrust act, which the Supreme Court had determined to make on its own account, and closed his discussion with the solemn warning that—

after many years of public service at the National Capital, and after a somewhat close observation of public affairs, I am impelled to say that there is abroad in our land a most harmful tendency to bring about the amending of constitutions and legislative enactments by means alone of judicial construction.

I think I have used no more forceful language, up to this time at least, Mr. President, than that employed by the learned justice. He continued:

The supreme law of the land—which is binding alike upon all, upon Presidents, Congresses, the courts, and the people—gives to Congress, and to Congress alone, authority to regulate interstate commerce, and when Congress forbids any restraint of such commerce in any form all must obey its mandate. To overreach the action of Congress merely by judicial construction—that is, by indirection—is a blow at the integrity of our governmental system, and in the end will prove most dangerous to all.

In a special message of July 7, 1910, to Congress President Taft said:

It has been proposed, however, that the word "reasonable" should be made a part of the statute, and then that it should be left to the courts to say what is a reasonable restraint of trade, what is a reasonable suppression of competition, what is a reasonable monopoly. I venture to think that this is to put into the hands of the court a power impossible to exercise on any consistent principle which will insure the uniformity of decision essential to just judgment. It is to thrust upon the courts a burden that they have no precedents to enable them to carry, and to give them a power approaching the arbitrary, the abuse of which might involve our whole judicial system in disaster.

Truer and wiser words were never uttered. Coming from such high authority they were entitled to unusual weight. They preceded the decisions by more than a year. When these came they contained no indication that the President's counsels had ever been heard, much less considered, by the majority of the court.

Having emphasized the evils associated with the judicial administration of the statute, and having declared that the amendment if made by Congress would impose upon the courts the duty of administering it, the country very naturally expected from the President some expression of disappointment if not of disapproval of the court's announcements. But with an easy

complacency worthy of Polonius he hastened to express his approval of them. He voiced his satisfaction with their conclusions quite as vigorously as he had previously asserted his objections to them. They seemed to him to be consonant with the text of the law as they would be useful in the determination of future controversies arising under it. I do not wish to speak unkindly of our former Executive whose genial and companionable traits of character appealed strongly to all who came in contact with him and whose sincere desire to properly discharge the duties of this great office does not admit of question. But the best intentions are valueless when accompanied by weakness and vacillation. The Executive who counsels with earnestness and with wisdom, but who applauds when his counsels are flatly rejected, can not long enjoy the confidence of the people or the respect of his coordinates. The President's change of front regarding this most important statute was one of the most unfortunate if not the most conspicuous of the many shifting policies of his administration, for it gave Executive sanction to a piece of judicial legislation against the enactment of which by Congress he had strongly and successfully protested. Moreover, he officially recognized the right of the courts to make and alter the laws of the Nation by judicial decree. The people were amazed at this inconsistency; they resented it, and their disapproval found subsequent expression in public discussion at the primaries, in the national conventions, and at the polling places. They have been impelled beyond all these. As the source and depository of all political power, they are asserting their right to finally determine for themselves the validity of the laws which their representatives make and which their courts transform. When they established this Government they divided its authority into three departments, coequal and coordinate. They do not view the usurpation by one of these departments of an authority conferred by them upon another with equanimity, and will prevent it if they can. They believe they can do so by setting these usurpations aside. That these acts of usurpation are called judicial decisions is beside the question. That does not detract from their inherent character nor mitigate their consequences.

The people are therefore beginning very seriously to consider whether they shall not appeal from these decisions to themselves and set them aside as they assume to set aside or reconstruct the laws of the land. Whether the people shall finally resolve to assert this right depends largely upon the courts themselves and upon such action as the Congress may take or may decline to take in the premises. It may be that the equilibrium between the departments can not be maintained; that the needs of the country have outgrown its continuance; that experience has demonstrated its impracticability. But if it is to be modified or readjusted or overthrown, we may be sure that the people will themselves ultimately so determine and rearrange the distribution of power as they shall deem desirable or necessary. Whether the process they adopt for the readjustment is to be the recall of decisions or some other process is unimportant. The fundamental factor in the equation is their right to make and enforce their own laws as a majority of themselves shall decide.

If Congress offends the electorate by running counter to its will, its Members may be recalled at the polls. If the President offends the electorate, he is shorn of his power by a withdrawal of popular confidence, and goes to the scrap heap at the end of his term. But if the courts persist in making or changing laws the people must seek other remedies, for the judges owe no tenure to the people. Between the courts and omnipotence nothing substantial intervenes. What, then, shall be done? The answer is obvious. It has been given, and the recall of decisions is on the high road of things that are to be.

I know full well that this power may be subject to abuse, but not more so, not as much so, in truth, as the abuse that has summoned it to the service of freemen. I know that the courts may be more deliberate than the mass, but the results of deliberation do not quicken and spread abroad the sense of injustice unless they be wrong. I know that the people in mass is called the mob, but the reproach is a slander on popular government. The people are always conservative. It was "the mob" which resisted the oppressions of the Crown, which sustained the newborn American Government, which condemned and overthrew the institution of slavery, which resists the encroachments of present-day plutocracy, and which is in rebellion against the exercise of political authority by the courts.

If those who decry or dread the potency of the recall can devise a better means of confronting and overthrowing this last manifestation of absolutism in a Republic, they owe it to themselves and the people to conceive and bring it forth, for the time for action seems at hand.

Solomon said there was nothing new under the sun. The assertion of the recall does not conflict with the wise man's

precepts. It is a new name for an old theory; a new method of applying an old remedy. The right has been successfully asserted several times in our history. In *Cohens v. Virginia* (6 Wheat., 264) the Supreme Court held that it had appellate jurisdiction of a controversy in which a State was a party. The people promptly recalled the decision by adopting the eleventh amendment to the Constitution.

The alien and sedition laws were Dead Sea fruits of the first Adams administration. They were offensive to the people of that era. They were not in touch with the spirit of our newly founded Republic. They were vigorously and effectively enforced by grand juries and by the courts. They aroused the implacable hostility of the masses, who rose in revolt against them. The people overturned the administration which was responsible for them, destroyed the party which enacted them, and then struck them from the statute books. They recalled the President, the Congress, and the laws themselves. During the progress of their political battle they were called mobs, rioters, and the rabble, unfit for self-government, and a menace to all forms of law and order. Their leaders were stigmatized as demagogues and charlatans, appealing to the baser instincts of the multitude for the gratification of ignoble and dangerous ambitions. But the cause was the old one of privilege against the masses in one of its many forms, and the masses won. The recall became effective, and the abuse against which it was then directed was swept aside.

In *Dred Scott v. Sandford* (19 How., 393) it was held that Congress could not lawfully exclude slavery from the Territories. This decision was recalled by the people, speaking through the rattle of musketry and the thunder of cannon during four long years of strife and bloodshed. They achieved their purpose at an appalling sacrifice of blood and treasure, and crystallized their ultimate decree in the thirteenth amendment to the Constitution.

It was held in the Income Tax cases that the Nation was without authority to raise revenues by that method. The sixteenth amendment has recalled the edict, and until some other decision shall narrow its purpose or deny its efficacy the General Government may lay the burdens of its operations upon wealth as readily as upon consumption.

I realize the force of the criticism that recall by constitutional amendment is the exercise of a fully conceded authority, while recall by popular vote is wholly beyond and above the recorded ways. But we can not amend the Constitution with the occurrence of every bad decision. The process is a tedious and involved one. It is not always possible of accomplishment. Nor can we longer rely upon its efficacy, for if laws can be interlined by judicial decree, so may constitutions be interlined. As laws have been made over by judicial construction, so clauses of the Constitution have been made over by judicial construction. The progress of a malady frequently makes ordinary remedies useless; the good physician resorts to more effective albeit more unusual ones when such an emergency confronts him.

The people of Great Britain and of her transoceanic dependencies, ourselves excepted, enjoy the blessings of liberty to a larger degree than any other nation. Their laws when enacted by Parliament are supreme. Their freedom needs no judicial guardian. They possess and exercise the power of recall. No majority of Parliament hostile to their will can survive. No serious division between their ministry and their commons can arise without being followed by a referendum. There the so-called mob hears, judges, decides, and acts for itself. Must we, their descendants, the inheritors of their institutions, shrink from the application of the same expedients when demanded by public exigency because conservatism retreats into its corner and protests against innovation?

Mr. OWEN. Mr. President, if it will not interrupt the Senator, I should like to call his attention to the fact that the British Parliament since 1701, by the act of settlement, has exercised substantially the right to recall judges, and since that time they have had no trouble with their judges. Forty-eight of the States of the United States have two ways of removing judges. Thirty-six of the States have three ways of removing or recalling judges, and three States have four ways of removing judges. The United States can only recall by impeachment, a useless remedy except against criminal conduct.

Mr. THOMAS. I thank the Senator for his interruption.

The Rev. Myron Reed, a famous preacher of Denver, once said that the people might not always be right, but they always wobbled in the right direction. All of us, collectively, are the people, but the mass consists of those whom Lincoln called the common people, and whom he said the Lord loved, else he would not have made so many of them. These have always constituted the bone and sinew of the country, the very warp and woof of the national fabric. They make and mold the

sentiment of the times. They shape our lines of action. They hold the Republic in the hollow of their hands. It is these people who are concerned in preserving our institutions, who are fully alive to the evils of the assertion and exercise of absolute power by any but themselves, and who propose in some effective manner to counteract its last and most sinister manifestation.

The proposal to strike from a statute a word not appearing upon its face is concededly paradoxical. It will doubtless be regarded by some as impossible; by others as absurd. Were conditions otherwise than as we know them to be, both these conclusions would be correct. But the law that is written upon the statute books is not the law that is enforced by the courts. They have rewritten it, and their record of the law supplants that of Congress for every practical and substantial purpose. As enacted by Congress, all restraints of trade were outlawed. As rewritten by the court, unreasonable restraints of trade are alone prohibited. The anomaly involved in the legislative repeal of an interpolated word is no more remarkable than was its insertion into the law by judicial enactment. The proposed repeal is nothing more than legislative restoration of the law to its normal status. If the act seems extraordinary, it must be remembered that the occasion requiring it is more so. If the method of our procedure is without precedent, it is because the exigency confronting us is of similar character. If we can not repeal the amendment of a national statute because the courts made the amendment, it must be equally apparent that the courts were without power to make it, and it is therefore void.

On the other hand, if such authority be lodged in the courts, any change they see fit to make in the laws is valid and binding upon all men. If that be true, the legislative power to amend and to repeal the laws extends to such changes as well as to the laws of its own creation. You can not deny to Congress the right to strike words out of a statute when inserted by judicial decree if you concede to the courts the power to so insert them. And the fact that the insertion does not appear upon the face of the law furnishes the strongest possible argument in support of the right to strike it out, for the law must be certain, explicit, and intelligible. All men are presumed to know it. None can plead their ignorance of it. Yet how can the law be known if its language is a lie and its recitals a mockery? The laws of Draco were suspended so far above the people that they could not read and therefore could not know them. All men have access to ours, but some of them mislead the reader, albeit their contents seem clear. To make them certain, to keep them explicit, every change in their structure or their substance should appear upon the statute books, and not buried under the ponderous phraseology of learned judicial opinions.

The amendment which I have proposed is demanded by the underlying principle of equality. Laws to be respected and effective must be impersonal and impartial. They must extend to and embrace all men alike. If aimed at particular classes, they must affect alike all members thereof. Failing this, they cease to be laws. They are pronouncements only. They crush some while exempting others. Their operation is spasmodic, fitful, and dependent upon conditions or contingencies whose existence or absence is determined by extraneous forces. They are invested with every element of painful uncertainty. Those who are immune to-day are to-morrow on the deadly circuit of their influence. Such a law is unworthy of a despotism; it should be impossible in a republic.

Such in effect, nevertheless, is our so-called Sherman law since the Standard Oil and Tobacco decisions. It is no longer of uniform operation. It is a yardstick that shrinks or stretches whenever invoked for public or private protection. It is controlled by a higher law called the rule of reason. This rule is lodged in the minds and is evolved from the mental processes of the judges. It holds the statute in solution and precipitates it or fails to do so, as every given case appears to warrant or require. Men can not safely embark in new enterprises or continue old ones while these uncertain and fitful conditions exist. That certainty of object and of expression which every statute should possess, that knowledge of their requirements and of the consequences of their breach to which every citizen is entitled, and that uniformity and impartiality of operation without which laws are tyrannies, oppressive, and unjust unite in demanding the immediate restoration of this important law to its original form and purpose. If this can not be done, it should be repealed unconditionally.

The people are seldom radical. They are law-abiding. They do not abuse their strength. They have never menaced any of the powers which they have delegated to their rulers. Every peril we have encountered, every abuse of authority, every perversion of the laws to untoward purposes, have proceeded from those who decry the populace, denounce them as mobs,

deny their right to govern themselves. Two years ago the mayor of New York City said:

No one, however rich, need ever be afraid of the people. The people are not revolutionary by nature. They are never dishonest. Even in the French Revolution, when they destroyed prisons and fortresses, not a bank was looted. The Bastille was torn down, but the Bank of France remained undisturbed.

It is, of course, true that the people of France in the frenzy of the moment, with centuries of oppression behind them and with power to avenge their accumulated wrongs, indulged in wild excesses of retaliation. But we must remember that it was the same people who visited stern justice upon the heads of their own monsters, and that the French Revolution has by the long since recorded verdict of posterity been recognized as the greatest single step forward in the history of civilization. And while we fervently pray and fondly hope that the recurrence of such an event may never mark or mar the progress of the race, we must realize that the surest method of its avoidance is to recognize and remove the causes which wrought the great upheaval.

The right to sit in ultimate judgment upon the validity of our laws rests and should rest with the people. They possess all power not delegated to the Government. They have expressly reserved it. They never delegated to any department the power to set aside the laws made by their representatives, unless they delegated it indirectly or by necessary implication. But that could not be, for their delegates to the constitutional convention several times declined to do so by express action. If its possession by any department is essential to the existence or the continuance of the Government, they should delegate it. But they can not be estopped from denying that they have indirectly done so merely because they have so long submitted to its assumption and exercise. And since evolution has transformed the judiciary into a law-making body, a condition has been evolved which the body of the people will meet and overcome if Congress does not do so. We must therefore rise to the occasion lest we fall with it. Should we fail to act, ours will then be the responsibility.

The most sinister effect of these decisions upon the public mind, and which I deplore as much as anyone, is the strength they have added to the apprehension that the Federal courts lean toward privilege and away from the masses. Those who so believe ground their faith upon the antecedent decisions involving the same statute upon the shelter afforded to centralized industries by the provisions of the fourteenth amendment as construed and enforced, by the gravitation of practically all controversies affecting corporate action and organization to the Federal jurisdiction, and by the general trend of Federal decisions. However much these views may be condemned the fact that they are entertained and expressed by a constantly increasing number of men and women in every section of the Union is so obvious that it can not be overlooked. However well or ill founded the sentiment may be, we must reckon with and do what we can to correct it. Yet this is not merely difficult; it is impossible while they can find support in the decisions which are the equivalents of legislation, which relieve Congress of the consequences of enacting bad laws, if they are bad, by shaping them to the judicial view, and which deprive them of the merit of enacting good laws, if they are good, by recasting them into the judicial molds. The people must believe in the courts though they lose faith in all other governmental agencies, if the Republic shall endure. They will so believe so long as the courts conform both in the letter and the spirit to the limitations of the Constitution. If the popular confidence is ever wholly lost, the fault will not be theirs. It will be embedded in the history of the national jurisprudence, in the unfolding and the progress of its extension of power through the exercise of political authority, disguised under the forms of judgments and decrees.

Mr. President, since preparing my remarks upon this bill my attention has been called to Document 1106 of the Senate, a speech of Mr. Justice Holmes, delivered at a dinner of the Harvard Law Association in New York. I find among other admirable sentiments a passage that seems to me to be peculiarly apposite to this branch of the discussion. He says:

It is a misfortune if a judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong. I think that we have suffered from this misfortune, in State courts at least, and that this is another and very important truth to be extracted from the popular discontent. When 20 years ago a vague terror went over the earth and the word socialism began to be heard, I thought and still think that fear was translated into doctrines that had no proper place in the Constitution or the common law. Judges are apt to be naïf, simple-minded men, and they need something of Mephistopheles. We, too, need education in the obvious—to learn to transcend our own convictions and to leave room for much that we hold dear to be done away with short of revolution by the orderly change of law.

Coming from such a high and pure source, Mr. President, I think I am justified in saying that it outlines a thought which has frequently occurred to me that the fear of something that is to come, which is expressed either by the word "socialism" or by some of its equivalents, has unconsciously, perhaps, thrown an influence about and around the judges of the courts as well as legislators and societies which expresses itself in preventing by some anticipatory course the things which are thus dreaded. Many decisions have been rendered which never ought to have been rendered, because they do not conform with the letter and spirit either of statutes or of constitutions. The singular thing is that history has not taught eminent men everywhere the great truth that nothing can arrest, although many things may impede, the general progress of humankind and the onward march of civilization. This fact is well expressed by the recent historian of the Roman Empire, who says that "when the times are ripe for great political changes neither parties nor statesmen can alter the stern logic of facts."

Mr. NEWLANDS. Mr. President, would it interrupt the Senator if I would put a question to him, or would he prefer to wait until he has completed his remarks?

Mr. THOMAS. If it is merely a question, I would be glad to answer it.

Mr. NEWLANDS. It is a question that involves a short discussion.

Mr. THOMAS. Then I would prefer to finish, because I have already consumed more time than I should have done.

Mr. NEWLANDS. I will question the Senator, then, with his permission, at the close of his speech.

Mr. THOMAS. So far as I am concerned, the Senator may do so, if the Senate will bear with us.

It has therefore seemed to me pertinent to introduce the bill to which my remarks have been directed, and which proposes to repeal the amendment of the so-called Sherman Act by the decisions in the Standard Oil and Tobacco cases, restore the law to its original phraseology, and take from the courts the power of future legislation upon the subject. That Congress has power to do this does not admit of doubt. That by so doing and by further legislation qualifying and restricting the appellate power of the Circuit and Supreme Courts, Congress can remove practically all the evils demanding the recall of decisions by popular vote seems to me reasonably clear. We may thus satisfy all sorts and conditions of men, including those who favor and those who fear this efficient weapon of modern political warfare.

The power to enact laws includes the power to amend or to repeal existing ones. This power has in recent times been unsuccessfully challenged in those States which have adopted the initiative and referendum as regards laws enacted by direct legislation. I know of no exception to it save as to laws relating to the issue of bonds and securities which are contractual in their nature and which are frequently made nonrepealable until the obligations created by them shall have been discharged. The fact that the courts have amended a statute should prompt instead of deter legislative action concerning it.

Surely an amendment so effected can not operate both to change the law and render it immune to legislative action, especially when, as here, the judicial amendment is one which the legislative body expressly refused to enact and one which largely defeats the purpose of the law by making its operation depend upon the court's own view of each particular case as it arises thereunder. For since this amendment nobody knows nor can know what the law against combinations in restraint of trade is. The law is what a majority of judges may determine it to be from time to time, and a majority of the judges on the bench to-day may not be the same majority next year. A majority of the judges thought very differently about the law three or four years ago. A future majority may go back to the previous opinions or reject all of them for some other and different one. This is a situation where the law and the discretion of the court are identical, and all because it has inserted the word "unreasonable" into the body of the law—a word general and indefinite in its meaning, one which defies the lexicographers and illustrates the epigram of George Eliot that we are sometimes unable to define a thing in language except by defining and distinguishing it from something else. Let us, therefore, bring order out of this chaos by restoring the statute to its original structure and prohibiting all future alterations of it save as they may be made by ourselves.

This action should be accompanied by a prohibition upon all the courts against any further or other alteration of the phraseology of the statute, a precaution equally desirable in all future legislation relating to the same subject, bills concerning which will, I presume, receive the early consideration of the Senate. Our refusal to do this will subject future laws to the same judi-

cial perils which the pioneer statute has encountered and in the end may be made to express not what we meant but what the courts believe we should have meant.

The almost limitless range of the jurisdiction of the Federal courts should be restricted in the early future, and the appellate powers of the Supreme and circuit courts should be regulated without delay if we would check the rising tide of popular demand for the recall of decisions. I have said that the authority of the Supreme Court to alter a law on appeal rests upon acts of Congress. This is a fact with which all lawyers are familiar. As Congress gave so it may take away the unlimited right of review. It has done so in the past; the events of recent times require that it should do so again.

Section 2 of Article III of the Constitution declares that:

In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

This clause confers appellate jurisdiction upon the Supreme Court, but the extent and mode of its exercise is left to the discretion of Congress. The latter may therefore impose, and has at all times imposed, such limitations upon the right of review as has seemed just and proper. Its power to do so has always been recognized.

It will be safest—

Said Hamilton—

to declare generally that the Supreme Court shall possess appellate jurisdiction, both as to law and fact, and that this jurisdiction shall be subject to such exceptions and regulations as the National Legislature may prescribe. This will enable the Government to modify it as will best answer the ends of public justice and security. (Federalist, No. 81.)

When, in 1788, the Virginia convention assembled to ratify or to reject the proposed Federal Constitution, Patrick Henry argued earnestly against its adoption. One ground of his opposition was the article relating to the judiciary. He feared the extent to which the power therein conferred might be carried, and foresaw the annulment of laws enacted by the people's representatives. He warned his countrymen against the proposed Federation, and apprehended the possibility of forcible resistance to the aggressions of the Central Government.

Old as I am—

He said—

It is probable I may yet have the appellation of rebel.

It was John Marshall, afterwards the great Chief Justice, who opposed him and who reassured the convention. Said he:

The honorable gentleman says that no law of Congress can make any exception to the Federal appellate jurisdiction of facts as well as law. He has frequently spoken of technical terms and the meaning of them. What is the meaning of the term "exception"? Does it not mean an alteration and diminution? Congress is empowered to make exceptions to the appellate jurisdiction as to law and to fact of the Supreme Court. These exceptions certainly go as far as the legislature may think proper for the interest and liberty of the people. (Elliot's Debates, vol. 3, p. 559.)

In his Lectures on Constitutional Law, Justice Miller (p. 345) says:

The Congress, therefore, can control very largely the appellate jurisdiction of the United States Supreme Court. It has been done so by passing laws at various times regulating that jurisdiction. One of its earliest enactments upon the subject was that no ordinary suit between individuals could come to the Supreme Court for revision unless the amount involved was over \$2,000. It is now \$5,000, and it has been urged that this should be enlarged to ten or twenty thousand dollars, either by the creation of some intermediate appellate tribunal or otherwise.

Judge Cooley declares in his Principles of Constitutional Law (p. 177) that—

The two very effective restraints which the legislature may interpose to the abuse of executive and judicial authority are: First, that which consists in the control over their jurisdiction; and second, the proceeding of impeachment. Much of executive authority comes, not from the Constitution, but from statute, and what is thus given may at any time be taken away. The same is true of the courts. Some of them are purely statutory courts and may be modified or abolished; all of them derive the most of their jurisdiction from statutes, and whenever this is abused it can be restricted or taken away. But it may also be modified or taken away on grounds of expediency or policy merely.

And Justice Story adds the weight of his great authority to the proposition in this language:

The appellate powers of the Supreme Court are not given by the judicial act of 1789. They are given by the Constitution. But they are limited and regulated by that act and other acts on the same subject. And when a rule is provided all persons will agree that it can not be departed from. (2 Story Con., 1773.)

If the power of Congress to strip the courts of appellate jurisdiction ever admitted of doubt, it was dispelled by the case of *Ex parte McCardle* and the legislation which determined and disposed of it. The student of American history will discover nothing of greater interest and importance than the events

comprising that unique controversy, which illuminates with flash-light brilliancy the authority of the Congress to abridge the political attributes of the judiciary by laying an interdict upon the sources of its origin.

This case, like the fourteenth amendment, was an outgrowth of the Civil War. Among the acts of reconstruction was one which divided the Southern States into 10 military districts, the chief administrative heads of which were officers of the Army. This, like all the acts of reconstruction, was bitterly contested, not alone by the people of the South but by the President and his advisers. Under its operation northern as well as southern citizens were arrested for alleged offenses and their lives were placed in jeopardy. To relieve this unlooked-for condition the act of February 5, 1867, was passed, giving the right of appeal to the Supreme Court in habeas corpus proceedings arising under the reconstruction act. One W. H. McCardle, the editor of a newspaper in Mississippi, having been arrested on complaint charging him with libel and inciting to insurrection, availed himself of the benefits of the act, petitioned unsuccessfully for the writ, and appealed therefrom to the Supreme Court. His appeal was founded upon the contention that the reconstruction acts of Congress were unconstitutional and therefore void.

Popular sentiment voiced the impression that the Supreme Court would so decide, in which event the entire fabric of reconstruction would collapse, and with it the fortunes of the party which erected it. But that party controlled both Houses of Congress by formidable majorities, and their leadership was in the hands of the ablest men of the Nation. If the danger which menaced the very life of the party could be avoided by legislation, the pathway could be readily cleared. If not, the country must await the predicted catastrophe.

The leaders of the majority rose to the occasion. They invoked the authority conferred upon Congress by article 3, section 2 of the Constitution and determined to destroy the appellate jurisdiction of the Supreme Court over the *McCardle* case. They accomplished their purpose by adding a short section to a pending bill, providing for writs of error to the Supreme Court in suits against revenue officers. This section merely repealed so much of the act of February 5, 1867—

as authorizes an appeal from the judgment of a circuit court to the Supreme Court of the United States, or the exercise of any such jurisdiction by such Supreme Court on appeals which have been or may hereafter be taken.

This measure naturally evoked vindictive opposition, but was passed, vetoed, and passed over the veto, thus becoming a law; after which a rehearing of the *McCardle* case was granted. Counsel for appellant earnestly contended against the power of Congress to legislate a case out of the jurisdiction of the Supreme Court which had been taken there under existing laws, which had been argued and submitted, and which was on the eve of final decision, especially when such legislation, though general in terms, was notoriously and avowedly designed by its authors to affect that particular case. He said:

This court is coexistent and coordinate with Congress, and must be able to exercise the whole judicial power of the United States, though Congress passed no act on the subject. The judiciary act of 1789 has been frequently changed. Suppose it were repealed. Would the court lose, wholly or at all, the power to pass on every case to which the judicial power of the United States extended? This act of March 27, 1865, does take away the whole appellate power of this court in cases of habeas corpus. Can such results be produced? We submit that they can not, and this court, then, we further submit, can go on and pronounce judgment on the merits, as it would have done had not the act of March 27 been passed.

This case had been argued in this court fully. Passing then from the domain of the bar, it was delivered into the sacred hands of the judges, and was in the custody of the court. For aught that was known by Congress it was passed upon and decided by them. Then comes, on the 27th of March, this act of Congress. Its language was general, but as was universally known, its purpose was specific. If Congress had specifically enacted "that the Supreme Court of the United States shall never publicly give judgment in the case of *McCardle*, already argued, and upon which we anticipate that it will soon deliver judgment contrary to the views of a majority in Congress of what it ought to decide," its purpose to interfere specifically with and prevent the judgment in this very case would not have been more real or, as a fact, more universally known. Now, can Congress thus interfere with cases on which this high tribunal has passed or is passing judgment? Is not legislation like this an exercise by the Congress of judicial power?

A more signal instance of deliberate interference with the decision of a specific existing controversy can not well be imagined. The law was retroactive in its operation, and intended to be so, since it deprived the court of jurisdiction duly acquired before its enactment; it was so designed because the law-making power apprehended the nature and dreaded the results of a decision perhaps already agreed upon. The court might with much reason and certainly with a large degree of contemporary popular approval have declined to recognize the *ex post facto* feature of the statute while bowing to the mandate in futuro, but it did not do so. The statute was

recognized in its entirety by a unanimous bench, and the right of Congress to make exceptions to and regulate the appellate jurisdiction of the court, both as to pending and to future controversies, was fully upheld.

It is quite true—

Said the Chief Justice, speaking for the court—

as was argued by counsel for the petitioner, that the appellate jurisdiction of this court is not derived from acts of Congress. It is, strictly speaking, conferred by the Constitution. But it is conferred "with such exceptions and under such regulations as Congress shall make." It is unnecessary to consider whether, if Congress had made no exceptions and no regulations, this court might not have exercised general appellate jurisdiction under rules prescribed by itself. For among the earliest acts of the First Congress, at its first session, was the act of September 24, 1789, to establish the judicial courts of the United States. That act provided for the organization of this court, and prescribed regulations for the exercise of its jurisdiction. The source of that jurisdiction and the limitations of it by the Constitution and by statute, have been on several occasions subjects of consideration here. In the case of *Durousseau v. The United States* (6 Cranch, 312) particularly the whole matter was carefully examined, and the court held "that while the appellate powers of this court are not given by the judicial act, but are given by the Constitution," they are nevertheless "limited and regulated by that act, and by such other acts as have been passed on the subject." The court said further that the judicial act was an exercise of the power given by the Constitution to Congress of making exceptions to the appellate jurisdiction of the Supreme Court. "They have described affirmatively," said the court, "its jurisdiction, and this affirmative description has been understood to imply a negation of the exercise of such appellate power as is not comprehended within it."

The principle that the affirmation of appellate jurisdiction implies the negation of all such jurisdiction not affirmed having been thus established, it was an almost necessary consequence that acts of Congress providing for the exercise of jurisdiction should come to be spoken of as acts granting jurisdiction and not as acts making exceptions to the constitutional grant of it. The exception to the appellate jurisdiction in the case before us, however, is not an inference from the affirmation of other appellate jurisdiction. It is made in terms. The provision of the act of 1867 affirming the appellate jurisdiction of this court in cases of *habeas corpus* is expressly repealed. It is hardly possible to imagine a plainer instance of positive exception.

We are not at liberty to inquire into the motives of the Legislature. We can only examine into its power under the Constitution, and the power to make exceptions to the appellate jurisdiction of this court is given in express words.

What, then, is the effect of the repealing clause upon the case before us? We can not doubt as to this: Without jurisdiction the court can not proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle. It is quite clear, then, that this court can not proceed to pronounce judgment in this case, for it has no longer jurisdiction of the appeal, and judicial duty is not less fitly performed by declining ungranted jurisdiction than by exercising firmly that which the Constitution and the laws confer. (7 Wall., 512-514.)

The appeal was therefore dismissed, and since all others arising under the same laws were prohibited the latter continued in full force and operation until they had effectuated their purpose. They may have been invalid. Congress may have exceeded its powers in enacting them, but it made its will effectual by depriving the judiciary of all power to place its veto upon them. The time is at hand when it should place a similar restraint upon the courts with reference to its existing and prospective antitrust legislation. It will thus destroy the incentive to delay the operation and defeat the requirements of such laws by litigation challenging their validity and designed to substitute the social and economic views of the judges for those of the Nation. It will thus put an end to the transfer of the administrative functions of these laws from the executive to the judicial department, a transfer which is not only opposed to our theory of government but which renders them practically ineffective. For it is self-evident that if each alleged violation of the laws must go through all the tedious processes of litigation, and then be disposed of upon its own particular facts, their operation is blocked through the sheer inability of the courts to dispose of them. Moreover, each instance becomes a law unto itself, and the statute instead of being a rule of conduct may become a juggler's wand, performing wonders that serve to amaze and deceive. The counsel of St. Paul to be all things to all men should never operate as a rule of construction for the written laws of a self-governing people.

Judicial administration is not only uncertain and variable in its operation but tedious and expensive as well. The record in the Standard Oil case embraces about 12,000 pages of printed matter bound in 23 volumes. This consisted for the most part of testimony involving transactions covering a period of some 40 years. It was begun in November, 1906, and ran over a period of nearly 5 years. The Tobacco case presents a similar condition, having been commenced in July, 1907. The expense attending their prosecution was prodigious. Other equally important proceedings arising under the same law are dragging their slow length along, and generations may come and go while the long procession of offenders against the law marches wearily from the commencement of suits against them in the trial court to the court of last resort. The interval is apt to be

occupied with proposed changes in the law, with certain changes of sentiment as to its efficacy, with profound distrust of those public officials charged with its enforcement, but hampered by the pitfalls and technicalities of judicial procedure. The first pronouncement, however compliant with the purpose of the statute, is apt to be attended with reasonings not at all in accord with previous ones emanating from the same source, and this stimulates dissatisfaction as it begets lack of confidence in the wisdom of the bench. Every argument conspires for the withdrawal of the administration of these laws from the courts, and this can be effectuated only by denying their right to invalidate or to review them.

The majority report of the committee declares that if the prevailing method "continues in force the Federal courts will, as far as restraint of trade is concerned, make a common law for the United States, just as the English courts have made a common law for England." But the English common law consists of rules and customs deriving their force from decisions, and proceeding from what the Supreme Court of the United States in *Kansas against Colorado* calls "a first statement" or original announcement of the doctrine followed by its application to a present controversy. This makes a precedent for the solution of future controversies of similar character, and the system is evolved through a long line of rulings. The common law does not proceed from statutes, nor can it prevail when a statute conflicts with or changes it. But that common law which the Federal courts will make, so far as restraint of trade is concerned, will found itself on written laws which are altered or amended by decree. It is, in other words, the change of the written statute which will constitute the national common law. No such system is possible in any other country; it can flourish here only by altering or setting aside the written mandates of the National Legislature. To call it a system of common law is a misnomer; it is an anachronism, indefensible by reason, unsupported by precedent, unwarranted by the Constitution, and condemned by the principles of justice.

The policy which I propose should be welcomed more heartily by the courts than by any other branch of the Government. The country, like the committee, "has full confidence in the integrity, intelligence, and patriotism" of the Federal courts, and the latter surely desire that such confidence shall continue unimpaired. If this is to be, they can not longer enjoy this "vast and undefined power in the administration of the statute under the rule which has been promulgated"; yet will they continue its exercise unless Congress intervenes and forbids it. The practice has prevailed too long to be voluntarily abandoned. It has crystallized into a habit whose indulgence naturally yields to the influence of opportunity.

The denial of the right of review will relieve the courts of a vast and ever-increasing responsibility. They will be no longer burdened with a duty whose proper discharge seems to require the making and the administration of laws. They will resume their proper function of expounding and applying statutes to the solution and determination of controversies. They will again take their normal places in the machinery of government and the apprehensions and resentment of men now justly aroused by their assumptions of political authority will pass away.

If Congress, when a Federal statute is changed by the judgment of a court, would at once annul the change by appropriate legislation, the evil would be largely minimized. But such a course, at all times difficult, might for many reasons be impossible in the presence of great exigencies. And Executive disapproval might at times render such legislation useless. It is far easier to insert "thou shalt not" in the body of a statute designed to correct a crying evil or to effectuate a needed change, and thus prevent the creation of a status, than to deal with the status after it shall have been created.

The majority report truly asserts that "the people of this country will not permit the courts to declare a policy for them with respect to this subject. If we do not promptly exercise our legislative power, the courts will suffer immeasurable injury in the loss of that respect and confidence so essential to their usefulness. It is inconceivable that in a country governed by a written Constitution and statute law the courts can be permitted to test each restraint of trade by the economic standard which the individual members of the court may happen to approve. If we do not speedily prescribe, in so far as we can, a legislative rule by which to measure the form of contract and combination in restraint of trade with which we are familiar, or which we can anticipate, we cease to be a government of law, and become a government of men, and, moreover, of a very few men, and they appointed by the President."

We have been becoming such a Government throughout the last 50 years. We have witnessed with but little protest the

Judicial transformation of the fourteenth amendment, the vast stretch of Federal jurisdiction through its potent and prolific agency, the shearing away of the national authority to tax incomes, the enactment of statutes by decree. A few more advances and the judicial department becomes the Government. The people are alive to the danger and are looking to us to avert it for them. They believe with Lincoln that "the candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court the instance they are made in ordinary litigation between parties in personal actions, the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal."

The duty resting upon us as the people's representatives because of these conditions should be recognized and performed. We should neither evade nor postpone it. The issue is a grave one. We must meet it calmly and with courage. We are vested with ample authority to dispose of it. The people who have clothed us with this authority expect us to exercise it. The cause is theirs. We must not fail them, nor falter. The Supreme Court amendment to the antitrust act should be repealed, and the courts forbidden to hereafter change its text or modify its prohibitions.

Mr. NEWLANDS. Mr. President, I should like to ask the Senator a question. I have listened with great interest to his clear and strong speech, and no one can join more vigorously with him than myself in the denunciation of judicial legislation; but the question in my mind is as to whether this was a case of judicial legislation or simply a case of judicial construction. The Senator complains that the court read into the statute the word "unreasonable," and made the statute apply only to unreasonable restraint of trade. As I read the decision, the word "unreasonable" does not apply to restraint of trade, but simply to the restraint of competition. I understand the position of the court to be that they were called upon to determine what the words "restraint of trade" in the statute meant, and in discharging that duty they could not fail to recognize the fact that the words "restraint of trade" had a well-defined meaning at common law, and that doubtless Congress used those words in their common-law sense; and they held that at common law "restraint of trade" did not cover all restraints of competition; that at common law there were reasonable forms of restraints of competition that did not constitute restraint of trade and which were not subject to the condemnation of the law. If that be true, did the court go beyond its legitimate function in defining the words "restraint of trade"? Did the court go beyond its legitimate function when it declared that Congress used that term in the common-law sense? Did it go beyond its legitimate function when it declared that at common law a "restraint of trade" did not cover reasonable restraints of competition? Was not that all that the court decided in that case?

Mr. THOMAS. Does the Senator put that to me as an interrogatory?

Mr. NEWLANDS. I do.

Mr. THOMAS. Mr. President, I do not think that either the language or the intention of the court is susceptible of such a modified interpretation. It was not the first decision of that eminent tribunal which involved a construction of this law. Those familiar—and I assume that all lawyers are familiar—with the general course of decisions in which this law was sought to be applied to existing conditions, and which are admirably outlined in the report of the committee to which I have several times referred, know that various attempts were made to secure just that construction to which the Senator refers; but in each instance a majority of the court declined to do so, and, among other things, upon the ground that the use of the words "restraint of trade" had obtained a definite meaning at common law which meaning did not permit that construction.

I think that Judge Taft, afterwards President of the United States, in the Addyston Pipe case, in Eighty-fifth Federal Reporter, took that position, the case having been tried before him originally.

The Senator will, of course, also recall that in the Trans-Missouri Freight cases the emphatic pronouncement of the court was that the law meant what I have contended it must mean, and which does not admit of the modified construction or interpretation to which the Senator refers. He must also know an effort was once made to secure an amendment of that statute in Congress, and that the report of the Committee on Commerce, of which the senior Senator from Minnesota [Mr. NELSON] was the chairman, to this body expressly pronounced

against any such amendment or addition to the statute, and that the President of the United States himself, as I have shown, in a message to the Congress—I think it was in a message to the Congress—not only advised against a change, but pointed out the inevitable consequences of the change of the law as the Senator has interpreted the decision to have done.

I might also go further and call the attention of the Senator to the dissenting opinion of Mr. Justice Harlan in the identical case, which, to my mind, is the most emphatic, logical, and unanswerable refutation of that construction that can be found anywhere in the judicial literature of the country.

Mr. NELSON. Mr. President, I ask the indulgence of the Senate just for a moment in further reply to the point made by the Senator from Nevada [Mr. NEWLANDS]. I had occasion, when the question came before the Committee on the Judiciary to amend the antitrust law, to examine into the subject, and made the report to which the Senator from Colorado has referred. I think Senators who will examine the common law—and I took pains to examine it on that occasion—will find that the doctrine of reasonable restraint or unreasonable restraint applies only in those cases at common law where a man sells out his business or trade in a given locality and agrees to abstain from engaging in that business for a limited period of time or within a limited area. In reference to that class of contracts, the doctrine of reasonableness applies; but to no other contracts, where it is simply a question of whether it is a general restraint or not. I think that is the common law of England, and there is nothing in any of the decisions to the contrary. So that any contention by the Supreme Court that such is the law is a mistake.

I recall the incident at that time, when the opinion was first delivered from the bench orally on a certain Monday, as is the custom of the court. Judging from the newspaper reports, the court used the term "reasonable" or "unreasonable," but afterwards, as Senators will find if they examine the opinion of the court, the court abandoned that phrase, and used the phrase "rule of reason," and I would suggest to the Senator from Colorado that he modify his bill so as to hit that particular phrase in the opinion.

#### ADDITIONAL CIRCUIT JUDGE.

During the delivery of Mr. THOMAS's speech,

Mr. THOMAS. I yield for a moment to the Senator from West Virginia [Mr. CHILTON].

Mr. CHILTON. I ask for the following unanimous-consent order.

The VICE PRESIDENT. The Senator from West Virginia submits a request for unanimous consent, which will be read.

The SECRETARY. The Senator from West Virginia asks unanimous consent that on Monday, April 28, 1913, immediately upon the conclusion of the routine morning business, the Senate will proceed to the consideration of the bill (S. 577) authorizing the President to appoint an additional circuit judge for the fourth circuit, and before adjournment on that calendar day will vote upon any amendment that may be pending, any amendments that may be offered, and upon the bill—through the regular parliamentary stages—to its final disposition.

The VICE PRESIDENT. Is there objection?

Mr. BACON. What is the bill?

Mr. CHILTON. It is the bill to provide for an additional circuit judge for the fourth circuit.

The VICE PRESIDENT. Is there objection? The Chair hears no objection, and the order will be made.

After the conclusion of Mr. THOMAS's speech,

#### ENROLLED JOINT RESOLUTION SIGNED.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the Speaker of the House had signed the enrolled joint resolution (H. J. Res. 62) making an appropriation for defraying the expenses of the committees of the Senate and House of Representatives authorized to attend and represent the Senate and House at the unveiling and dedication of the memorial to Thomas Jefferson at St. Louis, Mo., and it was thereupon signed by the Vice President.

#### EXECUTIVE SESSION.

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

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After 1 hour and 13 minutes spent in executive session the doors were reopened, and (at 6 o'clock and 48 minutes p. m.) the Senate adjourned until Monday, April 28, 1913, at 12 o'clock m.

## NOMINATIONS.

*Executive nominations received by the Senate April 24, 1913.*

## SUPERVISING INSPECTOR OF STEAM VESSELS.

William J. MacDonald, of Michigan, to be supervising inspector of steam vessels for the fourth district in the Steamboat-Inspection Service, Department of Commerce, vice Joseph J. Dunn, deceased.

## COLLECTORS OF CUSTOMS.

John J. Bell, of Michigan, to be collector of customs for the district of Huron, in the State of Michigan, in place of John T. Rich, whose term of office expired by limitation January 8, 1913.

William H. Berry, of Pennsylvania, to be collector of customs for the district of Philadelphia, in the State of Pennsylvania, in place of Chester W. Hill, superseded.

## COMMISSIONER OF LABOR STATISTICS.

Charles P. Neill, of the District of Columbia, to be Commissioner of Labor Statistics, Department of Labor.

## AUDITOR FOR THE NAVY DEPARTMENT.

Edward Luckow, of Wisconsin, to be Auditor for the Navy Department, in place of Ralph W. Tyler, resigned.

## AUDITOR FOR THE STATE DEPARTMENT.

Edward D. Hearne, of Delaware, to be Auditor for the State and Other Departments, in place of Frank H. Davis, resigned.

## COLLECTORS OF INTERNAL REVENUE.

Hayes H. Lewis, of Florida, to be collector of internal revenue for the district of Florida in place of Joseph E. Lee, superseded.

James Coffey, of South Dakota, to be collector of internal revenue for the district of North and South Dakota, in place of Willis C. Cook, superseded.

## COMMISSIONER OF FISH AND FISHERIES.

Hugh M. Smith, of the District of Columbia, to be Commissioner of Fish and Fisheries, in the Department of Commerce, vice George M. Bowers.

## SECRETARY OF LEGATION.

Alexander R. Magruder, of Maryland, to be secretary of legation at Copenhagen, Denmark, vice Norval Richardson.

## UNITED STATES CIRCUIT JUDGE.

Charles A. Woods, of South Carolina, to be United States circuit judge, fourth circuit, vice Nathan Goff, resigned.

## ASSISTANT ATTORNEY GENERAL.

Samuel J. Graham, of Pennsylvania, to be Assistant Attorney General. (Position now vacant.)

## UNITED STATES ATTORNEYS.

Anthony van Wagenen, of Iowa, to be United States attorney for the northern district of Iowa, vice Frederick Faville, whose term has expired.

John A. Aylward, of Wisconsin, to be United States attorney for the western district of Wisconsin, vice George H. Gordon, whose term will expire at the close of April 25, 1913.

## APPOINTMENTS IN THE NAVY.

The following-named citizens of the United States to be assistant dental surgeons in the Dental Reserve Corps of the Navy from the 23d day of April, 1913, subject to the examinations required by law:

Williams Donnally,  
Vines L. Turner, and  
George C. Kusel.

## POSTMASTERS.

## ALABAMA.

A. A. Leach to be postmaster at Dadeville, Ala., in place of H. E. Berkstresser. Incumbent's commission expired January 13, 1913.

Claude McMillan to be postmaster at New Decatur, Ala. Office became presidential July 1, 1912.

Elizabeth Simpson to be postmaster at Hartsells, Ala., in place of S. H. Sherrill. Incumbent's commission expired January 13, 1913.

O. L. Woodfin to be postmaster at Uniontown, Ala., in place of May T. Fowler. Incumbent's commission expired December 16, 1912.

## ARKANSAS.

Pearl Berkheimer to be postmaster at Augusta, Ark., in place of A. B. Lippman. Incumbent's commission expired January 28, 1913.

T. G. Robinson to be postmaster at Marvell, Ark., in place of John W. Terry. Incumbent's commission expired February 10, 1913.

John D. Wilbourne to be postmaster at Pine Bluff, Ark., in place of Fred C. Furth. Incumbent's commission expired March 23, 1910.

## CALIFORNIA.

Percy B. Brown to be postmaster at Holtville, Cal., in place of James S. Bridenstine. Incumbent's commission expired February 18, 1913.

Albert E. Dixon to be postmaster at Point Loma, Cal., in place of Albert E. Dixon. Incumbent's commission expired January 20, 1913.

John M. Jolley to be postmaster at Oceanside, Cal., in place of John M. Jolley. Incumbent's commission expired December 14, 1912.

## CONNECTICUT.

John J. Cassidy to be postmaster at Woodbury, Conn., in place of William L. Judson. Incumbent's commission expired December 14, 1912.

John Joseph Molans to be postmaster at Seymour, Conn., in place of Harvey S. Halligan. Incumbent's commission expired December 14, 1912.

## GEORGIA.

William B. McCants to be postmaster at Winder, Ga., in place of Job R. Smith. Incumbent's commission expired May 22, 1912.

David P. Phillips to be postmaster at Lithonia, Ga., in place of William R. Watson. Incumbent's commission expired January 12, 1913.

## HAWAII.

Harry D. Corbett to be postmaster at Hilo, Hawaii, in place of George Desha. Incumbent's commission expired April 1, 1913.

A. F. Costa to be postmaster at Walluku, Hawaii, in place of M. T. Lyons. Incumbent's commission expired December 16, 1912.

J. M. Souza to be postmaster at Kohala, Hawaii, in place of Arthur J. Stillman. Incumbent's commission expired February 13, 1913.

## IDAHO.

Manford W. Harland to be postmaster at Troy, Idaho, in place of F. Beckman. Incumbent's commission expired January 22, 1913.

## ILLINOIS.

W. H. Chapman to be postmaster at Clifton, Ill., in place of Robert L. Lutton. Incumbent's commission expired December 14, 1912.

George A. Griffith, sr., to be postmaster at Rankin, Ill., in place of William L. Spear. Incumbent's commission expired December 14, 1912.

William Twohig to be postmaster at Galesburg, Ill., in place of Omer N. Custer. Incumbent's commission expired January 14, 1913.

## INDIANA.

Fred G. Rice to be postmaster at Roachdale, Ind., in place of Charles McCaughey. Incumbent's commission expired January 13, 1913.

Robert E. Springsteen to be postmaster at Indianapolis, Ind., in place of Robert H. Bryson. Incumbent's commission expired April 28, 1912.

## IOWA.

J. F. Goos to be postmaster at Sabula, Iowa, in place of Walter E. Newsome. Incumbent's commission expired January 31, 1912.

## KANSAS.

George W. Barker to be postmaster at Minneapolis, Kans., in place of Lewis Pickrell. Incumbent's commission expired December 17, 1912.

L. D. Cassler to be postmaster at Canton, Kans., in place of David K. Fretz. Incumbent's commission expired January 10, 1911.

Frederick M. Cook to be postmaster at Jamestown, Kans., in place of William R. Ansdell. Incumbent's commission expired February 19, 1912.

J. O. Ferguson to be postmaster at Independence, Kans., in place of Henry W. Conrad. Incumbent's commission expired January 9, 1912.

Agnes H. Gallagher to be postmaster at Summerfield, Kans., in place of William A. Fleming. Incumbent's commission expired April 17, 1912.

L. G. Wagner to be postmaster at Sylvia, Kans., in place of Joseph E. Aldrich. Incumbent's commission expired January 11, 1913.

J. J. Wilson to be postmaster at Moran, Kans., in place of Clark C. Thomas. Incumbent's commission expired January 11, 1913.

## KENTUCKY.

Charles E. Lightfoot to be postmaster at Cloverport, Ky., in place of Robert L. Oelze. Incumbent's commission expired January 22, 1913.

## LOUISIANA.

Mattie D. Boatner to be postmaster at Vidalia, La., in place of Charles Moritz. Incumbent's commission expired February 18, 1913.

Overton Gauthier to be postmaster at Jennings, La., in place of Edward I. Hall. Incumbent's commission expired January 29, 1913.

## MAINE.

R. T. Flavin to be postmaster at West Paris, Me., in place of Clarence L. Ridlon. Incumbent's commission expired March 1, 1913.

## MARYLAND.

Sherlock Swann to be postmaster at Baltimore, Md., in place of William H. Harris. Incumbent's commission expired January 11, 1913.

## MICHIGAN.

Theophilus Belanger to be postmaster at River Rouge, Mich., in place of Maynard Palmer. Incumbent's commission expired January 12, 1913.

## MISSISSIPPI.

Truman Gray to be postmaster at Waynesboro, Miss., in place of James R. S. Pitts. Incumbent's commission expired January 14, 1912.

James C. Jourdan to be postmaster at Iuka, Miss., in place of David A. Adams. Incumbent's commission expired February 11, 1913.

W. M. Noah to be postmaster at Kosciusko, Miss., in place of Fannie Hillerman. Incumbent's commission expired February 11, 1913.

Lillie W. Nugent to be postmaster at Rosedale, Miss., in place of Lillie W. Nugent. Incumbent's commission expired January 13, 1913.

Henrietta Welch to be postmaster at Carrollton, Miss., in place of Henrietta Welch. Incumbent's commission expired April 28, 1912.

## MISSOURI.

Charles B. Bacon to be postmaster at Marshall, Mo., in place of Leonard W. Van Dyke. Incumbent's commission expired February 9, 1913.

Robert J. Ball to be postmaster at Gallatin, Mo., in place of Clifford M. Harrison. Incumbent's commission expired April 2, 1912.

A. P. Beazley to be postmaster at Eldon, Mo., in place of Elmer E. Hart. Incumbent's commission expired January 11, 1913.

Thomas A. Dodge to be postmaster at Milan, Mo., in place of Benjamin F. Guthrie. Incumbent's commission expired April 23, 1913.

John S. Fowler to be postmaster at Cole Camp, Mo., in place of Cord P. Michaelis. Incumbent's commission expired January 22, 1913.

Absalom L. Galloway to be postmaster at Cassville, Mo., in place of John A. Livingston. Incumbent's commission expired February 11, 1913.

John Hetrick to be postmaster at Laclede, Mo., in place of Albert J. Caywood. Incumbent's commission expired May 15, 1912.

A. H. Martin to be postmaster at Perry, Mo., in place of William F. Norris. Incumbent's commission expired December 14, 1912.

## MONTANA.

J. P. Lavelle to be postmaster at Columbus, Mont., in place of E. B. Thayer. Incumbent's commission expired January 26, 1913.

Eugene L. Poindexter to be postmaster at Dillon, Mont., in place of Grace Lamont. Incumbent's commission expired January 26, 1913.

George E. White to be postmaster at Manhattan, Mont., in place of Caspar L. Gayle. Incumbent's commission expired January 14, 1913.

## NEW JERSEY.

William H. Cottrell to be postmaster at Princeton, N. J., in place of Charles S. Robinson, removed.

E. T. Lanterman to be postmaster at East Orange, N. J., in place of Marcus Mitchell, deceased.

Albert L. Williams to be postmaster at Vineland, N. J., in place of Walter S. Browne, deceased.

## NEW MEXICO.

W. E. Foulks to be postmaster at Deming, N. Mex., in place of Edward Pennington. Incumbent's commission expired December 17, 1912.

## NEW YORK.

Peter M. Giles to be postmaster at Le Roy, N. Y., in place of George E. Marcellus. Incumbent's commission expired April 8, 1913.

John Soemann to be postmaster at Lancaster, N. Y., in place of John F. Hein. Incumbent's commission expired December 16, 1912.

## OHIO.

Charles R. Gerding to be postmaster at Pemberville, Ohio, in place of James H. Muir. Incumbent's commission expired March 1, 1913.

Forrest L. May to be postmaster at Dayton, Ohio, in place of Frederick G. Withoft. Incumbent's commission expired February 28, 1912.

Albert G. Witte to be postmaster at Elmore, Ohio, in place of Harlow N. Aldrich. Incumbent's commission expired January 20, 1913.

## OKLAHOMA.

O. H. P. Brewer to be postmaster at Muskogee, Okla., in place of Alice M. Robertson. Incumbent's commission expired January 14, 1913.

Sam Flourney to be postmaster at Elk City, Okla., in place of F. E. Nichols. Incumbent's commission expired April 28, 1912.

D. M. Hamlin to be postmaster at Newkirk, Okla., in place of Edwin F. Korn. Incumbent's commission expired January 28, 1913.

## OREGON.

L. F. Reizenstein to be postmaster at Roseburg, Oreg., in place of Charles W. Parks. Incumbent's commission expired January 20, 1913.

R. E. Williams to be postmaster at The Dalles, Oreg., in place of Edgar Hostetler. Incumbent's commission expired February 18, 1913.

## PENNSYLVANIA.

Hugh Gilmore to be postmaster at Williamsport, Pa., in place of Allen P. Perley. Incumbent's commission expired May 26, 1912.

T. H. McKenzie to be postmaster at Barnesboro, Pa., in place of James E. Johnston. Incumbent's commission expired April 1, 1913.

## SOUTH CAROLINA.

James R. Montgomery to be postmaster at Marion, S. C., in place of James W. Johnson. Incumbent's commission expired March 13, 1912.

P. M. Murray to be postmaster at Walterboro, S. C., in place of Bernhard Levy. Incumbent's commission expired February 18, 1913.

## TENNESSEE.

Horace L. Browder to be postmaster at Sweetwater, Tenn., in place of Richard N. Hudson. Incumbent's commission expired January 31, 1912.

J. R. Brown to be postmaster at Cleveland, Tenn., in place of James I. Harrison. Incumbent's commission expired April 28, 1912.

Henry Estill to be postmaster at Winchester, Tenn., in place of Joseph C. Hale. Incumbent's commission expired January 21, 1909.

Wiley Sublett to be postmaster at Estill Springs, Tenn., in place of Thomas J. Littleton. Incumbent's commission expired November 23, 1907.

## TEXAS.

B. M. Burgher to be postmaster at Dallas, Tex., in place of Sloan Simpson.

N. A. Burton to be postmaster at McKinney, Tex., in place of Samuel H. Cole. Incumbent's commission expired May 15, 1912.

Joseph R. De Witt to be postmaster at Brackettville, Tex., in place of Henry J. Veltmann. Incumbent's commission expired April 28, 1912.

Norman H. Martin to be postmaster at Weatherford, Tex., in place of Robert B. Milliken, deceased.

J. B. Phillips to be postmaster at Howe, Tex., in place of Laban B. Ruth. Incumbent's commission expired April 13, 1912.

R. S. Rike to be postmaster at Farmersville, Tex., in place of Edward W. Morton, deceased.

Sam D. Seale to be postmaster at Floresville, Tex., in place of William Reese. Incumbent's commission expired February 11, 1913.

J. W. White to be postmaster at Uvalde, Tex., in place of Guido R. Goldbeck, resigned.

## VIRGINIA.

William C. Johnston to be postmaster at Williamsburg, Va., in place of Thomas C. Peachy. Incumbent's commission expired February 9, 1913.

John E. Rogers to be postmaster at Strasburg, Va., in place of Asbury Redfern. Incumbent's commission expired January 11, 1913.

Arthur W. Sinclair to be postmaster at Manassas, Va., in place of Howard P. Dodge. Incumbent's commission expired January 14, 1913.

## WASHINGTON.

F. A. Kennett to be postmaster at Prosser, Wash., in place of Thomas N. Henry. Incumbent's commission expired January 16, 1911.

W. H. Padley to be postmaster at Reardan, Wash., in place of William H. McCoy. Incumbent's commission expired January 28, 1913.

## WEST VIRGINIA.

Talbot H. Buchanan to be postmaster at Wellsburg, W. Va., in place of William R. Miller. Incumbent's commission expired February 4, 1912.

Jerry W. Dingess to be postmaster at Huntington, W. Va., in place of James W. Hughes. Incumbent's commission expired February 3, 1913.

## CONFIRMATIONS.

*Executive nominations confirmed by the Senate April 24, 1913.*

## COMMISSIONER OF INTERNAL REVENUE.

William H. Osborn to be Commissioner of Internal Revenue.

## SURVEYOR GENERAL, OREGON.

Edward G. Worth to be surveyor general of Oregon.

## RECEIVERS OF PUBLIC MONEYS.

Samuel Butler to be receiver of public moneys at Sacramento, Cal.

Lee A. Ruark to be receiver of public moneys at Del Norte, Colo.

William A. Maxwell to be receiver of public moneys at Denver, Colo.

Sam Mothershead to be receiver of public moneys at Burns, Oreg.

Nolan Skiff to be receiver of public moneys at La Grande, Oreg.

L. A. Booth to be receiver of public moneys at The Dalles, Oreg.

## REGISTERS OF LAND OFFICES.

Onias C. Skinner to be register of the land office at Montrose, Colo.

John H. Bowen to be register of the land office at Springfield, Mo.

## UNITED STATES DISTRICT JUDGE.

Rhydon M. Call to be United States district judge for the southern district of Florida.

## UNITED STATES ATTORNEYS.

J. L. Camp to be United States attorney for the western district of Texas.

H. Snowden Marshall to be United States attorney for the southern district of New York.

## UNITED STATES MARSHALS.

William J. McDonald to be United States marshal for the northern district of Texas.

John H. Rogers to be United States marshal for the western district of Texas.

## ASSISTANT ATTORNEY GENERAL.

Samuel Houston Thompson, jr., of Colorado, to be Assistant Attorney General, vice John Q. Thompson, deceased.

## POSTMASTERS.

## INDIANA.

R. E. Springsteen, Indianapolis.

## KANSAS.

Jefferson Dunham, Little River.  
William A. Matteson, Abilene.

## KENTUCKY.

Mary Alice Sweets, Bardstown.

## NEW JERSEY.

W. H. Cottrell, Princeton.

## OKLAHOMA.

O. H. P. Brewer, Muskogee.

## OREGON.

Frank S. Myers, Portland.

## HOUSE OF REPRESENTATIVES.

THURSDAY, April 24, 1913.

The House met at 11 o'clock a. m.

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

Father in heaven, so move upon our hearts that the Godlike may be in the ascendancy as we pass along life's rugged way; that we may leave in our wake a record of which we may justly be proud, which those who shall come after us may follow with impunity; that at the end of our earthy sojourn we may be fully prepared to enter upon the work which waits on us in the great beyond. For Thine is the kingdom and the power and the glory forever. Amen.

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

## THE NATURAL CONDITION OF LAKE TAHOE.

Mr. RAKER. Mr. Speaker—

The SPEAKER. For what purpose does the gentleman from California rise?

Mr. RAKER. Mr. Speaker, I desire to ask unanimous consent that senate joint resolution 25, relating to citrus fruits in California, and house joint resolution 18, both of the Legislature of California, be printed in the RECORD.

The SPEAKER. The gentleman from California asks unanimous consent to print the resolution mentioned—

Mr. RAKER. Two of them.

The SPEAKER. In the RECORD. Is there objection?

Mr. MANN. Mr. Speaker, reserving the right to object, I would like to get the attitude of the other side of the House on the question of printing memorials of legislatures in the RECORD. It is the practice to print these in the Senate. I notice nearly every day in the RECORD gentlemen drop in the basket a number of memorials or resolutions of legislatures. If it is the intention to allow one gentleman the privilege of having printed in the RECORD upon presentation in the House resolutions adopted by a legislature, I submit the same privilege should be extended to every other gentleman of the House.

Mr. UNDERWOOD. Mr. Speaker, I will say to the gentleman from Illinois that I think about the most harmless thing that a man can do is to print something in the RECORD. If it is couched in respectful terms and is orderly, I see no objection to a Member of the House printing something in the RECORD if he thinks it is of any benefit to anybody. As a rule, I think the place where you can bury a thing the deepest is in the record of this House.

Mr. MANN. A number of gentlemen on this side of the House, new Members, have already been to me at different times in the session and asked whether it was the practice and custom of the House to ask unanimous consent to print these resolutions in the RECORD. I have stated to those gentlemen it was not the custom of the House to do that—

Mr. GARNER. Will the gentleman yield?

Mr. MANN (continuing). And hence they have been dropped in the basket. Take, for instance, a resolution passed by the Legislature of the State of New York. Every Member would have the same right to acquire some prominence in connection with the matter by asking unanimous consent to have the resolution printed in the RECORD, and how many times it might be printed I do not know. If that side of the House is not going to object, I do not know that I will, with the understanding that if other gentlemen ask that privilege it will not be objected to.

Mr. UNDERWOOD. I wish to say this to the gentleman from Illinois. I think that the question of unanimous consent must be determined in each instance, and we can not fix a uniform rule about them, and I would be unwilling now to make an agreement fixing a uniform rule, but I think the gentleman knows, so far as I am personally concerned, that I am not given