Second lieutenants.

Philip T. Case.
Paul C. Marmion.
Lowry B. Stephenson.
John L. Mayer.
Benjamin A. Moeller.
Clyde H. Metcalf.
Harold C. Pierce.

POSTMASTERS.

CONNECTICUT.

Matthew E. McDonald, Simsbury.

MINNESOTA.

Robert K. Brough, Alexandria.

RHODE ISLAND.

Walter A. Kilton, Providence.

UTAH.

James Clove, Provo.

VERMONT.

Emory G. Page, Hyde Park.

WITHDRAWALS.

Executive nominations withdrawn, March 1, 1913.

POSTMASTERS.

MASSACHUSETTS.

Charles J. Shepard to be postmaster at Waltham, in the State of Massachusetts.

NORTH DAKOTA.

Ruby Bickford to be postmaster at Bowbells, in the State of North Dakota.

TEXAS.

George Wohleb, jr., to be postmaster at Rogers, in the State of Texas.

WISCONSIN.

Rose M. Kropp to be postmaster at Hilbert, in the State of Wisconsin.

HOUSE OF REPRESENTATIVES.

SATURDAY, *March 1, 1913.*

The House met at 10.30 o'clock a. m.

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

Almighty God, our heavenly Father, let Thy spirit come mightily upon us to illumine our minds and cleanse our hearts from guile, that we may be with Thee in thought and purpose and have our portion with those who love God and their fellow men; that all our ways may be ways of pleasantness, and all our paths be paths of peace; for Thine is the kingdom, and the power, and the glory forever. Amen.

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

Mr. HARDWICK. Mr. Speaker, I make the point of order that there is no quorum present.

The SPEAKER. The Chair hopes the gentleman will withhold that for a moment.

Mr. HARDWICK. All right, I will withhold it.

INTERSTATE SHIPMENT OF INTOXICATING LIQUORS—VETO MESSAGE.

Mr. CLAYTON. Mr. Speaker——

The SPEAKER. The Chair recognizes the gentleman from Alabama to call up the President's veto message.

Mr. CLAYTON. Mr. Speaker, I move that the House, on reconsideration, pass the bill (S. 4043) divesting intoxicating liquors of their interstate character in certain cases, the objections of the President to the contrary notwithstanding. I move the present consideration and passage of the bill.

Mr. HARDWICK. I make the point of order that that is not in order. The House does that automatically; but I make the point of order that there is no quorum present.

Mr. BURKE of South Dakota. Mr. Speaker, I endeavored to get recognition when the question of the approval of the Journal was up, for the purpose of calling attention to an error in a roll call.

The SPEAKER. But the gentleman did not get recognition.

Mr. BURKE of South Dakota. I ask unanimous consent.

The SPEAKER. The House can not do anything without a quorum when the point is raised.

Mr. BURKE of South Dakota. Perhaps the gentleman will withhold his point.

Mr. HARDWICK. This will be in order as soon as we get a quorum.

The SPEAKER. The gentleman from Georgia makes the point that there is no quorum present. The Chair will count. [After counting.] One hundred and fifty-seven Members present, not a quorum.

Mr. UNDERWOOD. Mr. Speaker, I move a call of the House.

The motion was agreed to.

The SPEAKER. A call of the House is ordered. The Doorkeeper will lock the doors, the Sergeant at Arms will notify absentees, and the Clerk will call the roll.

The Clerk proceeded to call the roll, when the following Members failed to answer to their names:

Aiken, S. C.	Ellerbe	Lever	Needham
Ainey	Ferris	Lindsay	Olmsted
Ames	Finley	Littleton	Peters
Ansberry	Gardner, N. J.	Lobeck	Pray
Bates	George	McCall	Ransdell, La.
Brown	Gudger	McGuire, Okla.	Reilly
Carter	Guernsey	McKinney	Riordan
Clark, Fla.	Harris	McLaughlin	Scully
Conry	Hartman	Maher	Sherley
Covington	Haugen	Merritt	Smith, J. M. C.
Crago	Heald	Miller	Stack
Curley	Hill	Moon, Pa.	Taylor, Ala.
Currier	Hinds	Moon, Tenn.	Taylor, Ohio.
Danforth	Hughes, W. Va.	Moore, Tex.	Tilson
Davenport	Kindred	Morgan, Okla.	Vreeland
Davidson	Korbly	Morse, Wis.	Weeks
Dickson, Miss.	Lafean	Mott	Whitacre
Dwight	Lee, Ga.	Murray	

The SPEAKER. Three hundred and eleven Members have answered to their names—a quorum.

Mr. UNDERWOOD. Mr. Speaker, I move to dispense with further proceedings under the call.

The motion was agreed to; and the Doorkeeper was directed to open the doors.

STATEMENT OF VOTES.

Mr. BURKE of South Dakota. Mr. Speaker, yesterday I was necessarily absent from the House attending the conference on the Indian appropriation bill, which lasted until after midnight last night. On page 4408 of the RECORD it shows that I was paired with the gentleman from Texas [Mr. STEPHENS] against the question of suspending the rules and disagreeing to the amendments of the Senate to the Agriculture appropriation bill. I want to say that if I had voted I would have voted for the motion, and that I was in favor of the Senate amendment in relation to migratory game birds.

On the motion of the gentleman from Texas [Mr. BURLESON] to suspend the rules on the District of Columbia appropriation bill and disagree to the Senate amendments with an amendment, the RECORD shows that I was paired as being opposed to the motion. That is correct. Had I been present, I would have voted against it. It shows the gentleman from Texas [Mr. STEPHENS] as being paired for the motion, and I understand he would have voted against it had he been present.

Mr. STEPHENS of Texas. Mr. Speaker, I indorse what the gentleman from South Dakota has said. Had I been present, I should have voted against the amendment offered by the gentleman from Texas [Mr. BURLESON].

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Stuart, one of its clerks, announced that the Senate had insisted upon its amendments to the bill (H. R. 28775) making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1914, and for other purposes.

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

H. R. 28699. An act making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1914, and for other purposes;

H. R. 27475. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war; and

H. R. 28282. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war.

The message also announced that the Senate had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 22526) to amend section 8 of an act entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," approved June 30, 1906.

The message also announced that the Senate had agreed to the amendments of the House of Representatives to the bill (S. 271) to authorize the collection of the military and naval

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records of the Revolutionary War with a view to their publication.

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

S. J. Res. 164. Joint resolution stopping traffic and preventing interference with the suffrage procession.

DIVESTING LIQUORS OF THEIR INTERSTATE CHARACTER.

The SPEAKER. The Chair lays before the House the veto message of the President of the United States on the bill (S. 4043) to divest intoxicating liquors of their interstate character in certain cases.

The Clerk read the veto message.

[For veto message, see Senate proceedings of February 28, 1913.]

The SPEAKER. The Chair also lays before the House the resolution of the Senate.

The Clerk read as follows:

IN THE SENATE OF THE UNITED STATES,
February 8, 1913.

The Senate having proceeded, in pursuance of the Constitution, to reconsider the bill entitled "An act to divest intoxicating liquors of their interstate character in certain cases," returned to the Senate by the President of the United States with his objections and sent by the Senate to the House of Representatives with the message of the President returning the bill,

Resolved, That the bill do pass, two-thirds of the Senate agreeing to pass the same.

Mr. HARDWICK. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. HARDWICK. Would it now be in order to have the opinion of the Attorney General read in connection with this?

The SPEAKER. It would not.

Mr. HARDWICK. Then I ask unanimous consent.

Mr. CLAYTON. I object.

The SPEAKER. The gentleman from Alabama objects.

Mr. CLAYTON. Mr. Speaker, I move on reconsideration to pass the bill S. 4043, the objections of the President to the contrary notwithstanding, and upon that I demand the previous question.

The SPEAKER. The gentleman from Alabama moves that on reconsideration the House shall agree to pass the bill S. 4043, the objections of the President to the contrary notwithstanding, and on that motion he moves the previous question.

Mr. BARTLETT. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. BARTLETT. If the previous question is ordered, will there be debate?

The SPEAKER. There will be 40 minutes debate, 20 minutes on a side.

The previous question was ordered.

The SPEAKER. The gentleman from Alabama has 20 minutes and the gentleman from Louisiana [Mr. DUPRÉ], the ranking member in opposition on the committee, will have 20 minutes.

Mr. CLAYTON. Mr. Speaker, I shall not undertake to say very much at this time on this subject. The debate on this important measure has been long and has been had, not only in the House, but in the Senate and in the committee rooms for years. This body quite understands the question from every viewpoint. Of course, Mr. Speaker, at this time no speech that any Member could make here would change a single vote. Everybody knows that. There is hardly any necessity now for any time to be given to debate.

Mr. Speaker, the President in his message admits, as I understand, from having heard it read, that the Supreme Court has never decided adversely to a measure like this, but many able lawyers think decisions made by that august tribunal from time to time can be quoted to sustain the constitutionality of the pending bill.

One of the latest utterances by the Supreme Court on the power to regulate interstate commerce, consistent with the contention of the friends of this measure that it is constitutional, is the case of Hoke against the United States, decided February 24, 1913.

As I view this question the bill is simply to allow the States to enforce their own police regulations. It is to go back to the ancient doctrine announced in Pierce versus New Hampshire more than 50 years ago, holding that under the police power of the State the State could regulate and control the matter of traffic in intoxicating liquors, according to the sovereign will of the State. That stood as the law of this country for nearly 50 years, and until the case of Leisy versus Hardin was decided, which specifically overruled it. That case led to the enactment of what is known as the Wilson law, and ever since the Wilson law was emasculated the effort has been made by the States, in furtherance of their police power, to let the State have the right to control the liquor whenever it reached the boundary of the State.

Mr. Speaker, while they talk about the history of the commerce clause of the Constitution, and that such clause of the Constitution was the result of a compromise between the States, and was one of the reasons for the formation of the Federal Union under the Constitution, let us not forget that the police power of the State is an older power than the commerce power of Congress, and that the States intended to reserve their police power. That this was intended is manifest from the Constitution, the dual scheme of government, and by the amendments adopted shortly after the ratification of the Constitution itself.

Mr. Speaker, the question here is, Shall this House—and I take it that this House will—pass this particular measure simply further to "*remove* (quoting the language of Chief Justice Fuller) *the impediment to the enforcement of State laws in respect to imported packages in the original condition in the absence of specific utterances on the part of Congress*," by now making a specific utterance that the importation of liquor into a State for illegal purposes is prohibited? Let those who believe that each State has a right to regulate its domestic affairs, to carry out its own internal policy, cast their vote for this measure, whereby the Federal Government is to take its protection away from those engaged in the wrongful traffic of selling liquor contrary to the law of the State.

It will be observed that in this case to which I referred, Hoke versus United States, the commerce clause was considered, and the Supreme Court said:

Congress is given power "to regulate commerce with foreign nations and among the several States." The power is direct; there is no word of limitation in it, and its broad and universal scope has been so often declared as to make repetition unnecessary. And, besides, it has had so much illustration by cases that it would seem as if there could be instance of its exercise that does not find an admitted example of some one of them. Experience, however, is the other way, and in almost every instance in the exercise of the power differences are asserted from previous exercises of it and made a ground of attack. The present case is an example.

This was a white-slave traffic case, and the act forbidding the traffic in white slavery was upheld. It was upheld under the commerce clause of the Constitution. It was decided that the transportation for illegal purposes of women by the interstate railroads was a violation of this law, and that the law was constitutional as a proper means for regulating such interstate traffic even to the extent of prohibiting such transportation of women for such purposes.

I quote further from this opinion:

There, in emphasis of the purpose of the law, we denominated adulterated articles as "outlaws of commerce" and said that the confiscation of them enjoined by the law was appropriate to the right to bar them from interstate transportation and completed the purpose of the law by not merely preventing their physical movement but preventing trade in them between the States.

And the same doctrine was announced in sustaining the pure-food law and the act regulating the transportation of nitroglycerine, the act forbidding the transportation of game birds, the quarantine act against diseased cattle, the act outlawing lottery tickets, and in other acts where Congress has legislated under the commerce clause of the Constitution. The power of Congress is ample in this respect, and here it is. Congress is asked here to say that it withholds the protection afforded by the commerce clause from intoxicating liquors imported into a State to be used in violation of the laws of that State. Will anybody deny that it is a good State rights doctrine to maintain that idea, and will anybody deny that the States in asking this legislation are asking legislation that will enable them to further protect the morals and the health of their citizens according to the ideas and law of each sovereign State?

Mr. Speaker, some gentlemen are very insistent that those who oppose this legislation possess all the reverence for the Constitution. Those of us who support this measure have as much respect for that great instrument as those gentlemen have. The reserved rights of the State are of as much constitutional concern or as much under the protection of the Constitution as the powers delegated to Congress. The tenth amendment of the Constitution says:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

I reserve the balance of my time.

Mr. DUPRÉ. Mr. Speaker, I yield 10 minutes to the gentleman from Kentucky [Mr. STANLEY]. [Applause.]

Mr. STANLEY. Mr. Speaker, this bill is designed to prevent the shipment of alcoholic liquors into certain States and localities which have forbidden their importation or sale. To accomplish this purpose it is proposed that Federal control over such commodities shall cease and that they shall lose their status as

articles of interstate commerce at the boundary lines of such States as have previously interdicted traffic in them, and that thereafter they shall be, while in transit as well as in the hands of the consignee, under the exclusive control of State or local authorities.

To do this it is necessary that the Federal Government shall be divested of the power to regulate such commerce and that the State governments be invested with the jurisdiction formerly exercised by Federal authority.

In so far as interstate commerce in alcoholic liquors is concerned, it will be subject not to any uniform regulation by Congress, but will be forced upon crossing State lines to comply with such conditions as 48 States are pleased to impose.

We are not left to conjecture, as to the effect upon interstate commerce of this delegation to the several States of the power to make their boundary lines barriers to commerce between them, and investing these Commonwealths with the power to halt and inspect such commerce at their borders for the purpose of excluding or confiscating articles considered injurious to the moral or physical well-being of their citizens.

This is not a matter of speculation, but of history. The States originally possessed this power, and only surrendered it after a long and sad experience in its exercise.

The Colonies having declared their independence became separate and distinct sovereignties, acknowledging no allegiance to the mother country and no binding or indissoluble bond among themselves.

The presence of a common enemy and a common danger compelled the formation of a loose league between these States and the organization of a central authority authorized to maintain an Army and Navy, to send and receive ambassadors, to coin money and regulate the value thereof, to establish a standard of weights and measures, and to exercise other functions now delegated to the Federal Government. This alliance, offensive and defensive, provided for the exigencies of war, but it failed to meet the demands of peace.

The Articles of Confederation centralized political power, but made no provision for industrial or commercial cooperation. Each State was free to exercise full and absolute control over trade and commerce within its borders. Embargo provoked embargo, and the industrial development of a Commonwealth was circumscribed by its boundaries. States industrially hostile could not in the nature of things long remain politically united.

In the language of Justice Johnson—

> "For a century the States had submitted with murmurs to the commercial restrictions imposed by the parent State; and now, finding themselves in the unlimited possession of those powers over their own commerce which they had so long been deprived of, and so earnestly coveted that selfish principle which, well controlled, is so salutary, and which, unrestricted, is so unjust and tyrannical, guided by inexperience and jealousy, began to show itself in iniquitous laws and impolitic measures, from which grew up a conflict of commercial regulations, destructive of the harmony of the States and fatal to their commercial interests abroad. *This was the immediate cause that led to the forming of a convention.*" (Gibbons *v.* Ogden, 9 Wheat., 224.)
>
> "It was the want of any power to regulate commerce as between the States themselves and with foreign nations which as much—and I am not sure but I am justified in saying more—than any one thing forced the States to form the present Constitution in lieu of the Articles of Confederation, under which they had won their freedom and established their independence." (Justice Miller's Lectures on the Constitution, p. 433.)
>
> "It is a matter of history that one of the great objects of the formation of the Constitution was to secure uniformity of commercial regulations, and thus put an end to restrictive and hostile discriminations by one State against the products of other States and against their importation and sale." (Bowman *v.* Chicago, etc., Railway Co., 125 U. S., 508.)
>
> "The oppressed and degraded state of commerce previous to the adoption of the Constitution can scarcely be forgotten"—

Says Chief Justice Marshall—

> "* * * Those who felt the injury arising from this state of things and those who were capable of estimating the influence of commerce on the prosperity of nations perceived the necessity of giving the control over this important subject to a single government. It may be doubted whether any of the evils proceeding from the feebleness of the Federal Government contributed more to that great revolution which introduced the present system than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, a matter of surprise that the grant should be as extensive as the mischief and should comprehend all foreign commerce and all commerce among the States." (Brown *v.* Maryland, 12 Wheat., 446.)
>
> "Few things are better known"—

Says Daniel Webster—

> "than the immediate causes which led to the adoption of the present Constitution; and he thought nothing clearer than that the prevailing motive was to *regulate commerce*, to rescue it from the embarrassing and destructive consequences resulting from the legislation of so many different States and to place it under the protection of a *uniform* law. The great objects were commerce and revenue; and they were objects indissolubly connected. By the Confederation divers restrictions had been imposed on the States, but these had not been found sufficient. No State, it was true, could send or receive an embassy nor make any treaty, nor enter into any contract with another State or with a foreign power, nor lay duties interfering with treaties which had been entered into by Congress. But all these were found to be far short of what the actual condition of the country required. The States could still, each for itself, regulate commerce, and the consequence was a perpetual jarring and hostility of commercial regulation. * * * The resolutions of Virginia, in January, 1786, which were the immediate cause of the convention, put forth this same great object. Indeed, it is the *only* object stated in those resolutions. There is not another idea in the whole document. *The entire purpose for which the delegates assembled at Annapolis was to devise means for the uniform regulation of trade.* They found no means but in a general government, and they recommended a convention to accomplish that purpose. Over whatever other interests of the country this Government may diffuse its benefits and its blessings it will always be true, as a matter of historical fact, that it had its immediate origin in the necessities of commerce and for its immediate object the relief of those necessities by removing their causes and by establishing a *uniform* and steady system. * * *
>
> "We do not find in the history of the formation and adoption of the Constitution that any man speaks of a *general concurrent power* in the regulation of foreign and domestic trade as still residing in the States.
>
> "*The very object intended, more than any other, was to take away such power. If it had not so provided, the Constitution would not have been worth accepting.*" (From Webster's argument in Gibbons *v.* Ogden, 9 Wheat., pp. 11–13.)
>
> "If there was any one object riding over every other in the adoption of the Constitution, it was to keep the commercial intercourse among the States *free from all invidious and partial restraints.*" (Gibbons *v.* Ogden, p. 231.)

The Articles of Confederation created a dead political bond between States politically united but industrially divided. There was no autonomy, no industrial union. Each State had the right to levy such imposts and prescribe such conditions as pleased it upon commerce entering its borders. The boundary lines of the States became impenetrable barriers to the course of trade. In order that we might have a vital industrial and commercial Union, in order that the States might be united in aspiration and in interest as well as in political destiny, the Constitution of the United States was ordained and established. First of all, to Congress, and to Congress alone, was given the absolute, supreme, and exclusive control and direction of commerce between the several States and foreign nations. That, Mr. Speaker, was the keystone of the arch; yea, more, it was the arch itself. Around the interstate-commerce clause of the Constitution cluster all other provisions, and, as we have seen, the Supreme Court decisions are replete with references to the fact that the Constitution itself was ordained, that the convention at Annapolis was called for one purpose, one all-compelling purpose, and that was forever to obliterate, forever to remove from the course of commerce any and every barrier that any State might attempt to erect.

To erect State barriers to interstate commerce, to impede and harrass it by hostile and conflicting regulations, is to return to the very condition which prevailed prior to the adoption of the Constitution, to restore the ills that great instrument was

ordained to cure, and to reestablish the conditions it was designed to destroy.

Mr. Speaker, this is not the first time Congress has been asked to reinvest the States with powers delegated by them to the Federal Government. It is exceptional only in this, that in recent years only has such a proposal found serious or favorable consideration by men mindful of their duty to obey and sustain the Constitution of the United States, and to preserve and safeguard the freedom of commerce between the States.

A measure identical in purpose and character was offered by Calhoun in the Twenty-fourth Congress. On June 8, 1836, he introduced in the Senate a bill providing that there should not thereafter be transported into any State any book or paper of an incendiary character touching the question of chattel slavery, and that it should be unlawful, knowingly, to deliver to any person whatever any pamphlet, newspaper, handbill, or other printed paper or pictorial representation touching the subject of slavery "*when by the laws of said State, District, or Territory, their circulation was prohibited.*"

The manifest unconstitutionality of this attempt to turn over to the States the exercise of the control of commerce or the mails, previously exclusively vested in Congress, was earnestly maintained by Benton, Davis, Webster, and Clay.

Henry Clay in the course of a fierce assault upon such legislation, which he characterized as "unauthorized" and "dangerous," declared:

> "But he wanted to know *whence Congress derived the power* to pass this law. *It was said that it was to carry into effect the laws of the States. Where did they get such authority?* He thought that their only authority to pass laws was *in pursuance of the Constitution;* but to pass laws to carry into effect the laws of the States was a most prolific authority, and there was no knowing where it was to stop; *it would make the legislation of Congress dependent upon the legislation of 24 different sovereignties.* He thought the bill was of a most dangerous tendency. The Senator from Pennsylvania asked if the post-office power did not give them the right to regulate what should be carried in the mails. Why, there was no such power as that claimed in the bill; and if they passed such a law it would be exercising a most dangerous power. Why, if such doctrine prevailed *the Government might designate* the persons or parties or classes who should have the benefit of the mails, excluding all others."

Mr. Speaker, were it possible to turn over to the States the arbitrary control of commerce in one commodity and to reserve to the Federal Government the unimpaired power to regulate it in all others, I might waive my inveterate opposition to this measure, but in the words of Henry Clay:

"There is no knowing where it is to stop"—

Or of Portia—

> "'Twill be recorded for a precedent,
> And many an error by the same example
> Will rush into the State."

In the language of Chief Justice Fuller in the Knight case:

> "Acknowledged evils, however grave and urgent they may appear to be, had better be borne than the risk be run in the effort to suppress them of more serious consequences by resort to expedients of even doubtful constitutionality."

If a State, by virtue of an act of Congress, can assume control over one article of commerce, can at its will confiscate or exclude it, then it can by the same means assume control or prescribe regulations for the exclusion of any other article.

The one vital question is, Can Congress refuse to exercise a *uniform* control over *any* article of interstate commerce? Can it remove its protection from *any* part? If so, then it can remove it from *every part.*

It is idle to assert to any lawyer that you can intrust to a State the right to exclude one commodity for a good purpose while withholding from it the power to exclude another for a bad purpose.

"Of course"—

Says Daniel Webster—

> "*there is no limit to the power to be derived from the purpose* for which it is exercised. If exercised for one purpose, it may be exercised for another. No one can inquire into the *motives* which influence sovereign authority." (Gibbons *v.* Ogden, 9 Wheat., 23.)

"Questions of power"—

Says Chief Justice Marshall—

> "do not depend on the degree to which it may be exercised. If it may be exercised *at all,* it must be exercised at the will of those in whose hands it is placed. * * * It will not meet this argument to say * * * that the good sense of the States is a sufficient guaranty against it. The Constitution has not confided this subject to that good sense. It is placed elsewhere. The question is, Where does the power reside? Not, How far will it probably be abused?" (Brown *v.* Maryland, 12 Wheat., 433–447.)

If one State can exclude articles containing alcohol, another can prohibit articles containing nicotine, and so on.

As stated in West *v.* Kansas Gas Co. (221 U. S., 229):

> "*If one State has such a right, all States have it. Embargo may be retaliated by embargo, and commerce will be halted at State lines. And yet we have said that* in matters of foreign and interstate commerce *there are no State lines.* * * * *This was the purpose, as it is the result, of the interstate-commerce clause of the Constitution of the United States.*"
>
> "Can it be supposed"—

Says Justice Matthews—

> "that by omitting any express declarations on the subject, Congress has intended to submit to the several States the decision of the question in each locality of what shall and what shall not be articles of traffic in the interstate commerce of the country? If so, it has left to each State, according to its own caprice and arbitrary will, to discriminate for or against every article grown, produced, manufactured, or sold in any State and sought to be introduced as an article of commerce into any other. If the State of Iowa may prohibit the importation of intoxicating liquors from all other States, it may also include tobacco, or any other article, the use or abuse of which it may deem deleterious. It may not choose even to be governed by considerations growing out of the health, comfort, or peace of the community. Its policy may be directed to other ends. It may choose to establish a system directed to the promotion and benefit of its own agriculture, manufactures, or arts of any description, and prevent the introduction and sale within its limits of any or of all articles that it may select as coming into competition with those which it seeks to protect. The police power of the State would extend to such cases as well as to those in which it was sought to legislate in behalf of the health, peace, and morals of the people. In view of the commercial anarchy and confusion that would result from the diverse exertions of power by the several States of the Union, it can not be supposed that the Constitution or Congress have intended to limit the freedom of commercial intercourse among the people of the several States. 'It can not be too strongly insisted upon,' said this court in Wabash, etc., Railroad Co. *v.* Illinois (118 U. S., 557, 572), 'that the right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the States might choose to impose upon it that the commerce clause was intended to secure. This clause giving to Congress the power to regulate commerce among the States and with foreign nations, as this court has said before, was among the most important of the subjects which prompted the formation of the Constitution.' (Cook *v.* Pennsylvania, 97 U. S. 566, 574; Brown *v.* Maryland, 12 Wheat., 419, 446.) And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the States, which was deemed essential to a more perfect union by the framers of the Constitution, if at every stage of the transportation of goods and chattels through the country the State within whose limits a part of the transportation must be done could impose regulations concerning the price, compensation, or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce." (Bowman *v.* Chicago & North Western R. R. Co., 125 U. S. 493.)

FEDERAL CONTROL OF INTERSTATE COMMERCE SUPREME, EXCLUSIVE, AND INDIVISIBLE.

The transportation of a commodity from the consignor in one State to the consignee in another is one transaction and subject to the sole and exclusive control of the Federal Government.

The shipment may traverse 2 States or 10, but so long as any part of it is interstate every part preserves that status. In the nature of things, *all commerce* between the States is at some time commerce *within a State.*

If each State can subject commerce entering its territorial limits to the same restrictions as commerce originating and end-

ing within them, then there is left *no such thing as interstate commerce.*

"If"—

Says Marshall—

"Congress has power to regulate it, *that power must be exercised whenever the subject exists.* * * * This principle is, if possible, still more clear when applied to commerce 'among the several States.' They either join each other, in which case they are separated by a mathematical line, or they are remote from each other, in which case other States lie between them. What is commerce 'among' them, and how is it to be conducted? Can a trading expedition between two adjoining States *commence and terminate outside of each?* * * * The power of Congress, then, whatever it may be, *must be exercised within the territorial jurisdiction of the several States.*" (Gibbons *v.* Ogden, 9 Wheaton, p. 196.)

A State's control of that part of interstate commerce which may chance to be within her territorial limits is no greater and no less than it is over any other part of it. It is true that a State may in the exercise of its police power exclude from its territorial limits certain harmful or unwholesome articles, but, as will be seen, such things are prohibited *because, and only because, they are not interstate commerce* and form no part of it.

The character and extent of the Federal power over interstate commerce was exhaustively analyzed and defined by Chief Justice Marshall in the first great decision rendered upon this subject.

The State of New York had granted to Robert Fulton and Robert R. Livingston an exclusive right to license vessels propelled by steam upon waters within the boundaries of that State. The importance of the grant and the illustrious character of the litigants alike attracted the widest attention. Both parties to the controversy were represented by the ablest jurists of that day. Wirt wrote to his friend Judge Carr:

"About to-morrow week will come on the great steamboat question from New York. Emmett and Oakley are on one side, Webster and myself on the other. Come down and hear it. Emmett's whole soul is in the case, and he will stretch all his powers. Oakley is said to be one of the first logicians of the age, as much a Phocian as Emmett is a Themistocles, and Webster is as ambitious as Cæsar. He will not be outdone by any man if it is within the compass of his power to avoid it. It will be a combat worth witnessing."

Every argument which has been advanced by the proponents of this bill—claiming for a State the constitutional right to regulate or control commerce within its borders—was elaborated by learned and ingenious counsel in this case. It was claimed that the State of New York could regulate the use of steam upon vessels operated entirely within the territorial boundaries of that State; that since this agency was dangerous to human life and property that, under her inspection and police powers, the State might determine what vessels and upon what conditions steam might be applied as a motive power; that the use of this new and perilous agency was controlled by State regulations binding upon all the citizens of that State, and that Congress could not confer greater powers upon persons living without the State of New York than were enjoyed by her own citizens; that there was no interference with interstate commerce, since there was no regulation of such vessels until after they were entirely within the jurisdiction of the State. It was a novel question then. This vital clause of the Constitution was for the first time to be exhaustively interpreted and the whole range of trade and commerce for the coming empire was swept by the wide and prophetic vision of the great justice.

"The opinion in this case is regarded as one of his (Chief Justice Marshall's) greatest judicial utterances. The path before him was untrodden by any Federal decision save his own in the Brig *Wilson* case, and the questions presented were of the most vital importance. His opinion, in which no authority was cited, was so able, so profound and masterful, that it announced the principle which all future decisions have followed." (Watson On the Constitution, vol. 1, p. 470.)

"We are now"—

Said the court—

"arrived at the inquiry, '*What is this power?*' That question has been raised in the Supreme Court more than a thousand times since then, but the definition of John Marshall still remains unquestioned, complete and conclusive: 'It is the power to regulate. That is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are proscribed in the Constitution. * * * The power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.'" (Gibbons *v.* Ogden, 9 Wheat., p. 197.)

After a lapse of more than half a century Justice Lamar, in reviewing this great decision, declared:

"This line which separates the province of Federal authority, over the regulation of commerce, from the powers reserved to the States has engaged the attention of this court in a great number and variety of cases. * * * The decisions in these cases have almost uniformly adhered to the fundamental principles which Chief Justice Marshall, in the case of Gibbons *v.* Ogden, laid down as to the nature and extent of the grant of power to Congress on this subject and also of the limitations, express and implied, which it imposes upon State legislation with regard to taxation and to the control of domestic commerce and to all persons and things within its limits of purely internal concern. According to the theory of this great opinion, * * * the power expressly conferred upon Congress to regulate commerce is absolute and complete in itself with no limitations other than are proscribed in the Constitution; is to a certain extent *exclusively vested in Congress, so far free from State action;* is coextensive with the subject on which it acts *and can not stop at the internal boundary of the State* but must enter the interior of every State whenever required by the interests of commerce with foreign nations or among these several States." (Kidd *v.* Pearson, 128 U. S., p. 16.)

"It is"—

Said Justice Bradley—

"over the whole subject unimpeded and unembarrassed by State lines or State laws, and in this matter the country *is one,* and the work to be accomplished is national; State interests, States' jealousies, and State prejudices do not require to be considered. *In matters of foreign and interstate commerce there are no States.*" (Stockton *v.* Baltimore, 32 Fed. Rep., p. 9; Lacy *v.* Hardin, 135 U. S., p. 108.)

This power was not only absolute and supreme but it was *exclusive,* to be exercised uniformly and universally, and to be exercised by the Federal Government *alone.*

No State can assume control over interstate commerce without exercising a forbidden and Federal prerogative.

"When a State proceeds to regulate commerce with foreign nations or among the several States, it is"—

Says Justice Marshall—

"*exercising the very power that is granted to Congress and doing the very thing which Congress is authorized to do.* * * * The sole question is, Can a State regulate commerce with foreign nations and among the States *while Congress is regulating it?* * * * The verb 'to regulate' implies in its nature *full power* over the thing to to be regulated. It excludes, necessarily, *the action of all others* that would perform the same operation on the same thing. That regulation is designed for the entire result, applying to those parts which remain as they are as well as to those which are altered, *it produces a uniform whole,* which is as much disturbed and deranged by changing what the regulating power designs to leave untouched as that on which it has operated." (Gibbons *v.* Ogden, 9 Wheat., 99, 200, and 209.)

"Whenever the law of the State amounts essentially to the regulation of commerce with foreign nations or among the States, as it does *when it inhibits directly or indirectly* the receipt of an imported commodity or its disposition before it has ceased to become an article of trade between one State and another, or another country and this, it comes in conflict with the power which in this particular case has been *exclusively vested* in the General Government, and is therefore void." (Leisy *v.* Hardin, 135 U. S., p. 123.)

"The interstate-commerce clause of the Constitution guarantees the right to ship merchandise from one State into another and protects it until the termination of the shipment by delivery at the place of consignment." (Heyman *v.* Southern Railway Co., 203 U. S., p. 244.)

The gentleman from North Carolina [Mr. WEBB] argues that the vesting in Congress of the control of all articles of interstate commerce necessarily implies the right to exercise so much of that control as it chooses, and that from the nature of the grant it can, with or without cause, "*arbitrarily*" withdraw its protection from any commodity that a State may choose to confiscate or exclude.

"If"—

Says the gentleman from North Carolina [Mr. WEBB]—

> "Congress can *arbitrarily* prohibit the interstate transportation of all intoxicating liquors, then most certainly can Congress prohibit the shipment of any less portion of liquor or any kind or class of liquor for whatever reason it chooses to assign, or without giving any reason whatever. The larger power necessarily includes the smaller."

The gentleman attributes to Congress a kind of power never mentioned in the Constitution and never possessed or delegated by any State. He *assumes without warrant* of law or fact that because Congress has the supreme and exclusive power over interstate commerce, it has *arbitrary* power, and his whole argument is based upon this unwarranted assumption. If Congress possessed "*arbitrary*" power, and chose to exercise it arbitrarily, it could, I admit, make a commodity commerce in one State and contraband in another. It could exercise the whole or any part of the powers delegated, and exercise them directly or by proxy. Such a use or abuse of power is in its essence arbitrary. Arbitrary power was never invested in Congress by the Constitution, and arbitrary power can never be delegated by it to the States. The powers conferred upon Congress may be supreme or limited, exclusive or concurrent, but they are *not* arbitrary. Every power vested in the Federal Government is clearly defined by the organic law. It must be exercised as conferred, and not at the caprice of either the executive or the legislative branches of the Government. Arbitrary power may be exercised regularly or irregularly, uniformly or partially, upon the whole of the country's industries or any part; it may apply impartially to all citizens, or be made to operate as a bounty to a favored few and an intolerable burden to the numberless masses. Arbitrary power is the distinctive mark of the tyrant and of tyranny. "Life, liberty, and the pursuit of happiness" and the security of property are guaranteed to the citizen only by the assurance that all the powers, great or small, vested in Congress must be exerted fairly, uniformly, impartially, and that neither in the Federal nor in the State Government is there one hint of any authority which may be exercised arbitrarily at the caprice either of any President, Congress, governor, or legislature.

Further elaborating the varied and irregular operation of this law, the gentleman from North Carolina says:

> "If a man has the right to cut down an entire tree, he has the right to remove a few limbs. * * * If Congress can arbitrarily prohibit the interstate transportation of all intoxicating liquors, then most certainly can Congress prohibit the shipment of any less portion of liquor. * * * The larger power necessarily includes the smaller."

That is to say, exclusive jurisdiction includes concurrent. The right to prescribe for a just and uniform regulation over the entire field of interstate commerce implies the power to exercise a partial and irregular control over the same territory cut by State lines into segments and unrelated units.

"But"—

Says Webster—

> "what is it that is to be regulated? Not the commerce of the several States, respectively, but the commerce of the United States. Henceforth the commerce of the States was to be *a unit*, and the system by which it was to exist and be governed *must necessarily be complete, entire, and uniform*. Its character was to be described in the flag which waved over it, E pluribus unum. Now, how could individual States assert a right of *concurrent legislation* in a case of this sort without manifest *encroachment and confusion*?"

All the great powers enumerated in the Constitution must be exercised uniformly or not at all. A partial exercise, a partial enforcement, is a perversion of the law, as illegal and as unauthorized as the assumption of authority for which there is no warrant whatever. Congress has power to levy taxes, but it can not tax one State and exempt another. It has power to coin money and regulate the value thereof, but it can not by virtue of this power coin one metal in one State and another in another, make gold a legal tender in one State and silver or copper in another, or delegate to the States the right to do so. Congress has full power over the naturalization of all citizens, but it does not follow that it can naturalize a part of the citizens upon one condition and another part of the citizens, alike in all respects, upon another condition. It can not make one person a citizen after five years' residence in Texas and naturalize another after two years' residence in New York. Congress can exclude obscene matter from the mails, but it can not make the same matter decent in Maine and indecent in Florida, any more than it can make alcohol a legitimate article of commerce in Ohio and contraband in Kentucky. The uniform exercise of a power is an essential, inherent, indestructible part of that power, and when you destroy its uniformity, when you destroy the fairness and equality of its operation, the power itself is void.

> "So long as the State legislature continues to recognize wines, beer, and spirituous liquors as articles of lawful consumption and commerce, so long must continue the duty of the Federal courts to afford such use and commerce the same measure of protection under the Constitution and laws of the United States as is given to other articles." (Scott *v.* McDowell, 165 U. S., 91.)

Congress can no more protect a given article as a legitimate subject of commerce in one State and declare it contraband and defenseless in another than it can protect the integrity of its coin in one State and not in another or the enforcement of one standard of weights and measures in one State and not in another. The great powers of Congress can not be cut into segments. They are units. Their indissolubility, their uniformity, is their essence. To dissever is to destroy them.

> "The subjects upon which Congress can act under this power are of infinite variety. Some of them are national in their character and admit and require *uniformity of regulation* affecting all the States. In this class is included all that operation of commerce with foreign countries or between the States which consists in the transportation, purchase, sale, and exchange of commodities. Here there can of necessity be *only one system* or plan of regulation and that *Congress alone can prescribe*. * * * There would otherwise be no security against conflicting regulations of different States, each discriminating in favor of its own products and citizens and against the products and citizens of other States. And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the States was to insure a uniformity of regulation against conflicting and discriminatory State legislation." (County of Mobile *v.* Campbell, 102 U. S., p. 697.)
>
> "The object of vesting the power to regulate commerce in Congress was to secure uniform regulations when such uniformity was practicable, against conflicting State legislation." (Western Telegraph Co. *v.* Pendleton, 122 U. S., 358.)
>
> "This power to regulate commerce was given to Congress in comprehensive terms, and it was thus given, so far as it relates to commerce between the States, with the obvious intent to place that commerce beyond interruption or embarrassment arising from the conflicting or hostile State regulations." (Steamship Co. *v.* Port Railways, 6 Wall., pp. 32–33.)
>
> "The commerce clauses of the Constitution had their origin in a wise and salutary policy. They were intended to secure *harmony and uniformity* in the regulations by which they should be governed. The confusions and mischiefs that would ensue if this restriction were removed are too obvious to require comment." (Inman Steamship Co. *v.* Tucker, 94 U. S., p. 245.)
>
> "The power to regulate commerce among the several States was vested in Congress in order to secure *equality* and *freedom* in commercial intercourse against *discriminatory State legislation*." (Railroad Co. *v.* Richmond, 19 Wall., p. 589.)

If it was manifest to John Marshall in the infancy of the Republic that the industrial development and welfare of the Nation was dependent above all other things upon the absolute freedom of commerce among the States and the justice and uniformity of its regulation, how infinitely more necessary is it now. Then there were 13 Colonies, sparsely populated, separated one from another by mountain ranges and the vast stretches of an unpeopled wilderness. The locomotive and the telegraph were unknown. Trade between these Commonwealths was confined to a few navigable streams or found its slow and tedious course over dirt roads and mountain trails. To-day these Commonwealths are ribbed by 200,000 miles of railroad, laced in every part by quivering fibers of copper and steel. We

have articulated this exquisite system, intricate in its structure, vast in its extent, mighty in its power, embracing the land, the rivers, and the sea, riveted together these States by bolts of iron stronger than any political bond. These Commonwealths are and forever shall remain an industrial union, one in aspiration, in industry, and in commerce. To protect and develop that commerce we have deepened channels, bridged estuaries, dammed rivers, dredged harbors, dug canals across continents. This system is in its power and perfection a living, throbbing thing, and through its vast industrial arteries the produce of toiling millions and the necessaries and comforts of their daily life are borne swiftly to every part.

Now, we are told that the power to create implies the power to destroy, that they who were directed by the mandate of the Constitution to ordain and assemble this vast and splendid commerce were by the same instrument permitted at the caprice of any State to mutilate and dissever it, and that we may at will re-create and restore the very conditions the Constitution was ordained to inhibit and prevent. [Applause.] I do not believe that there is vested in Congress the right to cut the nerves this clause has created, to rend the sinews it has strengthened, to ligate the arteries now swollen and pulsating with the produce to 90,000,000 of people, the necessaries of their lives and the products of their toil [applause], and to consign to atrophy and decay the industrial energies of an empire. I do not believe that in that sense the whole is equal to all of its parts, that you can sever and dismember this thing and then call the mangled and disconnected remains the same symmetrical commercial body this clause has created. [Applause.]

We may not now under the hollow guise of State regulation divide and dissever the whole commercial structure without wrecking the uniform and harmonious creation designed by the fathers, described by Daniel Webster, and preserved by John Marshall. The interstate-commerce clause of the Constitution in its last analysis is something more than the sum total of a conglomeration of confused and conflicting State regulations, into which it can be dissected without injury to commerce or outrage to the law.

CONGRESS CAN NOT INVEST A STATE WITH FEDERAL POWER, MUCH LESS "PERMIT" THE ARBITRARY OR PARTIAL EXERCISE OF SUCH AUTHORITY.

But, says Mr. Dinwiddie:

> "The beauty about this law, as Mr. Webb expressed it to me the other day, is that it *expands and contracts* with the legislation of the State."

I can not comprehend the delight of the gentleman at the handiwork of the gentleman from North Carolina, who has succeeded in giving this chameleon-like quality to what I had considered a fixed and immutable clause of the Constitution of the United States, that instrument which was ordained to provide an impenetrable barrier to all legislation contrary to its provisions, now "contracts and expands" not at the will of Congress but at the whim of any State legislature which may choose to enlarge or restrict its powers. Mr. Dinwiddie shows an exact knowledge of the scope and operation of this law shared by few of my colleagues on this floor.

The gentleman from Alabama [Mr. CLAYTON] informs us:

> "The purpose (of this bill) is to take the protecting arm of the Federal Government, by virtue of the interstate-commerce clause of the Constitution, from around the illicit dealers in liquors, *and is to allow the States*, which have passed police regulations restricting or forbidding the sale of liquor to better enforce those regulations. * * * It will *permit* the State to seize such liquor, intended to be sold or otherwise used in violation of law, before it reaches the hands of the consignee."

If the Federal Government has no authority to control interstate commerce except by a uniform regulation, if it can not give to an article of interstate commerce one status in one State and another in another, it goes without saying that it can not delegate to a State a power which it could not itself have exercised. But even if Congress had, as the gentleman from South Carolina contends, "an arbitrary power" over interstate commerce, it could not delegate such power to a State. This law, in the language of the gentleman from Alabama, "permits" the States to do certain things. But Congress can not "permit" a State to do anything which requires the exercise of Federal power.

If Congress could "permit" the States to exercise one Federal function, it could another. It has the same warrant for "permitting" a State to maintain a navy, or to coin money, or to make a treaty as it has to "permit" it to regulate interstate commerce.

As stated by Mr. Chief Justice Taney in the License cases (5 How., 580):

> "But it is equally clear that as to all future laws by the States, if the Constitution deprives them of the power of making any regulations on the subject, an act of Congress could not restore it.
>
> "For it will hardly be contended that an act of Congress can alter the Constitution and confer upon a State a power which the Constitution declares it shall not possess. And if the grant of power to the United States to make regulations of commerce is a prohibition to the States to make any regulation upon the subject Congress could no more restore to the States the power of which they were thus deprived than it could authorize them to coin money, or make paper money a tender in the payment of debts, or to do any other act forbidden to them by the Constitution."

As stated by the gentleman from Alabama [Mr. CLAYTON], you "take the protecting arm of the Federal Government, by virtue of the interstate-commerce clause of the Constitution, from around" this commerce in order that the State may control a traffic formerly regulated by the Federal Government. But you can not "*take away*" any power vested in the Federal Government by the express terms of the Constitution, except by an amendment to that Constitution.

If the right is admittedly derived from the Constitution, it can not be affected by an act of Congress. The Constitution would indeed be a "rope of sand" if powers solemnly delegated by it to the Federal Government were secure only so long as it did not happen to please Congress to "take them away."

But you propose more than that. After this power is "taken away" from the Federal Government it is to be conferred upon the State, and the State is to be "permitted" to take control of commerce about which the Federal Government *alone* had thrown "its protecting arm" by virtue of a complete and exclusive jurisdiction exercised by virtue of an express provision of the Constitution itself.

> "It will hardly be contended that an act of Congress can alter the Constitution and confer upon the State power which the Constitution declares it shall not possess." (Chief Justice Taney in the License cases, 5 How., 580.)

The very statement of the case demonstrates its manifest and absolute unconstitutionality. As stated in Hall *v.* De Cuir (95 U. S., 57):

> "That power [over interstate commerce] is by the Constitution vested *exclusively* in Congress, as appears by the Constitution itself, and by an unbroken course of decisions of this court covering a period of more than half a century."
>
> "Now, it is a principle which can not be too often brought into view or enforced, that Congress can not delegate to State legislatures the exercise of powers which were given to it exclusively." (Argument of Emmett in Gibbons *v.* Ogden, 9 Wheat., 117.)

The State can not take such control until, by virtue of the "permission" given in this bill its power over interstate commerce has been enlarged. Yet the Supreme Court has emphatically declared:

> "*It does not admit of argument* that Congress can neither delegate its own powers nor enlarge those of a State." (In re Rahrer, 140 U. S., 560.)

INTERSTATE COMMERCE IN ALCOHOLIC LIQUORS NOT SUBJECT TO THE POLICE POWERS OF A STATE.

It is asserted that intoxicating liquors are injurious to the citizen morally and physically, and that a State in the proper exercise of its police powers can prevent the introduction of an article productive of disorder, disease, and pauperism. Or as stated by the gentleman from Texas [Mr. HENRY]:

> "The States of the Union may exercise their sovereign power—the power they never surrendered. They retained the right to control the liquor traffic and to all matters of domestic concern within the scope of police powers."

Now, if it be true that a State, in the exercise of its reserved police powers, can take possession and control of liquors while in transit from a point in one State to their destination in another, then this law is unnecessary. The police power of a State is not determined by Federal legislation. Congress can neither enlarge nor restrict it. Such power as the gentleman suggests was reserved, inherent. Never having been delegated to the Federal Government, it can not be conferred by it. In the nature of things it is absurd and impossible to attempt

by an act of Congress to strengthen a power inherent in a State or to "permit" the State to exercise it.

As stated by Chief Justice Fuller (in re Rahrer, 140 U. S., 554):

> "The power of the State to impose restraints and burdens upon persons and property in conservation and promotion of the public health, good order, and property, *is a power originally and always* belonging to the States, not surrendered by them to the General Government nor directly restrained by the Constitution of the United States and essentially *exclusive*."

There is no conflict of authority between the police power of a State to protect its citizens from unwholesome substances or objects liable to spread contagious disease and the power of Congress to regulate commerce. The confusion of ideas and apparent conflict of authority is entirely due to a failure to clearly define the term "commerce." Many things may be transported from one place to another by an interstate carrier which are not commerce, and are not exempt from State supervision and control. Commerce between the States is confined to commodities of value legitimately subject to barter and sale, to *property* in some form.

If the thing carried is not *property*, is not intended or suitable for barter or sale, it is not commerce. Decayed meats, putrid and wholesome foodstuffs, vermin, noxious insects, rags infected with disease or poisonous germs are not legitimate subjects of barter and trade, are not *property*, and can not claim any protection as such in the channels of interstate or foreign commerce. Wild animals, such as birds killed out of season, can not be reduced to the status of *property* and are not articles of commerce. All such things are subject to the police power of the State, and the fact that they may happen to be on the cars or boats or in the possession of a carrier engaged in commerce among the States does not affect or lessen in any degree the State's jurisdiction over them.

In determining whether or not a State can seize a given thing at its border or exclude it from interstate commerce, we are met by a simple question *not of law, but of fact.*

If it is not a legitimate article of commerce, the State authorities can confiscate or destroy it. If it is such an article, it is exempt from such police power and beyond its control.

FEDERAL LIMITATIONS UPON POLICE POWER.

The determination of this question of fact must in the nature of things be left to the final determination of the Federal Government. Were the State vested with the unlimited and arbitrary discretion to declare what articles should be subject to its police powers and those powers in turn free from any limitation or control by the Federal Government, then the State could necessarily exclude any and all articles from interstate commerce which were in any way objectionable.

> "Can this exclusive State power be made to rest not on the fact of the state or condition of the article, nor that it is property usually passing by sale from hand to hand, but on the declaration found in the State laws and asserted as part of the State policy that it shall be excluded from commerce? * * * Can they declare that ardent spirits and wines are deleterious to morals and health and cease to be commercial commodities? * * * If this be the true construction of the constitutional provision, then the paramount power of Congress to regulate commerce is subject to a very material limitation, for it takes from Congress and leaves with the States the power to determine the commodities or articles of property which are the subjects of lawful commerce. Congress may regulate, *but the States determine what shall or shall not be regulated.* Upon this theory the power to regulate commerce, instead of being paramount over the subject, would become subordinate to the State police power. * * * The same process of legislation or reasoning adopted by the States and their courts could bring within the police power any article of consumption that the States wish to exclude, whether it might apply to that which was drunk or to food and clothing. * * * And it would be but another step to regulate real or supposed extravagance on goods and clothing." (Bowman *v.* Chicago, etc., R. R. Co., 125 U. S., 490.)

As stated by Mr. Justice Catron in the License cases (5 How., 576–577):

> "It has, indeed, been suggested that if a State deems the traffic in ardent spirits to be injurious to its citizens and calculated to introduce immorality, vice, and pauperism into the State it may constitutionally refuse to permit its importation, notwithstanding the laws of Congress; and that a State may do this upon the same principles that it may resist and prevent the introduction of disease, pestilence, or pauperism from abroad. But it must be remembered that disease, pestilence, and pauperism *are not subjects of commerce*, although sometimes among its attendant evils. They are *not* things to be regulated and trafficked in, but to be prevented, as far as human foresight or human means can guard against them. But spirits and distilled liquors are universally admitted to be subjects of ownership and property, and are therefore subjects of exchange, barter, and traffic like any other commodity in which a right of property exists."

This simple distinction between the things which are subject to the police power of the States and those which are not is clearly drawn in Bowman *v.* Chicago, etc., Railroad Co. (125 U. S., 490):

> "It has never been regarded as within the legitimate scope of inspection laws to forbid trade in respect to any known article of commerce, irrespective of its condition and quality, merely on account of its intrinsic nature and the injurious consequences of its use or abuse. * * * Doubtless States have the power to provide by law suitable measures to prevent the introduction into the States of articles of trade which, on account of their existing condition, would bring in the spread of disease, pestilence, and death, such as rags or other substances infected with the germs of yellow fever or the virus of smallpox or cattle or meat or other provisions that are diseased or decayed or otherwise, from their condition or quality, unfit for human use or consumption. *Such articles are not merchandise; they are not legitimate subjects of trade and commerce.* They may be rightly outlawed as intrinsically and directly the immediate sources of destruction to human health and life. * * * And here is the limit between the sovereign power of the State and the Federal power. *That is to say that which does not belong to commerce* is within the jurisdiction of the police power of the State, and that which *does belong to commerce* is within the jurisdiction of the United States, and to this limit must all the general views come."

If, then, alcoholic liquors are not legitimate objects of barter and sale under the laws of the United States, they can be excluded from interstate commerce without any further legislation; and if they are entitled to a status as property, and are so regarded by the Supreme Court, interstate traffic in them is not subject to the police power of a State, and this act can not make them subject, because Congress can not enlarge or extend in any way the police powers of any State.

But this question of fact is no longer left to our determination, if it ever was. The status of alcoholic liquors as legitimate commodities in interstate trade has been conclusively and repeatedly determined by the Supreme Court:

> "That ardent spirits, distilled liquors, ale, and beer are subjects of exchange, barter, and traffic, like any other commodity in which a right of traffic exists, and are so recognized by the usages of the commercial world is not denied." (Leisy *v.* Hardin, 135 U. S., 110.)

On November 13, 1911, Justice Lurton, in an exhaustive opinion, in which he discussed this exact question, i. e., the power of the State of Kentucky in the exercise of its police power to exclude or prevent the importation of alcoholic liquors into "dry" territory in that State, declared:

> "By a long line of decisions, beginning even prior to Leisy *v.* Hardin (135 U. S., 100), it has been indisputably determined:
>
> "*a.* That beer and other intoxicating liquors are recognized and legitimate subjects of interstate commerce.
>
> "*b.* That it is not competent for any State to forbid any common carrier to transport such articles from a consignor in one State to a consignee in another.
>
> "*c.* That until such transportation is concluded by delivery to the consignee, such commodities do not become subject to State regulation, restraining their sale or disposition.
>
> "The Wilson Act, which subjects such liquors to State regulation, although still in the original packages, does not apply before actual delivery to such consignee, where the shipment is interstate. Some of the many later cases in which these matters have been so determined and the Wilson Act construed, are: Rhodes *v.* Iowa (170 U. S., 412), Vance *v.* Vandercook Co. (170 U. S., 438), Heyman *v.* Southern Railway (204 U. S., 270), Adams Express Co. *v.* Kentucky (214 U. S., 218).

"Valid as the Kentucky legislation undoubtedly was as a regulation in respect to intrastate shipments of such articles, it was most obviously never an effective enactment, in so far as it undertook to regulate interstate shipment to dry points. Pending this very litigation, the Kentucky court of appeals, upon the authority of the line of cases above cited, reached the same conclusion. (C. & N. O. Ry. *v.* Kentucky, 126 Ky., 563.)

"The obligation of the railroad company to conform to the requirements of the Kentucky law, so far as that law prohibited intrastate shipments, is clear, and to this extent its circular notification was commendable. But the duty of this company, as an interstate common carrier for hire, to receive for transportation to consignees upon its line in Kentucky from consignors in other States any commodity which, in an ordinary subject of interstate commerce, and such transportation, could not be prohibited by any law of the State of such consignee, inasmuch as any such law would be an unlawful regulation of interstate commerce not authorized by the police power of the State."

LEGISLATORS CAN NOT VIOLATE THE CONSTITUTION OF THE UNITED STATES UNDER THE SPECIOUS PLEA THAT THE SUPREME COURT WILL RIGHT THE WRONG.

It is not surprising, Mr. Speaker, that able jurists supporting this measure have expressed grave doubts as to its constitutionality. In discussing this bill in the Senate, on February 10, Senator BORAH said:

"I do not believe the second section of the bill is constitutional. * * * *But I want to say, while I am on my feet, just a word in regard to the first section, and why I think in a general way it is not subject to the inhibition of the Constitution. It may not be and perhaps it is not wholly free from doubt, but I think the doubt should be resolved in favor of the bill, in view of the fact that it promotes wholesome legislation. In fact, if it were not for certain decisions of the Supreme Court I might have arrived at a conclusion that it would also be unconstitutional.*

I can not subscribe to the doctrine that because so many good and sincere people favor this measure, believing it to be constitutional and actually calculated to prevent the illicit vending of intoxicating liquors, that I am justified in supporting it. This bill is the deliberate *act* of every man who votes for it. Can or will any Member of this House swear to support the Constitution of his country and then do a thing which may undermine and violate it, in the hope that subsequently it may fall into the hands of men less fearful of popular clamor and more vigilant and courageous in the discharge of their duties, who will undo the work we have done to-day? Are our oaths less binding, our duties less imperative, our responsibilities less grave, than those of a justice of the Supreme Court?

Mr. Speaker, the Chief Justice of the United States can with better grace mangle and surrender the Constitution of his country, at the command of good but misguided men, than can we. Every man is supposed to know the nature and effect of his own acts. We are here to pass laws which are calculated to preserve the Constitution, not those which may probably violate it. We are presumed to understand the organic law of the land, and we are sworn to obey it. An act of Congress is presumed to be constitutional, because it is not to be supposed that high officials will enter that foggy legislative domain which leaves them in doubt as to whether they are performing a sworn duty or just passing a very popular bill, the Constitution to the contrary notwithstanding. The deliberate assent by a legislator to a measure of doubtful constitutionality is in the nature of treason to the security and liberty of his countrymen. The Constitution is the palladium of the safety, freedom, and happiness of all. Better, far better, to heed the sage and solemn warning of Judge Cooley:

"Legislators have their authority measured by the Constitution; they are chosen to do what it permits and nothing more, and they take solemn oath to obey and support it. When they disregard its provisions, they usurp authority, abuse their trust, and violate the promise they have confirmed by an oath. To pass an act when they are in doubt whether it does not violate the Constitution is to treat as of no force the most imperative obligations any person can assume. A business agent who would deal in that manner with his principal's business would be treated as untrustworthy; a witness in court who would treat his oath thus lightly and affirm things concerning which he was in doubt would be held a criminal. Indeed, it is because the legislature has applied the judgment of its members to the question of its authority to pass the proposed law, and has only passed it after being satisfied of the authority, that the judiciary waive their own doubts and give it their support."

It was upon the assumption that no Congress would ever dare to favor any act of doubtful constitutionality, no matter how much it might be supposed to "promote wholesome legislation," that Chief Justice Marshall declared:

"It has been truly said that the *presumption is in favor of every legislative act*, and that the whole burden of proof is upon him who denies its constitutionality." (Brown *v.* Bowman, 12 Wheat., 436.)

There is *more* excuse for the timerous or corrupt judge, who, disregarding his oath, takes a chance on the violation of the constitution of his country, than for a Member of this body. The Supreme Court may assume that you have acted with a clear apprehension of the limitations of the Constitution. You are required to resolve all doubts *against* not in favor of the legality of your own acts. If you *doubt* the constitutionality of a measure you should so amend it as to remove that doubt, and if you can not so amend it you can not sanction it. You are sworn to preserve the Constitution, not to so legislate that you are *probably* supporting it. You are acting under the most sacred oath, you are discharging the most momentous and solemn obligation ever imposed upon mortal man. The "ark of the covenant" is in your keeping; disregard the stern inhibitions of that great instrument, and free government, self-government, has ceased to exist.

In what contempt do you hold a witness who under oath makes a statement while doubting its truth, in the hope that he may secure a judgment which will have a wholesome effect upon the community? Will you assume that by disregarding or destroying the constitutional limitations set upon the powers of the State or Federal Government you can write laws more wholesome than the Constitution itself? If you entertain any such delusion you are sworn not to indulge it.

Who can contemplate that great instrument without a feeling of reverence, of awe? In obedience to its sage provisions the fathers erected the most exquisite, the most perfect, and, may it please God, enduring edifice ever designed by the wisdom of man or dedicated to the liberties of his kind. It has maintained and preserved in concrete form the freedom proclaimed by the Declaration of Independence. Its authors translated the philosophy of Jefferson into law.

The sage of Monticello, with the audacity of genius, turned his back upon all the precedents and finespun fallacies of 4,000 years of civilization. He took a man, a simple citizen, endowed him with inherent and inalienable rights, clothed him with all power and authority, crowned him with a ballot, and the trembling monarchs of the world cowered before the towering creation of this mighty American.

An organized society was formed by having this citizen confer certain authority upon officers of the law, his servants, not his masters, commissioned for a fixed time to discharge specific duties necessary to protect and secure him in possession of property and the enjoyment of life and liberty. The total of the authority thus conferred became the Commonwealth when these Commonwealths, for the sake of mutual protection, "formed a more perfect union," the aggregate of the powers expressly delegated by the States, formed the Federal Government. The individual was surrounded by the precinct or township, the county, the State, the Nation, like so many concentric circles, and each in proportion of its nearness to the citizen was invested with the greatest possible jurisdiction. Each served a double purpose. It prevented the encroachment of one citizen upon the rights of another and presented between all and the ambition of a tyrant a series of stubborn barriers, each of which must be demolished before the liberties of a people could be engulfed in a compact Federal despotism.

This plan, original and sublime in its severe simplicity, crystallized into law, became the priceless legacy of succeeding generations, "the sheet anchor of our liberties," the Constitution of the United States.

Other lands may boast more fertile fields, richer mines, greater wealth, loftier mountains, and a wider domain. The happiness and the liberties of my country depend upon no material thing. Exile Americans from America, and again they will redeem the wilderness and erect a new Arcadia, if they still reverently bear beyond the seas inviolate and secure this immortal guaranty of their liberties. Violate it, trample under foot the Constitution of your country, and all your wealth; your mills and mines; your fields of cotton, corn, and grain;

your great highways; your proud and populous cities; your vaunted and martial array upon the land and the sea will not save you from misery and oppression.

The Constitution is the only enduring barrier to the ambition of rulers, the arrogance of courts, the excesses of popular assemblies swayed by the passions and prejudices of the hour. It is the sanctuary to which endangered liberty must flee; and we, above all, are the sworn—yea, the solemnly ordained—priests in this sacred temple. It can not be endangered by bayonet thrust or cannon shot. It is preserved not by valor but by obedience. It is endangered not by violence but by perfidy. It is dependent upon the intelligence, the integrity, and the lofty patriotism of legislators sworn to protect and preserve inviolate the provisions of the organic law of the land.

For one, I will not give my assent to this thing which so many of you admit *may* deface or desecrate this holy temple. As for myself, Mr. Speaker, there is no uncertainty. I do not doubt, I do not suspect, I do not fear—I am assured of the unconstitutionality of this hybrid piece of congressional advice, half Federal and half State, so vague and flimsy in its provisions that its authors dare not give it strength and force by the imposition of a penalty, the one thing, according to Blackstone, which entitles any legislative act to the dignity of law, to obedience, or respect. And yet we are advised to close our eyes to its glaring defects, to shirk our high obligation, and let the Supreme Court pass upon this measure; that this is no concern of ours.

Mr. CLAYTON. Who said such a thing?

Mr. STANLEY. The gentleman from Alabama is too good a lawyer to voice such a sentiment, but we have heard it intimated in this House, and the sneering intimation is more contemptible than the bold assertion. [Applause.]

I say, sir, it is preposterous that we should delegate to another power, to another branch of this Government, the duty of determining the legality of our own acts. It is the code of a coward and the philosophy of a fool.

No sailor is permitted to tread the deck of a ship, no soldier to shoulder a musket, no officer of the law can be invested with authority until, solemnly and with uncovered head and uplifted hand, he has called God to witness that he will support and defend the Constitution of the United States. [Applause.]

I know the courage and the sacrifice of conscientious jurists here who vote against this measure. I know you will be exposed to the tender mercies of shrewd demagogues, who will denounce you as the apostles of lawlessness and debauch. But for one, Mr. Speaker, I am not prepared to commit perjury because it is popular. [Applause.] Not for all the honors and emoluments of office will I endure this pitiless self-abasement, go out into the solitude of the night and gaze into my own timorous and shrinking soul, knowing full well that in order to hold office, I have ceased to deserve it—in order to a little longer serve my country I have basely betrayed it. I am here prepared to do my duty as I see it and to sustain the veto of the President of the United States. [Applause.]

Mr. CLAYTON. Mr. Speaker, I now yield to the gentleman from Iowa [Mr. KENDALL]. [Applause.]

Mr. KENDALL. Mr. Speaker, I shall vote to pass this bill over the presidential veto, but I intend by that action no disparagement of the Chief Executive of the United States. I have heard it suggested by gentlemen on this floor that while they agreed to this measure when it was originally before the House, and while they still believe that the legislation it embodies is meritorious, they are now disinclined to array themselves in opposition to Mr. Taft. In my opinion, that position is too illogical to command serious attention. In withholding acquiescence in this bill, the President has discharged his duty as he conceives it. In favoring its enactment into law, his objections to the contrary notwithstanding, we are discharging our duty as we conceive it. [Applause.] I support this bill not alone because of the abuses it will prohibit, but because of the friends who have volunteered to advocate it, and the enemies who have appeared to antagonize it. I am not deceived as to its limitations. It will not effectuate all the reform that its sponsors hope, nor all the restraint that its critics fear. But I believe it will fasten another shackle upon the illicit traffic in intoxicating liquors, and that is sufficient for my purpose. It will not fatally cripple that traffic, but it will materially embarrass it, and I shall not allow the occasion to go unembraced to accomplish a result so salutary.

It is significant, Mr. Speaker, that in all the perfervid oratory which has been indulged, in all the insidious literature which has been circulated, in all the voluminous advertisement which has been negotiated, nobody has ventured to extenuate the saloon except as an agency of evil too formidable to be overthrown. This circumstance is not remarkable. As a national institution it is all liability and no asset. As a local enterprise it is all burden and no benefit. The American dramshop can not be defended upon any principle which appeals to the moral sensibility or the business intelligence of the community. It is a rebel against good government. It dictates nominations, purchases elections, corrupts the ballot, and falsifies the returns. It smirches the legislature, soils the executive, and stains the judiciary. It is the foe of organized society. It overawes the pulpit, undermines the platform, and subsidizes the press. It discredits the Constitution, despises the statutes, denounces the Congress, and derides the courts. It is the destroyer of domestic happiness. It brutalizes the husband, desolates the wife, debauches the son, and betrays the daughter. It is without concern for truth, without regard for honor, without reverence for virtue. It has no tolerance for church, no interest in school, no consideration for home, no expectation of heaven, no apprehension of hell. The patience of America is exhausted, and we shall temporize with the infamy no longer. All the manifold forces of sobriety, of decency, of respect for order, of loyalty to law, of love for mankind, are marshaling in invincible phalanx to pulverize the rum power. And they will eventually triumph, because their righteous warfare is sustained by the fervent hopes of all good men and sanctified by the holy prayers of all good women. I regret exceedingly to disagree with the President in the concluding hours of his administration. Upon all political issues I am disposed always to acknowledge allegiance to the leader of my party; but upon a moral question such as this I refuse to surrender my convictions to him or to any other man. [Applause.]

This measure has had elaborate examination in the Senate and in the House. It was discussed in both bodies or hours. Numerous amendments were proposed, some of which were adopted and some of which were rejected. There was no effort manifested to stifle debate, and the most abundant opportunity was afforded its opponents to demonstrate the inexpediency of the provision. It passed the House by a vote of 239 to 64 and the Senate by a vote of 61 to 23. It was transferred to the President and has been returned with his disapproval. It was reconsidered in the Senate and again received the sanction of that body by the decisive vote of 63 to 21. The sentiment of the country and of the Congress is overwhelmingly in favor of this legislation. [Applause.] The bill has failed of Executive indorsement because it has been condemned by the Attorney General as unconstitutional. Mr. Speaker, the day is approaching, and approaching rapidly, when the President of the United States will be stripped of the power to overrule the deliberate judgment of the people's representatives upon that venerable pretext. If this measure is of uncertain validity, there is a suitable tribunal organized and maintained to determine the fact—a tribunal before whose arbitrament every patriotic citizen of the Republic submits with absolute unreserve. If it offends against the organic law of the land, let the Supreme Court so declare. [Applause.]

The SPEAKER. The time of the gentleman from Iowa [Mr. KENDALL] has expired.

Mr. CLAYTON. Mr. Speaker, I now yield to the gentleman from Mississippi [Mr. STEPHENS].

Mr. STEPHENS of Mississippi. Mr. Speaker, the President has vetoed the bill entitled "An act divesting intoxicating liquors of their interstate character in certain cases."

The text of the bill is as follows:

Be it enacted, etc., That the shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to, but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to, but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to, but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package, or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to, but subject to the jurisdiction thereof, is hereby prohibited.

The measure had my support when it was originally before the House, and I shall take pleasure in voting now to pass it "the objections of the President of the United States to the contrary notwithstanding."

The bill simply prohibits the shipment of liquors into certain territory and under certain conditions. When it was on its passage in the House an amendment was offered by the gentleman from West Virginia [Mr. DAVIS], for which I voted, believing that it would be materially strengthened if a penalty were prescribed for a violation of the law.

The amendment referred to is in the following language:

Amend by adding, on page 2, line 12, after the word "prohibited," the following:

"And whoever shall knowingly ship, transport, or deliver to any common carrier for shipment or transportation, or shall knowingly cause, induce, or procure to be shipped, transported, or delivered to any common carrier for shipment or transportation from one State, Territory, or District of the United States or place noncontiguous to, but subject to the jurisdiction thereof, to any other State, Territory, or District of the United States or place noncontiguous to, but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States or place noncontiguous to, but subject to the jurisdiction thereof, any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, with intent to receive, possess, sell, or use the same therein, or to cause, induce, or procure the same to be received, possessed, sold, or used therein, either in the original package or otherwise, in violation of the laws of such State, Territory, or District of the United States or place noncontiguous to, but subject to the jurisdiction thereof, shall be fined not less than $100 nor more than $5,000 or imprisoned not less than 30 days nor more than 2 years, or both."

The veto of the President is based on the ground of the unconstitutionality of the measure. There is a wide difference of opinion among strong lawyers on this question. I shall not take time to go into a discussion of the legal questions involved, but will say that, in my judgment, it is constitutional.

It is admitted, of course, that the Federal Government has exclusive jurisdiction and control over interstate commerce, and that the States have no right or power to interfere with commerce of that character. It is also true that liquors have been held to be an article of commerce and that the States have no right to interfere with its shipment.

This is an attempt to regulate interstate commerce by Federal law. It does not involve regulation or interference by any State law. Its purpose is to prescribe the termination of an interstate transaction.

Under the law as it now is, an interstate shipment is not completed until it reaches the consignee. If Congress has the power—and it does have it—to regulate interstate commerce, why does it not have the power to prescribe the limits within which an article may retain such character? The power to regulate certainly includes the power to define limits beyond which the article shall no longer be a legitimate article of commerce.

Each State has the right to make its own laws on the subject of prohibition so long as there is no interference with interstate commerce. This bill recognizes that right, and its purpose is to enable the States more completely to regulate the sale and use of intoxicating liquors.

Justice Harlan said, in the Bowman case:

If, consistently with the Constitution of the United States, a State can protect her sound cattle by prohibiting altogether the introduction within her limits of diseased cattle, she ought not to be deemed disloyal to that Constitution when she seeks by similar legislation to protect her people and their homes against the introduction of articles which are, in good faith and not unreasonably, regarded by her citizens as "laden with infection" more dangerous to the public than diseased cattle, or than rags containing the germs of disease.

And he further said:

Does the mere grant of the power to regulate commerce among the States invest individuals of one State with the right, even without the express sanction of congressional legislation, to introduce among the people of another State articles which by statute they have declared to be deleterious to their health and dangerous to their safety? In our opinion, these questions should be answered in the negative.

If the State is given the right to prohibit the shipment of diseased hogs, horses, and cattle into its territory, and also to prohibit persons having infectious diseases from coming into the State, then why not give the State the further right to prohibit the shipment of liquors under the conditions and in the manner attempted here?

The liquor traffic is detrimental to society; it is dangerous to public and private morals; it is injurious to public health; it endangers public safety; it affects the public peace and the good order of society; it produces idleness, disorder, pauperism, and crime; it degenerates and debases man; it destroys the moral sense; it brings woe and misery, poverty and want, heartaches and disgrace, and finally damns to eternal death.

I can use no stronger language in condemnation of the evils of liquor than was used by a former governor of our State in a message to the legislature, in which he said:

If I were called upon to name the one thing that has wrought the most harm in the world, causes more poverty, heartaches, blighted lives, frustrated ambitions, than all other agencies for evil combined, I should say the intemperate use of intoxicating liquors. Whisky taken immoderately is hurtful to man physically, spiritually, mentally, and financially. It is an evil without a mitigating incident. It is the deadly drug into which the jewels of the heart's best love are dissolved and poured into the mouths of men to madden the brain and destroy the soul.

I saw a young man in the morning of life, with the sunshine of hope radiant upon his brow, with the pulses of youthful spring bounding in his veins, in the midst of a world of promise. Life to him was a fair prospect and hope sprang eternal in his breast. I saw him enter the saloon, drawn there by the siren song of temptation. The first drink of the seductive drug passed his lips. I saw the sparkle in his youthful eye turn to a stupid, leaden gaze. He came back from day to day, until the love for the accursed stuff had become a gnawing disease, against whose cravings he was absolutely helpless. The sun of hope and happiness had passed behind the cloud of dissipation and death ere it reached the meridian.

And I said the cause of this man's downfall should be removed. Anything that encourages excessive drinking, which leads to this unhappy end, is an enemy to society and ought to be exterminated.

I have heard a thousand arguments in favor of closing the saloon and not one legitimate argument in favor of it keeping open. Its influence is hurtful in politics. The blear-eyed, soaked-brain, soul-quenched habitues of these dens of iniquity are easy victims for the ward rounder and political bribe giver. They vote for the men who will not enforce the law, but who, like themselves, hold the love of drink and lawless power above the interests of their country.

The saloon is the enemy of Christian religion; it is the destroyer of the happy home; it fills jails with criminals, the insane asylums with lunatics, and the world with idiots and paupers. In a word, it stands for everything that is bad and against everything that is good. It is verily the Circean vortex from whose voluptuous whirl come human swine, to scatter the seeds of sin and death, from which will surely spring the tares of sunless sorrow.

I have said that it will be a pleasure for me to vote for this legislation.

One of the true joys of living comes from good conscience and the knowledge that a substantial affirmative effort has been made to advance the best interests of our fellow men; and I do not believe that action can be taken on any subject that can give us this good conscience and gratifying knowledge in such a high degree as that coming from an effort to destroy the traffic in intoxicating liquors.

Each of us is under an imperative duty to enlist in the great work of lifting up the human race to a higher and better life, and nothing, in my judgment, will so promote this work as will the giving of relief from the evils that flow from the whisky traffic.

A republic, "a government by the people," can be no better than the average of the men and women who give it concrete existence; therefore it is right and proper that we, as legislators, having in view the best interests of our Nation, should remove as far as we can everything that debases, demoralizes, and depraves our citizenship.

In my short service here I have favored measures to reduce the tariff, because the people have been robbed by iniquitous laws in the interest of the few and against the many; a measure to restrict immigration, in order that the great hordes of foreigners who have no true conception of our form of government and who have not been trained to respect law, order, and the highest ideals of civilization and Christianity, should be kept from our borders; a measure to abolish the cotton exchanges engaged in gambling and making an illegitimate profit out of the sweat and toil of the people of the great section of a Nation; measures in the interest of economy, because I believe that it is wrong to withdraw anything more from the pockets of our citizens than is absolutely necessary to defray the expenses of the Government economically administered, and many others that look toward relief for the people of the Nation; but I do not believe that any measure before this Congress is as important as legislation looking to the overthrow of the whisky trade.

This legislation is but a step in the right direction. It is a national disgrace that our Government should be in partnership with the whisky interests. A large part of the revenue is derived from money paid by the men engaged in this traffic. Our revenue should be derived from some other source, and the Government should no longer countenance it as a legitimate business.

The end of all worthy struggle is to establish morality as the basis of individual and national life; to make righteousness prevail; to make justice reign; to spread beauty, gentleness, wisdom, and peace; to widen opportunity; to increase good will; to move in the light of higher thoughts and larger hope; to encourage science and art; to foster industry and thrift, education and culture, reverence and obedience, purity and love, honesty, sobriety, and disinterested devotion to the common good. This is the patriot's aim; this his ideal.

This ideal can never be reached so long as the Government is in league with such a hurtful business. Whisky crushes manhood, it defiles the imagination, and binds debasing fetters upon every faculty of man's being. The usurping demon of appetite and passion puts forth all its cruel might, and if its use is continued will finally destroy the man who uses it.

There is nothing that better suits the malice of the power of darkness in carrying out the purpose of destroying mankind.

I pray that God may speed the coming of the day when instead of being an article of commerce whisky will be declared contraband and that the Government will no longer issue licenses for the sale of whisky. Whenever this is done I believe that the city will be more orderly and healthful, the country more beautiful and productive, the fireside more cheery and bright, and all the rights of man be held more sacred.

I trust that in my day I may see this great change wrought, and then where there are now in many a home tears, sorrow, and sadness there will be in their stead laughter and songs and shouts of gladness.

I trust that the President's veto will be overridden. [Applause.]

Mr. CLAYTON. How many more speeches has the gentleman from Louisiana [Mr. DUPRÉ] on his side?

Mr. DUPRÉ. Three more.

Mr. CLAYTON. I have only two more, and I wish the gentleman would use some of his time.

Mr. DUPRÉ. I yield five minutes to the gentleman from Illinois [Mr. MANN].

Mr. MANN. Mr. Speaker, I yield two minutes to the gentleman from Missouri [Mr. BARTHOLDT].

The SPEAKER. The gentleman from Missouri [Mr. BARTHOLDT] is recognized for two minutes.

Mr. BARTHOLDT. Mr. Speaker, the lucid legal argument of the President makes it entirely plain to the membership of this House that we can not override his veto without at the same time overriding the Constitution of the United States. I am not a constitutional lawyer, Mr. Speaker, but if I were I would perhaps be more strongly inclined to support the President, because I would better understand and appreciate the reasons he gives why this bill is unconstitutional.

Mr. Dinwiddie and the lobby which is now crowding the corridors of this Capitol have not sworn by a solemn oath to support the Constitution. I have. The people at a greater distance who are clamoring for this legislation are not bound by an official oath to support the Constitution. I am. And, Mr. Speaker, it has been the proud boast of the naturalized citizens of this country, of whom I am one, and against whom Members have inveighed recently in discussing the immigration bill—it has been their proud boast that at all critical periods of our history they have been steadfastly loyal to the institutions of the country and to the Constitution. I would be unfaithful to that history if, upon this solemn occasion, I voted to violate the Constitution of the United States in spite of the official oath I have taken solemnly at the Speaker's desk. [Applause.]

It will be conceded, I trust, that it is now no longer a question of prohibition or no prohibition. The question is rather, Shall the Constitution of the country be upheld or not? To vote for the pending measure, the objections of the President to the contrary notwithstanding, means to put political considerations above the oath of office and above the Constitution of the United States. And I venture to say, whether the majority will agree with me or not, when Members, from whatever motives, are willing to adopt such a course, then a most dangerous stage of our history has been reached, namely, the point when the Constitution is no longer safe in the hands of those who have sworn to support and defend it and when a majority proceeds to set at naught the fundamental law of the country.

For one, Mr. Speaker, I propose to obey the injunction of the western poet, who says:

"Stand by the Constitution, men—
The Nation's Constitution—
It is our "Ark of Safety," men,
Our sacred institution.

In conclusion, permit me to read an editorial from to-day's New York World. It is as follows:

A RIGHTEOUS VETO.

The liquor bill which President Taft vetoed yesterday was a weak and cowardly measure. It was passed by Congress in response to a demand that the Nation come to the assistance of the States which have adopted prohibition. It was weak and cowardly, because practically every man who voted for it knew it was of dubious constitutionality and because, even if it were constitutional, it used the Federal power to bolster up State laws which most of those who passed them did not expect to obey.

Like the bill abolishing the Army canteen, it was supported by Members of Congress who did not have the courage to stand for the right. In this case Congress dodged the issue openly, in the belief that the President would meet a situation which it lacked the courage to face.

The boldness with which Mr. Taft killed this humbug shows that this confidence was not misplaced, but no credit attaches to anybody else.

The SPEAKER. The time of the gentleman has expired. The gentleman from Illinois [Mr. MANN] is recognized for three minutes.

Mr. MANN. Mr. Speaker, my distinguished friend from Alabama [Mr. CLAYTON] referred to the decisions of the Supreme Court in the white-slave case and in the pure-food case. I had the honor to draw the white-slave law, and, in the main, the pure-food law; but the principles involved in those laws are entirely different from the principle involved in the pending measure. Those laws provided for the General Government exercising its power over the commerce between the States. The pending proposition provides for the General Government refusing to exercise its power over that commerce and relegating it to the States.

I am in sympathy with the purposes, in the main, of the gentlemen who favor this measure. I voted for it when it passed the House. But it seems to me that the veto message of the President raises such grave constitutional questions, not merely as to the exercise by Congress of the power in this measure, but as to the future exercise of the power of Congress, under the commerce clause of the Constitution, as to all commerce between the States, that it ought to receive further deliberate consideration by a future Congress before Congress shall have determined what it may do under this commerce clause in depriving itself of the power to regulate commerce between the States and relegate that power to the States themselves.

I therefore shall vote to sustain the veto of the President. [Applause.]

I insert herewith, under leave, the opinion of the court on the Mann Act, as follows:

Supreme Court of the United States.

(No. 381.—October term, 1912.)

Effie Hoke and Basile Economides, Plaintiffs in Error, *v.* The United States. In error to the District Court of the United States for the Eastern District of Texas. February 24, 1913.

Mr. Justice McKenna delivered the opinion of the court.

Error to review a judgment of conviction under the act of Congress of June 25, 1910, entitled "An act to further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls, and for other purposes." (36 Stat., 825.) It is commonly known as the white slave act.

The constitutionality of the act was assailed by demurrer, and as its sufficiency otherwise was not questioned a brief summary of its allegations is all that is necessary.

The charge against Effie Hoke is that she "did, on the 14th day of November, A. D. 1910, in the city of New Orleans and State of Louisiana, unlawfully, feloniously, and knowingly persuade, induce, and entice one Annette Baden, alias Annette Hays, a woman, to go from New Orleans, a city in the State of Louisiana, to Beaumont, a city in the State of Texas, in interstate commerce, for the purpose of prostitution," etc.

The charge against Basile Economides is that he "did unlawfully, feloniously, and knowingly aid and assist the said Effie Hoke to persuade, induce, and entice the said Annette Baden * * * to go in interstate commerce * * * for the purpose of prostitution," with the intent and purpose that the said woman "should engage in the practice of prostitution in the said city of Beaumont, Tex."

The second and third counts make the same charge against the defendants as to another woman, the one named in the third count being under 18 years.

The demurrers were overruled, and after trial the defendants were convicted and sentenced, each to two years imprisonment on each count. (187 Fed., 992.)

The indictment was drawn under sections 2, 3, and 4 of the act, which sections are as follows:

"SEC. 2. That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $5,000, or by imprisonment of not more than 5 years, or by both such fine and imprisonment, in the discretion of the court."

The third section is directed against the persuasion, inducement, and enticement of any woman or girl to go from one place to another in interstate or foreign commerce, whether with or without her consent, to engage in the practices and for the purposes stated in the first section, and provides that "anyone who shall thereby knowingly cause or aid or assist in causing such woman or girl to go or to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia," shall be punished as prescribed in the first section.

Section 4 makes criminal the persuasion, inducement, and enticement of a woman or girl under the age of 18 years from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia to engage in the immoral practices enumerated. The person guilty thereof and who shall in furtherance thereof knowingly induce or cause such woman or girl to be carried or transported as a passenger in interstate commerce shall be deemed guilty of a felony, and on conviction the offender's punishment may be a fine of $10,000 or imprisonment for 10 years, or by both fine and imprisonment, in the discretion of the court.

The grounds of attack upon the constitutionality of the statute are expressed by counsel as follows:

"1. Because it is contrary to and contravenes Article IV, section 2, of the Constitution of the United States, which reads: 'The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.'

"2. Because it is contrary to and contravenes the following two amendments to the Constitution:

"'ART. IX. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

"'ART. X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'

"3. Because that clause of the Constitution which reserves to Congress the power (Art. I, sec. 8, subdiv. 2) 'to regulate commerce with foreign nations and among the several States,' etc., is not broad enough to include the power to regulate prostitution or any other immorality of citizens of the several States as a condition precedent (or subsequent) to their right to travel interstate or to aid or assist another to so travel.

"4. Because the right and power to regulate and control prostitution, or any other immoralities of citizens, comes within the reserved police power of the several States, and under the Constitution Congress can not interfere therewith, either directly or indirectly, under the grant of power 'to regulate commerce between the States.'"

We shall discuss at length but one of these grounds; the others will be referred to incidentally. The power of Congress under the commerce clause of the Constitution is the ultimate determining question. If the statute be a valid exercise of that power, how it may affect persons or States is not material to be considered. It is the supreme law of the land and persons and States are subject to it.

Congress is given power "to regulate commerce with foreign nations and among the several States." The power is direct; there is no word of limitation in it, and its broad and universal scope has been so often declared as to make repetition unnecessary. And, besides, it has had so much illustration by cases that it would seem as if there could be no instance of its exercise that does not find an admitted example in some one of them. Experience, however, is the other way, and in almost every instance of the exercise of the power differences are asserted from previous exercises of it and made a ground of attack. The present case is an example.

Commerce among the States, we have said, consists of intercourse and traffic between their citizens, and includes the transportation of persons and property. There may be, therefore, a movement of persons as well as of property; that is, a person may move or be moved in interstate commerce. And the act under consideration was drawn in view of that possibility. What the act condemns is transportation obtained or aided or transportation induced in interstate commerce for the immoral purposes mentioned. But an objection is made and urged with earnestness. It is said that it is the right and privilege of a person to move between States and that such being the right, another can not be made guilty of the crime of inducing or assisting or aiding in the exercise of it and "that the motive or intention of the passenger, either before beginning the journey, or during or after completing it, is not a matter of interstate commerce." The contentions confound things important to be distinguished. It urges a right exercised in morality to sustain a right to be exercised in immorality. It is the same right which attacked the law of Congress which prohibits the carrying of obscene literature and articles designed for indecent and immoral use from one State to another. (29 Stat., 512, United States *v.* Popper, 98 Fed., 423.) It is the same right which was excluded as an element as affecting the constitutionality of the act for the suppression of lottery traffic through national and interstate commerce (188 U. S., 321, 357). It is the right given for beneficial exercise which is attempted to be perverted to and justify baneful exercise as in the instances stated and which finds further illustration in Reid *v.* Colorado (187 U. S., 137). This constitutes the supreme fallacy of plaintiffs' error. It pervades and vitiates their contentions.

Plaintiffs in error admit that the States may control the immoralities of its citizens. Indeed, this is their chief insistence, and they especially condemn the act under review as a subterfuge and an attempt to interfere with the police power of the States to regulate the morals of their citizens and assert that it is in consequence an invasion of the reserved powers of the States. There is unquestionably a control in the States over the morals of their citizens, and, it may be admitted, it extends to making prostitution a crime. It is a control, however, which can be exercised only within the jurisdiction of the States, but there is a domain which the States can not reach and over which Congress alone has power; and if such power be exerted to control what the States can not it is an argument for, not against, its legality. Its exertion does not encroach upon the jurisdiction of the States. We have cited examples; others may be adduced. The pure food and drugs act is a conspicuous instance. In all of the instances a clash of national legislation with the power of the States was urged, and in all rejected.

Our dual form of Government has its perplexities, State and Nation having different spheres of jurisdiction, as we have said, but it must be kept in mind that we are one people; and the powers reserved to the States and those conferred on the Nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral. This is the effect of the decisions, and surely if the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to and the enslavement in prostitution and debauchery of women, and, more insistently, of girls.

This is the aim of the law expressed in broad generalization, and motives are made of determining consequence. Motives executed by actions may make it the concern of Government to exert its powers. Right purpose and fair trading need no restrictive regulation, but let them be transgressed and penalties and prohibitions must be applied. We may illustrate again by the pure food and drugs act. Let an article be debased by adulteration, let it be misrepresented by false branding, and Congress may exercise its prohibitive power. It may be that Congress could not prohibit the manufacture of the article in a State. It may be that Congress could not prohibit in all of its conditions its sale within a State. But Congress may prohibit its transportation between the States, and by that means defeat the motive and evils of its manufacture. How far-reaching are the power and the means which may be used to secure its complete exercise we have expressed in Hipolite Egg Co. *v.* United States (220 U. S., 45). There, in emphasis of the purpose of the law, we denominated adulterated articles as "outlaws of commerce" and said that the confiscation of them enjoined by the law was appropriate to the right to bar them from interstate transportation and completed the purpose of the law by not merely preventing their physical movement, but preventing trade in them between the States. It was urged in that case as it is urged here that the law was an invasion of the power of the States.

Of course it will be said that women are not articles of merchandise, but this does not affect the analogy of the cases; the substance of the congressional power is the same, only the manner of its exercise must be accommodated to the difference in its objects. It is misleading to say that men and women have rights. Their rights can not fortify or sanction their wrongs, and if they employ interstate transportation as a facility of their wrongs it may be forbidden to them to the extent of the act of July 25, 1910, and we need go no further in the present case.

The principle established by the cases is the simple one, when rid of confusing and distracting considerations, that Congress has power over transportation "among the several States"; that the power is complete in itself; and that Congress, as an incident to it, may adopt not only means necessary but convenient to its exercise, and the means may have the quality of police regulations. (114 U. S., 196, 215; Cooley Constitutional Limitations, 7th ed., 856.) We have no hesitation, therefore, in pronouncing the act of June 25, 1910, a legal exercise of the power of Congress.

There are assignments of error based upon rulings on the admission and rejection of evidence and upon the instructions to the jury and the refusing of instructions. The asserted errors are set forth in 25 bills of exceptions, and the special assignment of errors in this court occupy 28 pages of the record and present the constitutional objections to the law in all the aspects that counsels' ingenuity can devise. A like ingenuity has been exercised to represent the many ways in which the conduct of the accused can be viewed and shown to be inconsistent with a guilty purpose. To discuss them all is unnecessary. We shall pass more or less rapidly over those we consider to be worthy of attention.

1. It is contended that there is variance between the indictment and the proof in that the indictment charges that the women were transported over the Texas & New Orleans Railroad Co.'s road and that the Government failed to prove that such road was a line extending from New Orleans to Beaumont, Tex., these places marking the beginning and end of the transportation of the women. Further, that the proof showed that their tickets were purchased over the Southern Pacific Road. The indictment alleges that the Texas & New Orleans Railroad was a part of the Southern Pacific system, and was commonly known as the "Sunset route," and there was through transportation. The variance is not much more than verbal, and that it prejudiced their defense in any way is not shown. If it is error at all it does not appear to have caused even embarrassment to the defense. But was it error? (See Westmoreland *v.* United States 155 U. S., 545, 549; also sec. 1025 R. S.)

2. The evidence does not show that the defendants or either of them induced, etc., the women to become passengers in interstate commerce. The particulars are recited wherein it is contended that the evidence is deficient. It is not necessary to review them. It was for the jury to consider and determine the sufficiency of the evidence, and we can not say they were not justified by it in the judgment they pronounced.

3. It is contended that Florence Baden persuaded her sister Gertrude to go to Beaumont and an instruction of the court is attacked on the ground that it declared the charge of the indictment was satisfied against the defendants if Florence acted for them. There was no error in the instruction under the circumstances shown by the record.

4. Error is assigned on the refusal of the court to give certain instructions requested by defendants. To consider them in detail would require a lengthy review of the evidence, for they present arguments on certain phases of it as to the degree of persuasion used or its sufficiency to induce or entice the women. There was no error in refusing the instructions.

5. The court permitted the women to testify as to the acts of Effie Hoke at her house at Beaumont restraining the liberty of the women and coercing their stay with her. Such testimony was relevant. The acts illustrated and constituted a completion of what was done at New Orleans. They were part of the same scheme and made clear its purpose.

There were other instructions asked by which the jury was charged that they could not convict Effie Hoke for the character of the house she kept or Economides for the business he conducted. The charge of the court sufficiently excluded both views. It explained the act of Congress and the offenses it condemned and directed the attention of the jury to them.

6. Defendants complain that they were not permitted to show that the women named in the indictment were public prostitutes in New Orleans. Such proof they contend was relevant upon the charge of persuasion or enticement. This may be admitted, but there was sufficient evidence, as the court said, of the fact of the immorality of their lives and explicitly ruled that they could be shown to be public prostitutes. The court, however, excluded certain details sought to be proved. Under the circumstances there was no error in the ruling.

In conclusion we say, after consideration of all errors assigned, that there was no ruling made which was prejudicial to defendants.

Judgment affirmed.

True copy.

Test:

_____,

Clerk Supreme Court, United States.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. McClintock, one of its clerks, announced that the Senate had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 27941) making appropriations for the support of the Army for the fiscal year ending June 30, 1914.

DIVESTING LIQUORS OF THEIR INTERSTATE CHARACTER.

Mr. CLAYTON. Mr. Speaker, I yield to the gentleman from Wisconsin [Mr. LENROOT].

The SPEAKER. The gentleman from Wisconsin is recognized.

Mr. LENROOT. Mr. Speaker, I shall vote to pass this bill, notwithstanding the objections of the President. I believe it to be constitutional, but admit that there is some doubt as to how the Supreme Court will hold upon that question. I want to call attention to the paragraph of the President's message that suggests that wherever the constitutionality of a measure is in doubt Members of the Congress should vote against it.

Mr. Speaker, if that had been the rule of action in the past, we never would have had the Interstate Commerce Commission, we never would have had the Sherman antitrust law, we never

would have had the white-slave act, and we never would have had progress of any kind; and if that shall be the rule of action in the future, we never will have legislation enacted which may be imperatively demanded by the country because of changing conditions in economic development.

And, Mr. Speaker, applying this to myself, there is but one consideration with me concerning any measure, and that is, is it just, is it right, is it in the public interest that it pass, is there reason to believe that the Supreme Court will hold it constitutional? And if those questions be all answered in the affirmative, it is my duty to my country, it is my duty to myself, to vote for that measure, and leave the final determination of the legal questions with the Supreme Court of the United States, which now is the final authority, and the only place where they can be definitely settled. [Applause.]

The SPEAKER. The time of the gentleman has expired.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Stuart, one of its clerks, announced that the Senate had passed with amendments bill of the following title, in which the concurrence of the House of Representatives was requested:

H. R. 28812. An act making appropriations for the naval service for the fiscal year ending June 30, 1914, and for other purposes.

MESSAGES FROM THE PRESIDENT OF THE UNITED STATES.

Sundry messages, in writing, from the President of the United States were communicated to the House of Representatives by Mr. Latta, one of his secretaries, who also informed the House of Representatives that the President had approved and signed bills of the following titles:

On February 26, 1913:

H. R. 20102. An act relating to proof of signatures and handwriting;

H. R. 26279. An act granting the Fifth-Third National Bank, of Cincinnati, Ohio, the right to use original charter No. 20;

H. R. 27837. An act to authorize the Buckhannon & Northern Railroad Co. to construct and operate a bridge across the Monongahela River in the State of West Virginia; and

H. R. 28187. An act to authorize the construction, maintenance, and operation of a bridge across and over the Great Kanawha River, and for other purposes.

On February 27, 1913:

H. R. 11478. An act to quiet title and possession with respect to a certain unconfirmed and located private land claim in Baldwin County, Ala., in so far as the records of the General Land Office show said claim to be free from conflict;

H. R. 23293. An act for the protection of the water supply of the city of Colorado Springs and the town of Manitou, Colo.; and

H. R. 26812. An act to provide for selection by the State of Idaho of phosphate and oil lands.

On February 28, 1913:

H. R. 27827. An act to amend section 70 of an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911; and

H. R. 28607. An act making appropriations for the Diplomatic and Consular Service for the fiscal year ending June 30, 1914.

DIVESTING LIQUORS OF THEIR INTERSTATE CHARACTER.

Mr. DUPRÉ. Mr. Speaker, I yield to the gentleman from Illinois [Mr. GALLAGHER].

The SPEAKER. The gentleman from Illinois [Mr. GALLAGHER] is recognized.

Mr. GALLAGHER. Mr. Speaker, I am sorry to see so many Representatives here taking this class of legislation seriously. The idea of trying to grant powers to the States to prohibit the sale of liquor when there is not a State in this Union that has prohibition laws that has enforced or will enforce the laws that are now upon the statute books of those States. In the language of the street, it is nothing but a flimflam game. [Applause.]

This legislation is obviously provocative of prohibition. And prohibition when practically applied never prohibits. In States which are dry illicit distilleries abound. And it has been authoritatively stated by Mr. Cabell, the Commissioner of Internal Revenue, that the illicit distilleries have produced 5,000,000 gallons a year. And this is largely in prohibition territory.

In view of these facts, officially declared, I am opposed, bitterly opposed, to the measure before the House. It strikes at the legitimate traffic and promotes the illicit traffic. It will make a farce of the excise laws of every Commonwealth of the Union, and will breed contempt for legitimate regulation of the liquor traffic.

Mr. DUPRÉ. Mr. Speaker, how much time have I remaining?

The SPEAKER. Four minutes.

Mr. DUPRÉ. I yield that time to the gentleman from Georgia [Mr. HARDWICK].

Mr. HARDWICK. Mr. Speaker, I think this proceeding began in a most fitting manner. The proceedings upon this proposition were begun by objection on the part of the distinguished gentleman from Alabama [Mr. CLAYTON], who is in charge of this measure, to the simple reading of the opinion of the Attorney General of the United States. No wonder the gentleman objected. No wonder he did not wish this House to know the convincing reasons advanced by the Attorney General of the United States upon this question. No wonder he did not want the light turned on.

Mr. Speaker, when this bill was first put upon its passage in this House I voted, as I expect to vote now, against this proposition, because I was convinced then, as I am convinced now, that it is not within the constitutional power of this body to enact this legislation. I do not believe that the General Government can delegate to any State, or to any subdivision of any State, any of the powers that belong to it any more than I believe that the State can delegate, either by misuser or nonuser, any power that it has to the Federal Government. As a strict constructionist, as a believer in the doctrine of State rights, I utterly repudiate the doctrine that these two powers or classes of power can be surrendered at will by the jurisdiction in which each adheres to the other whenever the circumstances of a particular case seem to make it popular. [Applause.]

Mr. Speaker, only rarely have I been able to agree with the President of the United States in his political policies; but I want to say now that, in my judgment, the time will come, when the history of this entire transaction is written, if this House shall vote to pass this bill, the objections of the President to the contrary notwithstanding, when the courts have taken deliberate, impartial judgment on this question, when all the honor and credit and glory that attaches to this transaction will be with the President of the United States and not with this Congress. [Applause.] The action of the President is a brave and manly action, and, although he does not belong to my political party, and although I have rarely agreed with him about political questions, I want to say here and now that, in my judgment, his conduct in vetoing this bill will increase his stature immeasurably in the eyes of the future historian of this country who records the doings of this administration with an impartial hand, uninfluenced by passion and unawed by the prejudices of this hour. [Applause.]

I yield back the remainder of my time.

The SPEAKER. The gentleman has yielded back one minute.

Mr. CLAYTON. Does the gentleman from Louisiana [Mr. DUPRÉ] wish to use that one minute?

Mr. DUPRÉ. I do not.

Mr. CLAYTON. Then, Mr. Speaker, may I inquire how much time I have remaining?

The SPEAKER. The gentleman has four minutes.

Mr. CLAYTON. I yield the remainder of my time to to the gentleman from North Carolina [Mr. WEBB], the author of this bill. [Applause.]

Mr. WEBB. Mr. Speaker, the President gives as one reason why he vetoes this bill that liquor and beer are legitimate articles of commerce. That was once true of liquor that was shipped into the Indian Territory before Congress put its hand upon it. That was true of opium before Congress put its hand upon it. That was true of nitroglycerin before Congress put its hand upon it. That was true of lottery tickets before Congress put its hand upon them. That was true of 25 or 30 other different articles before Congress put its hand upon them. In the beginning of the Government everything that could be bought and sold and transported was legitimate interstate commerce, but Congress having the plenary power to cover the whole field of interstate shipment, has the right to exclude certain articles which in the judgment of Congress it deems proper to exclude. It is admitted by all that Congress has the power to exclude the shipment of all liquor from interstate commerce. That being true, it certainly has the right to exclude the shipment of liquor in interstate commerce if it is found that it is intended to be used in violation of the law of a State of the Union.

The other reason assigned by the President for vetoing this bill is that it is a delegation of commerce power to the States. On that I respectfully dissent from the opinion of the President. The old Hepburn-Dolliver bill might have been open to that objection, but this bill is not, and the President's excerpts from the Knox report were written by Mr. Knox in assigning objections to the principle in that bill. The bill we now consider prohibits the shipment in interstate commerce of liquor intended to be used in violation of law of the State into which it is shipped. Congressional power never takes its hands off of

such shipment; but the minute it is determined by a competent tribunal that that is the fact, then Congress takes that shipment out of legitimate commerce and subjects it to the law of the State, as C. O. D. shipments of liquor are to-day treated. If a shipment of liquor is sent C. O. D. to-day it can be seized by the State, because it is not legitimate commerce. If it is not marked "whisky" it can be seized by the State for the same reason. Liquor shipped to a fictitious person to-day is not legitimate commerce, because the moment those three injunctions are violated the State can seize it: First, if it is shipped C. O. D.; second, if it is shipped to a fictitious person; and, third, if it is shipped and not marked "whisky."

Pray tell me why Congress has not the power to exclude from the channels of commerce whisky intended to be used in violation of the law of any State whether the State be wet or dry? Congress has plenary power over the entire field and can take out of commerce whatever it sees fit.

Mr. Speaker, the States at one time had the power—before the Constitution was formed—to prohibit the importation of liquor intended to be used in violating the law of these States. After the Constitution was formed is it going to be argued that the States, after the transfer of that power to Congress, that somewhere between the transfer that power was lost? If the State could prohibit the importation of liquor in violation of her laws, Congress can do it, otherwise the States have given up the power that they once had and sovereignty has been lost or suspended somewhere. Congress now has the same power over interstate commerce as each and every State had prior to the formation of the Constitution. Surely, gentlemen, Congress and the States combined have the power to control the liquor question. The courts say that the States now can not control or regulate interstate commerce, for that power now reposes absolutely in Congress. The States once could do it, but they transferred that power to Congress, and that is the legislative body to control interstate shipments now.

The act of 1897 directs the Secretary of the Treasury to make and maintain a standard for imported tea, and the importation of any tea that does not come up to that standard is prohibited. The syllabus of the case of Butfield (192 U. S., 470) reads as follows:

> The power to regulate foreign commerce being an enumerated power, is complete in itself, acknowledging no limitations other than those prescribed in the Constitution, and Congress can, without violating the due process clause, establish standards and provide from considerations of public policy that no right shall exist to import an article of food not equal thereto.

The court upholds the constitutionality of the measure, though the power to fix the standards and apply the imported tea to those standards is committed to individuals, and when such tea fails, in the judgment of the officials, to come up to those standards, the tea must be returned to the country whence it came or it is confiscated.

The power of Congress over interstate commerce is the same as over foreign commerce, and surely Congress can fix a standard or rule by which whisky may be shipped in interstate commerce, viz, that it must not be transported for the purpose of being used to violate the sovereign law of a sovereign State, and there is no delegation of commerce power to any State, but Congress condemns such a shipment of liquor and withdraws it from the sphere of legitimate commerce.

Surely Congress has this power, and therefore the bill is constitutional, and I hope this House will pass the bill in spite of the President's veto.

Mr. Speaker, I ask unanimous consent that all gentlemen who have made speeches on this bill may have the privilege of extending their remarks in the RECORD.

The SPEAKER. The gentleman from North Carolina asks unanimous consent that all gentlemen who have made speeches on this bill may extend their remarks in the RECORD. Is there objection?

There was no objection.

[Mr. DYER addressed the House. See Appendix.]

The SPEAKER. The question is, Will the House, on reconsideration, agree to pass the bill S. 4043, the objections of the President notwithstanding? and the Clerk will call the roll. All those in favor of passing the bill over the President's veto will answer "aye" and those opposed will answer "no."

The question was taken; and there were—yeas 246, nays 95, answered "present" 2, not voting 39, as follows:

YEAS—246.

Adair	Anderson	Beall, Tex.	Butler
Adamson	Andrus	Bell, Ga.	Byrnes, S. C.
Aiken, S. C.	Anthony	Boehne	Byrns, Tenn.
Ainey	Ashbrook	Borland	Calder
Akin, N. Y.	Austin	Bradley	Callaway
Alexander	Ayres	Burke, S. Dak.	Campbell
Ames	Barnhart	Burnett	Candler
Carlin	Hamilton, Mich.	Loud	Scott
Claypool	Hamilton, W. Va.	McCreary	Sells
Clayton	Hamlin	McGillicuddy	Shackleford
Cline	Hammond	McGuire, Okla.	Sharp
Collier	Hardy	McKenzie	Simmons
Covington	Harrison, Miss.	McKinley	Sims
Cox	Harrison, N. Y.	McKinney	Sisson
Crumpacker	Haugen	McLaughlin	Slemp
Cullop	Hawley	Macon	Sloan
Daugherty	Hay	Maguire, Nebr.	Small
Davis, Minn.	Hayden	Martin, Colo.	Smith, Saml. W.
Davis, W. Va.	Hayes	Martin, S. Dak.	Smith, Tex.
Denver	Heald	Matthews	Sparkman
Dickinson	Helgesen	Mays	Speer
Dies	Helm	Mondell	Stedman
Difenderfer	Henry, Conn.	Moon, Tenn.	Steenerson
Dixon, Ind.	Henry, Tex.	Morgan, La.	Stephens, Cal.
Dodds	Hensley	Morrison	Stephens, Miss.
Doremus	Higgins	Moss, Ind.	Stephens, Nebr.
Doughton	Hinds	Murdock	Stephens, Tex.
Draper	Hobson	Needham	Sterling
Edwards	Holland	Neeley	Stone
Ellerbe	Houston	Nelson	Sweet
Faison	Howard	Norris	Taggart
Farr	Howell	Nye	Talbott, Md.
Fergusson	Howland	Oldfield	Taylor, Ala.
Fields	Hughes, Ga.	O'Shaunessy	Taylor, Ark.
Finley	Hull	Padgett	Taylor, Colo.
Flood, Va.	Humphrey, Wash.	Page	Thayer
Floyd, Ark.	Humphreys, Miss.	Palmer	Thomas
Focht	Jackson	Patton, Pa.	Towner
Foss	Jacoway	Payne	Tribble
Foster	Johnson, Ky.	Pepper	Turnbull
Fowler	Johnson, S. C.	Pickett	Tuttle
Francis	Jones	Plumley	Underwood
French	Kendall	Porter	Vare
Fuller	Kennedy	Post	Volstead
Gardner, Mass.	Kent	Pou	Warburton
Garner	Kinkaid, Nebr.	Powers	Watkins
Garrett	Kitchin	Pray	Webb
Gillett	Knowland	Prince	Weeks
Glass	Kopp	Prouty	Whitacre
Godwin, N. C.	Lafferty	Rainey	White
Good	La Follette	Raker	Wilder
Goodwin, Ark.	Lamb	Randell, Tex.	Willis
Gould	Langham	Ransdell, La.	Wilson, Ill.
Graham	Langley	Rauch	Wilson, Pa.
Gray	Lawrence	Rees	Witherspoon
Green, Iowa	Lenroot	Richardson	Wood, N. J.
Greene, Vt.	Lever	Roddenbery	Woods, Iowa
Gregg, Pa.	Lewis	Rubey	Young, Kans.
Gregg, Tex.	Lindbergh	Rucker, Colo.	Young, Mich.
Griest	Linthicum	Rucker, Mo.	Young, Tex.
Gudger	Littlepage	Russell	
Guernsey	Lloyd	Saunders	

NAYS—95.

Allen	Curley	Hardwick	Peters
Barchfeld	Dalzell	Hart	Pujo
Bartholdt	Davidson	Hill	Redfield
Bartlett	De Forrest	James	Reilly
Bates	Dent	Kahn	Reyburn
Bathrick	Donohoe	Kinkead, N. J.	Roberts, Mass.
Berger	Driscoll, D. A.	Konig	Roberts, Nev.
Blackmon	Driscoll, M. E.	Konop	Rodenberg
Brantley	Dupré	Lafean	Rothermel
Broussard	Dwight	Lee, Pa.	Rouse
Browning	Dyer	Levy	Sabath
Buchanan	Esch	Longworth	Sherley
Bulkley	Estopinal	McCoy	Sherwood
Burgess	Evans	McDermott	Slayden
Burke, Pa.	Fairchild	McKellar	Stanley
Burke, Wis.	Fitzgerald	McMorran	Stevens, Minn.
Burleson	Fordney	Madden	Switzer
Cannon	Fornes	Mann	Talcott, N. Y.
Cantrill	Gallagher	Moore, Pa.	Taylor, Ohio
Cary	Gill	Moore, Tex.	Thistlewood
Cooper	Goeke	Murray	Tilson
Copley	Goldfogle	Olmsted	Townsend
Crago	Greene, Mass.	Parran	Underhill
Cravens	Hamill	Patten, N. Y.	

ANSWERED "PRESENT"—2.

Booher	Heflin

NOT VOTING—39.

Ansberry	Ferris	Littleton	Riordan
Brown	Gardner, N. J.	Lobeck	Scully
Carter	George	McCall	Smith, J. M. C.
Clark, Fla.	Harris	Maher	Smith, N. Y.
Conry	Hartman	Merritt	Stack
Currier	Hughes, W. Va.	Miller	Sulloway
Curry	Kindred	Moon, Pa.	Vreeland
Danforth	Korbly	Morgan, Okla.	Wilson, N. Y.
Davenport	Lee, Ga.	Morse, Wis	
Dickson, Miss.	Lindsay	Mott	

So (two-thirds having voted in the affirmative) on reconsideration the bill was passed, the objections of the President to the contrary notwithstanding.

The Clerk announced the following pairs:

On this vote:

Mr. HUGHES of West Virginia and Mr. DAVENPORT (in favor of overriding President's veto) with Mr. MERRITT (in favor of sustaining).

Mr. MOTT and Mr. FERRIS (in favor of overriding President's veto) with Mr. SCULLY (against).

For the session:

Mr. CLARK of Florida with Mr. CURRY.

Until further notice:
Mr. CONRY with Mr. J. M. C. SMITH.
Mr. CARTER with Mr. GARDNER of New Jersey.
Mr. ANSBERRY with Mr. DANFORTH.
Mr. BOOHER with Mr. SULLOWAY.
Mr. SMITH of New York with Mr. MOON of Pennsylvania.
Mr. KINDRED with Mr. CURRIER.
Mr. BROWN with Mr. HARRIS.
Mr. RIORDAN with Mr. VREELAND.
Mr. LOBECK with Mr. MILLER.
Mr. LEE of Georgia with Mr. HARTMAN.
The result of the vote was announced as above recorded.

HOURS OF LABOR ON PUBLIC WORK, DISTRICT OF COLUMBIA.

The SPEAKER laid before the House the following message from the President of the United States, which was read:

To the House of Representatives:

In compliance with the request of the House of Representatives (the Senate concurring therein) of February 28, 1913, I return herewith House bill No. 18787, entitled "An act relating to the limitation of the hours of daily service of laborers and mechanics employed upon a public work of the United States and of the District of Columbia, and of all persons employed in constructing, maintaining, or improving a river or harbor of the United States and of the District of Columbia."

WM. H. TAFT.

THE WHITE HOUSE, *March 1, 1913.*

Mr. WILSON of Pennsylvania. Mr. Speaker, I ask unanimous consent to reconsider the vote by which the conference report upon the bill was agreed to, to disagree to the conference report, and to ask for a further conference.

The SPEAKER. The gentleman from Pennsylvania asks unanimous consent to reconsider the vote by which the conference report on the bill referred to was adopted, to disagree to the same, and ask for a conference. Is there objection?

There was no objection.

The SPEAKER announced the following conferees: Mr. WILSON of Pennsylvania, Mr. BUCHANAN, and Mr. GARDNER of New Jersey.

2-CENT POSTAGE RATE TO NORWAY (H. DOC. NO. 1441).

The SPEAKER laid before the House the following message from the President of the United States, which was read and, with the accompanying papers, referred to the Committee on the Post Office and Post Roads and ordered printed:

To the House of Representatives:

In response to the resolution of the House of Representatives of February 20, 1913, requesting the President of the United States, "if not incompatible with the public interest, to transmit to the House of Representatives all information that may be in his possession or the possession of the Department of State or the Post Office Department as to the practicability of extending a 2-cent letter postage rate, similar to that in force with Great Britain and Germany, to Norway, Sweden, Denmark, and the Netherlands, and whether offers or intimations of a willingness on the part of any of said countries to establish such postal rates have been received, and if received, what action was taken in that behalf and the reason therefor," I transmit herewith reports by the Secretary of State and the Postmaster General upon the subject matter.

WM. H. TAFT.

THE WHITE HOUSE, *March 1, 1913.*

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. LEE of Georgia, indefinitely, on account of illness.
To Mr. MCKINNEY, indefinitely, on account of illness.

WITHDRAWAL OF PAPERS.

By unanimous consent, leave was granted to Mr. ANTHONY to withdraw from the files of the House, without leaving copies, the papers in the case of M. R. William Grebe, H. R. 4474, first session Fifty-seventh Congress, adverse report having been made thereon.

To Mr. KAHN, to withdraw from the files of the House, without leaving copies, the papers in the case of H. R. 25524, a bill for the relief of Ellen B. Monahan, Sixty-second Congress, no adverse report having been made thereon.

To Mr. NORRIS, to withdraw from the files of the House, without leaving copies, the papers in the cases of H. R. 25416, H. R. 54641, H. R. 23098, H. R. 16252, and H. R. 17641, no adverse report having been made thereon.

To Mr. CAMPBELL, to withdraw from the files of the House, without leaving copies, the papers in the case of H. R. 2931, Sixty-second Congress, no adverse report having been made thereon.

To Mr. TAYLOR of Ohio, to withdraw from the files of the House, without leaving copies, papers in the following cases, no adverse report having been made thereon:

Committee on Military Affairs: Nos. 23456, 21881, 26057, and 22550.

Committee on War Claims: Nos. 7016 and 12523.

MILITARY ACADEMY APPROPRIATION BILL.

The SPEAKER laid before the House the bill (H. R. 28699) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1914, and for other purposes, with Senate amendments thereto.

Mr. HAY. Mr. Speaker, I ask unanimous consent to take the bill from the Speaker's table, disagree to the Senate amendments, and ask for a conference.

The SPEAKER. Is there objection?

There was no objection.

The SPEAKER appointed the following conferees: Mr. HAY, Mr. SLAYDEN, and Mr. KAHN.

NAVAL APPROPRIATION BILL.

The SPEAKER laid before the House the bill (H. R. 28812) making appropriations for the naval service for the fiscal year ending June 30, 1914, and for other purposes, with Senate amendments thereto.

Mr. HARDWICK. Mr. Speaker, I make the point of order that there is no quorum present.

The SPEAKER. The Chair will count. [After counting.] One hundred and sixty-three Members present—not a quorum.

Mr. FITZGERALD. Mr. Speaker, I move a call of the House.

The motion was agreed to.

The SPEAKER. The Doorkeeper will close the doors, the Sergeant at Arms will notify absentees, and the Clerk will call the roll.

The Clerk called the roll, and the following Members failed to answer to their names:

Aiken, S. C.	Dickson, Miss.	Langley	Payne
Ainey	Dixon, Ind.	Lawrence	Porter
Ames	Dodds	Lee, Ga.	Prince
Andrus	Doremus	Lever	Ransdell, La.
Ansberry	Driscoll, M. E.	Lindsay	Reilly
Barnhart	Dwight	Littleton	Riordan
Berger	Esch	Lobeck	Rucker, Mo.
Boehne	Ferris	Loud	Saunders
Brown	Focht	McCall	Scully
Burleson	Francis	McLaughlin	Shackleford
Burnett	George	McMorran	Sherley
Byrnes, S. C.	Gill	Maher	Smith, J. M. C.
Carter	Graham	Martin, S. Dak.	Stack
Claypool	Greene, Mass.	Matthews	Stephens, Cal.
Cline	Gregg, Tex.	Merritt	Sulloway
Conry	Hamlin	Miller	Switzer
Covington	Harris	Mondell	Taylor, Ark.
Cravens	Hart	Moon, Pa.	Townsend
Crumpacker	Hartman	Morgan, Okla.	Vreeland
Currier	Heald	Morse, Wis.	Warburton
Dalzell	Higgins	Mott	White
Danforth	Hughes, W. Va.	Needham	Wilson, Ill.
Daugherty	Jackson	Nelson	Wilson, N. Y.
Davenport	Kindred	Olmsted	Young, Mich.
Davidson	Korbly	O'Shaunessy	
Denver	Lamb	Patton, Pa.	

The SPEAKER. On this vote 279 Members answered to their names, a quorum. The Doorkeeper will open the doors.

Mr. UNDERWOOD. Mr. Speaker, I move to dispense with further proceedings under the call.

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

Mr. PADGETT. Mr. Speaker——

Mr. JOHNSON of South Carolina. Mr. Speaker——

The SPEAKER. The gentleman from South Carolina.

Mr. JOHNSON of South Carolina. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the legislative bill——

Mr. UNDERWOOD. Mr. Speaker, I will ask the gentleman from South Carolina to yield to me. I desire to offer the resolution which I send to the Clerk's desk.

The SPEAKER. The Clerk will report the resolution.

The Clerk read as follows:

Ordered, That during the remainder of this session it shall be in order for the Speaker to entertain motions to suspend the rules without calling the Calendar for Unanimous Consent.

Mr. UNDERWOOD. Mr. Speaker, I——

Mr. HARDWICK. Mr. Speaker, I make the point of order that there is no quorum present.

The SPEAKER. The roll has just been called and a quorum developed.

Mr. HARDWICK. Mr. Speaker, it is perfectly evident that there is no quorum present to act on this matter.

Mr. MANN. Mr. Speaker, I make the point of order against the motion, or reserve it——

Mr. HARDWICK. I also reserve the point of order against the resolution.

Mr. UNDERWOOD. Mr. Speaker, I move to suspend the rules——

Mr. HARDWICK. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman from Georgia rise?

Mr. HARDWICK. I make the point of order against the motion that under clause 3——

The SPEAKER. The gentleman has not made his motion yet.

Mr. HARDWICK. The gentleman has made his motion, as I understand it.

Mr. UNDERWOOD. If the gentleman will allow me——

Mr. HARDWICK. Suppose the gentleman states it, then.

Mr. UNDERWOOD. Mr. Speaker, I move to suspend the rules and pass the order sent to the Clerk's desk.

Mr. HARDWICK. Now I raise the question of order, Mr. Speaker.

The SPEAKER. The gentleman from Georgia raises the question of order, and the Chair will hear the gentleman.

Mr. MANN. Mr. Speaker, I should like to be heard on the point of order.

The SPEAKER. Before this debate on the point of order takes place the Chair is going to take the liberty of making a statement, and that is unless Members come into this Hall and stay here one-half of these great supply bills are going to fail. They will come in and answer and then dodge out.

The Chair has not any authority to go out and pull them in, or he would do it. [Applause.] It would be a very serious reflection on this House if the supply bills failed through the negligence of the House. The Chair wishes the Members who are here would convey his remarks to those who are not here. [Applause.]

The gentleman from Alabama [Mr. UNDERWOOD] is recognized.

Mr. UNDERWOOD. Mr. Speaker, I wish to state——

The SPEAKER. The Chair will hear the gentleman from Georgia [Mr. HARDWICK] to state his point of order.

Mr. HARDWICK. Mr. Speaker, the point of order is that, under clause 3 of Rule XIII, this motion can not be entertained by the Speaker. Also, that this motion ought to be referred to the Committee on Rules.

Mr. MANN. Mr. Speaker, I would like to be heard on the point of order.

The SPEAKER. The Chair will hear the gentleman from Alabama [Mr. UNDERWOOD] first.

Mr. UNDERWOOD. Now, Mr. Speaker, there are two rules for suspending the rules and passing bills. One of those rules has been in the Book of Rules for many years, and that provides that it shall be in order on the last six days to suspend the rules and pass bills. The purpose of that rule, Mr. Speaker, has always been that this House may do business, that the great supply bills on which the Government must depend shall not fail. It is a rule that goes above partisanship, because it is rarely that either party has a two-thirds majority in this House. It is a rule directed to, and an appeal to, the patriotism of the membership of this body. [Applause.] It is an effort to take care of the great public business of this country.

Mr. HARDWICK. Will the gentleman from Alabama yield?

Mr. UNDERWOOD. For a question; yes.

Mr. HARDWICK. Does not the gentleman know that under the rulings of the Chair and under the practice of the House, there has been no effort whatever to apply this rule to the detriment of either appropriation bills or conference reports? There has been an effort to have a quorum present, and it is the constitutional right of even the youngest and humblest Member in this Chamber, on either side of it, to have a quorum present in transacting this great business, and that is the right of the people of the United States.

Mr. UNDERWOOD. The gentleman from Georgia [Mr. HARDWICK] may think so, but I do not think his colleagues on the floor of this House agree with him or the position that he has taken. [Applause.]

Mr. HARDWICK. I will leave that to my colleagues and not to the gentleman from Alabama [Mr. UNDERWOOD].

Mr. HENRY of Texas. Will the gentleman yield for a question?

Mr. UNDERWOOD. I will.

Mr. HENRY of Texas. I think the gentleman will agree that no one has tried to stand in the way of any supply bills. Now, will he state to this House that the order that he has just proposed is in the interest of passing the supply bills and not for the purpose of passing the workmen's compensation bill?

Mr. UNDERWOOD. Mr. Speaker, it is in the interest of clearing this calendar, so that the supply bills may pass. [Applause.]

Mr. HENRY of Texas. Will the gentleman yield further?

Mr. UNDERWOOD. Let me finish my speech. So far as I am individually concerned, I am in favor of the workmen's compensation act, but I am no more in favor of pushing that to the front than other meritorious matters before this House. But it appears to me that there is a deliberate filibuster in this House to prevent its transacting public business. Now, what I have to say——

Mr. SISSON. Mr. Speaker——

Mr. UNDERWOOD. Will my friend from Mississippi allow me to finish?—and then I will answer his statement.

Mr. Speaker, the new rules we have adopted for suspending the rules and the Unanimous Consent Calendar were adopted for giving the right of way for the Unanimous Consent Calendar during the ordinary process of business in this House and on unanimous-consent days to let the gentlemen who had private bills have the opportunity to submit them to the unanimous consent of their colleagues before other business interfered with them. But I contend that you can not repeal a law by indirection; that the presumption is that you do not amend a rule unless the Congress directly states that it is amended or rejected.

Mr. Speaker, I contend that it was not the sentiment of this House to pass a rule in adopting the Unanimous Consent Calendar to reject or hamper the old rule that was in the House and which permitted us by two-thirds vote to suspend the rules and attend the public business on the last six days of a session. If we do not clear this calendar it means that public supply bills will fail. They will not fail by my aid. There were bills in here in the last few weeks that I endeavored to push for a consideration in this House that carried matters that I did not believe in myself. But I believed that it was my patriotic duty to have them acted on, and I believe it is yours now. [Applause.]

Now, Mr. Speaker, there is no man on the floor of this House who has a higher regard for the Speaker of this House than I have. [Applause.]

There is no man on the floor of this House that believes in the integrity and fair-mindedness of the Speaker more than I do. [Applause.] I believe that the Speaker of this House almost universally in his decisions from the chair has been correct [applause], and I am ready to sustain him in those decisions. But I want to say to the Speaker that, although I know that his ruling that the Unanimous Consent Calendar must be called before we can suspend the rules is the deliberate and honest and sincere judgment of the Chair, I differ with him in that judgment, and I believe if that decision is carried out it will seriously hamper the transaction of the public business.

Mr. FLOYD of Arkansas. Mr. Speaker, will the gentleman yield?

Mr. UNDERWOOD. In just one moment. I offer this resolution; I do not want to appeal from the decision of the Chair, and will not do so; but I offer the resolution to bring this question before the House, and ask the Speaker to determine in the decision whether or not this rule to suspend the rules has been set aside by the Unanimous Consent Calendar, or whether it is in order for me to offer this resolution now. Whether it is in order or not, I ask the Speaker to submit that question to the judgment of my colleagues and his colleagues on the floor of the House so that the House may determine.

Mr. FLOYD of Arkansas and Mr. SISSON rose.

The SPEAKER. To whom does the gentleman from Alabama yield?

Mr. UNDERWOOD. To the gentleman from Mississippi [Mr. SISSON].

Mr. SISSON. I would like to ask the gentleman from Alabama, Mr. Speaker, if the situation in the House is not occasioned now by the unjust, unfair, and unscientific method pursued at the other end of the Capitol in putting on supply bills measures that ought not to be there?

Mr. UNDERWOOD. I will say to my friend that I do not believe in legislating upon appropriation bills. But it is not my province or that of my friend from Mississippi, under the rules of this House, to criticize the body at the other end of the Capitol. Whether it is their fault or not, we are facing a condition——

Mr. SISSON. Does not the gentleman believe that the very dignity of this House is involved in all of these propositions when the Senate has put upon these appropriation bills matters that are totally foreign to them, endeavoring to drive through this House matters that they could not otherwise get through

perhaps, especially at the short session, which is called for the purpose of passing the supply bills?

Mr. UNDERWOOD. All that I can say to my friend is what I said before, that I do not believe in legislating upon appropriation bills, and I must refrain from criticizing the action of gentlemen at the other end of the Capitol.

Mr. SISSON. Then if the Senate does those things which the House has the right to question, how can we object unless we do criticize that method of legislation?

Mr. UNDERWOOD. I say let us criticize, if it is necessary and we do not agree with what they propose, by our vote and by our——

Mr. SISSON. Just another question. Does the gentleman believe that any Member of this House is acting from an unpatriotic motive when he is endeavoring to prevent that sort of disorderly and unwise legislation?

Mr. UNDERWOOD. I say to my friend that we should endeavor to prevent it by our votes and by our arguments and by our making the proper protest; but I do not think we are justified in engaging in a filibuster to prevent it. [Applause.]

Mr. SISSON. There are a number of bills here that are most important to the country. But if they are taken up under suspension of the rules there is no opportunity given to consider them section by section at a time, and no opportunity for this House to amend them, and these bills must go through with those riders on them, without giving a representative Member the right to represent his constituents or be heard on those bills, and that is my objection to it. The House of Representatives is entitled to be heard on these matters.

Mr. FLOYD of Arkansas. Mr. Speaker, will the gentleman yield?

Mr. UNDERWOOD. I yield to the gentleman from Arkansas.

Mr. FLOYD of Arkansas. I would like to ask the gentleman from Alabama this question: What higher rights have those Members who desire to call up bills under suspension than those Members who have complied with the rules of this House and placed their bills on the Unanimous Consent Calendar?

Mr. UNDERWOOD. That is a matter of recognition that the Chair must govern himself, and I would not say that I think the gentleman from Arkansas or any other Member on this floor will question for one moment the fairness and equal justice that have been accorded to all the Members of the House by the gentleman who presides over the proceedings of this House. [Applause.]

Mr. FLOYD of Arkansas. I do not question that, but I question the fairness of the gentleman from Alabama in these closing hours, in offering a resolution here to change the rules that we have solemnly adopted for the government of this House.

Mr. UNDERWOOD. I am not attempting to change the rule. I am attempting to have a declaration by this House as to whether this rule is in effect or not. I have not made a single offer to change the rules. I have no doubt the gentleman from Arkansas is willing to submit to the decision of his colleagues as to whether this rule is in order or not.

Mr. FLOYD of Arkansas. The gentleman has expressed his high regard for the Speaker of this House. I have a higher regard for rulings of the Speaker of this House than does the gentleman from Alabama. I am willing to submit to the ruling already made by the Speaker of this House. Can the gentleman from Alabama say as much?

Mr. UNDERWOOD. I stated that I think if the ruling stands we can not legislate, and I am anxious that the wheels of legislation may not be blocked.

Mr. SISSON. They will not be blocked.

Mr. RODDENBERY. Will the gentleman yield?

Mr. UNDERWOOD. Yes.

Mr. RODDENBERY. In view of the statement the gentleman has made, will not the gentleman so modify his proposed order that it will make only the great supply bills more highly privileged than the Unanimous Consent Calendar?

Mr. UNDERWOOD. I do not think that is necessary. I do not question for a moment that the Speaker of the House will give preference to the great supply bills from now until the end of the session. When that is done, if there is other meritorious legislation that should come before the Congress, I see no reason why it should not be presented to the House for action.

Mr. RODDENBERY. Perhaps I did not quite catch the gentleman's proposition. As I understood him in his opening statement, he said that the object of presenting this order now was because unless this or something similar is done, this Congress will close and some of the great supply bills will fail to pass.

Now, what I want to invite the gentleman's attention to is this: If that is the object of this order, why would not that danger be averted by permitting this order distinctly to give preference and high privilege to the supply bills over the Unanimous Consent Calendar, leaving it so that Members who have bills on the Unanimous Consent Calendar will not have to stand aside and let some other measure that has never gone to the Unanimous Consent Calendar come in under suspension of the rules and consume the time? The workmen's compensation bill is one that clearly illustrates the point I desire to bring out. It comes from the Senate, and is reported from the House committee with a vast number of amendments upon it.

Mr. HARDWICK. About 150.

Mr. RODDENBERY. Over 100 amendments upon it. Now, if it is sought to consider the workmen's compensation bill by virtue of this order it puts this House, in the very last days of the Congress, up to passing under suspension of the rules an innovation of legislation, a complete revolution of our system of damage or injury compensation in the United States, confessedly a withdrawal from the employees of the country of their right to litigate in the courts. And however wise a bill it might be, is it fair to the Members of this House to force them to vote yea or nay on a bill from the Senate reported to the House with over 100 amendments, without right of considering amendments separately and without debate?

Mr. UNDERWOOD. I will say to the gentleman from Georgia that I am not proposing to pass the workmen's compensation bill. I stated in the beginning that if it comes before this House I intend to vote for it, because I believe in its principles; but what I am proposing it for is to enable the House to get back to the position it has occupied since the beginning of the Government, where it may use the two-thirds rule to transact the business of this House.

Now, as to particular bills, it has been assumed in the past that it was not dangerous to pass any bill under suspension of the rules if a two-thirds vote could be obtained; and I take it, in reference to this particular bill or any other, if it is a vicious or dangerous bill it will not receive a two-thirds vote in this House and will not be passed.

Mr. RODDENBERY. Is there any particular reason, parliamentary or otherwise, why the gentleman from Alabama at this time requests the Speaker of the House to submit a parliamentary proposition to the judgment of the Members, rather than rule upon it directly in this instance, as he has already done and has been the invariable custom heretofore?

Mr. UNDERWOOD. To be candid, I will say that I think the membership of this House has the same high regard for the Speaker that I have.

The membership of this House would not want to overrule the decision of the Speaker. I do not want to overrule the Speaker's decision, but this question having become vital, I ask the Speaker not to put us in an embarrassing position on this matter, but leave it to his colleagues under the rule of the House.

Mr. LONGWORTH. Will the gentleman yield?

Mr. UNDERWOOD. Certainly.

Mr. LONGWORTH. I want to ask the gentleman if he did not have much to do with the original draft of the rule, and does he believe it was the intention of the framers to provide that the Unanimous Consent Calendar should be called in the last six days of the session?

Mr. UNDERWOOD. Not at all.

Mr. LONGWORTH. And that is the object of this resolution?

Mr. UNDERWOOD. Yes. I do not think that thought was in the minds of any individual.

Mr. MANN. Mr. Speaker, I do not think that the gentleman from Alabama had much to do with the original draft of the rule. The gentleman from New York [Mr. FITZGERALD] and myself prepared the unanimous-consent rule.

Mr. UNDERWOOD. I am speaking of the rule where the unanimous-consent rule and the suspension and the discharged calendar were all put together.

Mr. MANN. What is the situation here now? I do not understand that the Speaker has directly ruled upon this question yet.

Mr. HARDWICK. If the gentleman from Illinois will allow me.

Mr. MANN. Certainly.

Mr. HARDWICK. The gentleman from Alabama [Mr. CLAYTON] was recognized to call up a motion to suspend the rules and pass this very bill. I made a point of order and the Speaker sustained the point of order.

Mr. MANN. I was not in the Chamber when the Speaker made that ruling.

The SPEAKER. The Chair simply ordered the call of the Unanimous Consent Calendar.

Mr. MANN. This is the situation: The old rule provides for a suspension on suspension days, of which this is one. Then came along the rule providing for the Unanimous Consent Calendar to be called immediately after the approval of the Journal. I remember very distinctly that when that rule was put in operation and the Unanimous Consent Calendar was called among the first bills which were reached on the calendar was one to which objection was made. Thereupon the gentleman in charge of the bill sought to receive recognition to move to suspend the rules and pass the bill, and that was done. It was done on more than one occasion, and it was always considered during the last Congress that the right of the Speaker to recognize for a suspension of the rules was a right of recognition at any time, and if the motion prevailed it set aside the rule for the Unanimous Consent Calendar in the same way that it set aside the other rules.

I think the difficulty has arisen in the minds of gentlemen because of the change of the rules at the beginning of this Congress. We had a rule for unanimous consent and a rule for suspension and a rule for discharge of committees. The rule for the committee discharge expressly provided that the motion to discharge a committee should take precedence over a motion to suspend the rules. So that during the entire last session of Congress I sat here with motions on the calendar to discharge committees ready at any time to call up the preferential motion to discharge a committee if the Speaker would give recognition to anyone to suspend the rules.

We were in the position that the Unanimous Consent Calendar was being called with the right of the Speaker to recognize for the suspension of the rules, but if the prior right for a motion to discharge a committee was entered, that cut off the suspension and you could not make a motion to discharge a committee until the Unanimous Consent Calendar had been called. That is where the impression grew up in this House that the Unanimous Consent Calendar must be called before you could recognize for the suspension.

But the rule was abrogated or changed by the House some time ago, and suspensions were given priority over motions to discharge committees.

While the Speaker, it appears, has ruled otherwise, I am very clear in my own mind that all the time the right of the Speaker to recognize for a suspension was the right which, if made and the motion prevailed, set aside the Unanimous Consent Calendar just as much as it did any other portion of the rules. But since the rules have been changed so that suspension is ahead of a motion to discharge a committee, I think the motion to suspend is in order at any time.

The SPEAKER. The gentleman does not mean to make that broad statement?

Mr. MANN. I mean on suspension days.

The SPEAKER. That is a qualification.

Mr. MANN. At any time during the last six days. The Unanimous Consent Calendar is never called except on suspension days, so that my statement is literally correct.

The SPEAKER. The question that the Chair asked is this: Does the gentleman contend that on the first and third Mondays, leaving this particular difficulty out of consideration for the moment, when somebody objects to a bill that is called the Chair ought to recognize the Member then to suspend the rules?

Mr. MANN. I do not contend that the Chair ought to recognize the Member. Quite the contrary. I do contend that the Chair has the right to recognize him.

The SPEAKER. That question has never been raised while the present occupant of the Chair has been Speaker.

Mr. MANN. It was raised while Mr. CANNON was Speaker, and recognition was given. Of course, it is not intended by the Unanimous Consent Calendar to allow bills to be placed on the calendar which, when objected to, gives the right to a motion to suspend the rules, because the right to recognize for suspension has always been considered arbitrary in the Speaker, and, I take it, is necessarily so. We are in this position just now: If the motion offered by the gentleman from Alabama [Mr. UNDERWOOD] is in order, it is not necessary. If it is not in order, of course it can not prevail.

Mr. UNDERWOOD. Mr. Speaker, if the gentleman will permit, I recognize that, and I offer it for the purpose of bringing the matter before the House and for the purpose of letting the House decide.

Mr. MANN. I understand the position of the gentleman. I take it that if the Speaker holds the motion is in order the gentleman will withdraw it. If the Speaker holds the motion is out of order, then some one will take an appeal from the decision of the Chair. Or if the Speaker submits the matter to the House and the House decides that the motion is in order, then I apprehend the gentleman will withdraw the motion, because then the House will have stated that suspensions are in order, and the motion amounts to nothing whatever.

Mr. UNDERWOOD. That is the purpose.

Mr. FITZGERALD. Mr. Speaker, I was not present when this question was originally raised by the gentleman from Georgia [Mr. HARDWICK] on yesterday or the day before. Had I been here, I would have called the attention of the Chair to several of the rules, which make it quite clear to me that the motion to suspend the rules is in order on suspension days, regardless of whether the Unanimous Consent Calendar has been called. Rule XXVII provides:

> No rule shall be suspended except by a vote of two-thirds of the Members voting, a quorum being present; nor shall the Speaker entertain a motion to suspend the rules except on the first and third Mondays of each month, preference being given on the first Monday to individuals and on the third Monday to committees, and during the last six days of a session.

The Unanimous Consent Calendar rule provides, after provision for the placing of the bills on the calendar:

> On days when it shall be in order to move to suspend the rules the Speaker shall, immediately after the approval of the Journal, direct the Clerk to call the bills which have been for three days upon the Calendar for Unanimous Consent.

There is nothing in that rule which prohibits the setting aside of the rule by suspension, or which prohibits the Speaker from giving recognition to a Member to move to suspend the rules. I believe that Members have been misled by the wording of the rule, which is:

> Immediately after the approval of the Journal the Speaker shall direct the Clerk to call the bills which have been for three days upon the Calendar for Unanimous Consent.

That language was carefully and designedly inserted in the rule. Its purpose was to insure the calling of the Calendar for Unanimous Consent on the days fixed, unless the rules were suspended, and the necessity for that particular language arose out of the language of paragraph 9 of Rule XXVI, which reads as follows:

> At any time after the reading of the Journal it shall be in order, by direction of the appropriate committees, to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the purpose of considering bills raising revenue or general appropriation bills.

To make the Unanimous Consent Calendar preferential over the highly privileged motions to go into the Committee of the Whole House on the state of the Union at any time after the approval of the Journal for the consideration of such bills, it was necessary to insert some language which would make that clear. That was done by the insertion of the words "immediately after the approval of the Journal," so as to cut out the highly privileged motions to go into the Committee of the Whole House on the state of the Union to consider revenue and appropriation bills on suspension days. All of the rules of the House can be suspended under the suspension rule, with the exception of one or two. There is a rule which prohibits the Speaker from entertaining any motion to suspend a rule which excludes from admission to the floor all except certain designated persons. It has been held that that rule can not be suspended, because the Speaker is expressly prohibited from entertaining the motion. The same language was inserted in the rule which prohibits the Speaker from entertaining a motion to take a recess on Tuesday of any week, the purpose being to prevent by indirection the elimination of Calendar Wednesday. There is no inhibition upon the Speaker from entertaining a motion to suspend the rules on a day when the Unanimous Consent Calendar is called, and the language of the rule was purposely framed merely to eliminate other motions, which under a different wording would have been preferential in character.

I believe that the peculiar wording of the rule and the situation described by the gentleman from Illinois accounts for whatever confusion there may be in this matter. It would be very easy, Mr. Speaker, if the House were to determine that during the last six days of the session it would not be in order to suspend the rules until the Unanimous Consent Calendar had been called to arrange for the most effective filibuster ever seen in the history of the House. All that it would be necessary to do would be to file with the Clerk notices to place upon the Unanimous Consent Calendar all bills reported from committees, whether entitled to go upon the Unanimous Consent Calendar or not, and so long as it would be necessary to call the calendar and objections to the bills that under the rule could not be placed upon it, sufficient time could be consumed to utilize all of the six days at the end of any session. There is one thing about the procedure of the House that is highly important, and that is, that the procedure, whatever it be, be definite and not variable. For that reason I should not care to

appeal from the decision of the Speaker construing the rules of this House unless it were a matter of such fundamental importance that I would prefer to have it settled by the House and have necessarily a vote on it. Since the gentleman from Alabama has made the suggestion at the beginning of his remarks that this matter is of such vital importance that the Speaker might properly, following the course of Mr. Speaker CANNON in construing a different provision of this rule on a former occasion, submit the question to the House and let the House fix a definite construction upon the rule for future observance, I trust that such a course will be followed in this instance.

Mr. HARDWICK. Of course, if the Chair has made up his mind——

Mr. HENRY of Texas. Mr. Speaker——

Mr. HARDWICK. I say if the Chair is willing to hear the gentleman from Georgia——

The SPEAKER. The Chair will recognize the gentleman from Georgia.

Mr. HARDWICK. Well, the gentleman from Texas rose, and I will yield to him.

The SPEAKER. The Chair will hear the gentleman from Texas.

Mr. HENRY of Texas. Mr. Speaker, this is a very important matter, and I am sure the Speaker wants his position to be exactly correct. The gentleman from Alabama [Mr. UNDERWOOD] has no higher regard for the Speaker of this House than that entertained by me. I believe the Speaker is going to decide this question in accordance with his convictions. Ordinarily the gentleman from Illinois [Mr. MANN] and the gentleman from New York [Mr. FITZGERALD] and the gentleman from Alabama [Mr. UNDERWOOD] are correct, but in this instance they can not by any process of reasoning construe away the English language. Let us deliberately for a moment or two examine the provisions of this order. Mr. Speaker, suppose this were the first or third Monday, which are suspension days, and the gentleman from Alabama should offer this resolution. Let us see what would be the effect of it. He and the gentleman from New York have argued that there is nothing in the rules to prevent submitting the proposition of the gentleman from Alabama. I take issue with them. We found it necessary to amend that rule providing for the Discharge Calendar and motions to discharge on that day. The gentleman from Illinois did not read from that rule, but stated what it was; but I want to read to the Speaker two or three lines and see what is the plain meaning. Clause 4 of Rule XXVII reads:

After the Unanimous Consent Calendar shall have been called on any Monday and motions to suspend the rules have been disposed of—

A plain, positive provision—"after the Unanimous Consent Calendar has been called" then motions to suspend may be entertained. Now, Mr. Speaker, we have a plain provision in Rule XXVII that on the first and third Mondays motions to suspend the rules can be entertained, and an express provision, written by the gentleman from New York [Mr. FITZGERALD], providing for a Unanimous Consent Calendar, and we now have six suspension days during the last days of this session which are on an exact parity with the suspension days on first and third Mondays, and the language of the rule is plain that the Unanimous Consent Calendar shall be first disposed of. Now, why the necessity of the proposition of the gentleman from Alabama? He says it is for the purpose of expediting the business of this House and passing the supply bills. I have been here almost as long as the gentleman from Alabama and have never stood in the way of transacting the legitimate business of this House, and no one who is cooperating with me on this occasion is standing in the way of considering any supply bill and will not impede consideration of any supply bill during the last hours of this session. Why the haste——

Mr. MANN. Will the gentleman yield for a question?

Mr. HENRY of Texas. No; I can not yield.

The SPEAKER. The gentleman declines to yield.

Mr. MANN. The gentleman ought to yield out of courtesy for a question.

Mr. HENRY of Texas. Not at the moment—yes; I will.

Mr. MANN. The gentleman says he is not standing in the way of supply bills, but if it is not in order to move to suspend the rules until the Unanimous Consent Calendar is called, is it in order to move to suspend the rules on a supply bill before the Unanimous Consent Calendar is called?

Mr. HENRY of Texas. That is for the Speaker to determine. I think it is, and will not stand in the way of it, anyway.

Mr. MANN. I will, if that is the rule.

Mr. HENRY of Texas. Now, Mr. Speaker, I say the ruling of the Chair was correct, and I believe in the integrity of the Speaker of this House, and think he will adhere to the rules as they are plainly written. Why the necessity of the proposition of the gentleman from Alabama [Mr. UNDERWOOD]? Heretofore these orders which he proposes have been considered by unanimous consent. Now he proposes to change the rules of this House without submitting his resolution to the Committee on Rules, that should report all such resolutions as this. The Committee on Rules can take care of the matter if it is referred to them. Why not pursue the orderly course? Ah, but they say it is in the interest of the dispatch of public business. Mr. Speaker, I am standing here, and we might as well be candid with one another, and let this House understand it, and let the country understand it, to contest every inch of ground against the railroad employees' compensation act which some of these gentlemen are trying to put through this House. [Applause.] I have tried to deal fairly with my colleagues and with the country. I served on the Committee on the Judiciary for more than 10 years, and say to my brethren here that after examining the employees' compensation act, I have convinced myself that it is an act more in behalf of the great railways of this country than in the interest of the men who work for them. [Applause.] I shall raise my voice against it.

Mr. MANN. Mr. Speaker, I rise to a question of order.

The SPEAKER. What point does the gentleman make?

Mr. MANN. I make the point of order that the gentleman from Texas [Mr. HENRY] is not discussing the point of order before the House.

The SPEAKER. The point is well taken.

Mr. HENRY of Texas. With all due deference to the Speaker and the gentleman from Illinois [Mr. MANN], I was endeavoring to explain that I am not engaging in a filibuster.

The SPEAKER. That might be a question of personal privilege, but it is not an argument on a point of order.

Mr. HENRY of Texas. I do not care to rise to a question of personal privilege, but, Mr. Speaker, will say that I shall expect the Speaker to construe these rules as they are written, and believe he will do it, and without intending to engage in a filibuster, intend to stand here until the end of this session and resist the passage of the proposed compensation bill. I am for the principle of an employees' compensation bill, but desire it to contain the optional feature so that those having rights may have the privilege of electing remedies and going into the courts for redress.

The SPEAKER. The gentleman from Georgia [Mr. HARDWICK] is recognized.

Mr. HARDWICK. It is impossible for me, Mr. Speaker, to permit the gentleman from Alabama [Mr. UNDERWOOD] to leave me in the attitude that he seeks to leave me in before this House. Of course the gentleman understands full well, as the Speaker does, and as my colleagues do, that I will not, either now or later, submit to be lectured by him on any occasion or about any subject.

The SPEAKER. The gentleman will address himself to this point of order. The question has been raised once——

Mr. HARDWICK. The Speaker raised it with the gentleman.

The SPEAKER. If the gentleman from Georgia [Mr. HARDWICK] had raised that point against the gentleman from Alabama [Mr. UNDERWOOD] the Chair would have sustained him.

Mr. HARDWICK. The gentleman from Alabama did not raise the question on "the gentleman from Georgia." It was raised by the gentleman from Illinois against the gentleman from Texas [Mr. HENRY].

The SPEAKER. The gentleman from Georgia [Mr. HARDWICK] will proceed.

Mr. HARDWICK. I want to say this, that under the rules and under the Speaker's rulings there has not been the slightest attempt to interfere with any of the great supply bills that are now before this House or may hereafter come before this House. Conference reports, under another rule that must be given equal force with the rules to which we appeal, have been given the right of way over everything. Under another rule, the general appropriation bills, the great supply bills of this House, have got the right of way, too. Construing those rules together, "the gentleman from Georgia" has not made the slightest attempt, and the gentleman from Alabama [Mr. UNDERWOOD] knows full well, as the Speaker knows it, to make one single effort to delay them.

Indeed, Mr. Speaker, I want to say, as a matter of justice to myself, that not even my distinguished friend who made that speech has done more than I have to help the supply bills through. I have been here for days and nights, when the gentleman was not even here, helping them and voting that way, and I do not rest under any such charge, because its injustice is apparent.

Mr. HEFLIN. Mr. Speaker, I will have to raise the point of order that the gentleman from Georgia [Mr. HARDWICK] is not speaking to the point of order.

Mr. HARDWICK. The gentleman did not raise that point against his colleague [Mr. UNDERWOOD].

The SPEAKER. The point of order is sustained.

Mr. HARDWICK. Now, Mr. Speaker, so much for that phase of the question. On the rule itself, the question of order itself, unless the Chair is prepared to take back at least two rulings—and the intimation came from the occupant of the chair that it was not a ruling, because he directed the business of the House to proceed in accordance with the point of order made—I do not think that would be seriously insisted upon, upon reflection on the part of the Chair. Unless the Chair is prepared to reverse his rulings on two separate occasions in the last 48 hours, and unless the Chair is prepared to bow gracefully and ask the House to reverse him in a graceful way, in the smooth, suave way suggested by the gentleman from Alabama [Mr. UNDERWOOD], this point of order I make must be sustained.

Now, Mr. Speaker, under Rule XI the gentleman from Alabama [Mr. UNDERWOOD] can not present this matter as a matter of privilege, because under the rules of the House that motion can not be made as a matter of privilege. That has never been done except in the one instance of "the revolution," in which we overthrew the power of the distinguished gentleman from Illinois [Mr. CANNON]. That is the only precedent. Under the rules and precedents, I say, that motion can not be made as a matter of privilege from the floor, but goes in the ordinary course of events to the Committee on Rules, to be reported on by it.

Therefore, the gentleman presents it craftily. Of course, I do not mean "craftily" in an unfair sense, but it is a pretty smooth proposition that the gentleman has worked out, apparently with common consent in some quarters, for the House and for the Speaker. He presents it as a sugar-coated pill, to reverse the Speaker by indirection and to save him from the mortification of reversing himself.

I, however, raise the question here and now that the gentleman's motion is not in order, on exactly the same ground as that upon which the Chair has twice sustained me, because before the Chair can put any motion to suspend the rules he must, under the plain language of this rule, first have the Unanimous Consent Calendar called. Any motion to suspend the rules is out of order; even a motion to alter the practice and rules of this House is out of order; in fact all motions to suspend the rules are out of order until that Unanimous Consent Calendar is called.

But the gentleman from New York [Mr. FITZGERALD] goes into a scholarly disquisition as to how these things happened to get into the rules, and he tells us there is a great difference, because a certain rule says the Speaker shall be prohibited from offering a motion to suspend the rules as to admission to the floor. Why, Mr. Speaker, can the Committee on Rules or the House make a rule that the House can not undo, to apply the gentleman's own argument to his own proposition? Can the House and the committee say that the House may not suspend that rule? And yet we have said so, and the precedents are that way. He calls attention to the fact that the Speaker of this House is not permitted under the rules to entertain a motion to take a recess on Calendar Wednesday.

Now, Mr. Speaker, although the language in one rule is negative, in the other it is positive, and I can not see, to save my life, the force of the gentleman's finespun logic, when he contends that when the rule says the Speaker shall not do a thing, the Speaker must not do it, and when the rule on the other hand says the Speaker shall do a thing, the Speaker can disobey it. The gentleman from New York [Mr. FITZGERALD], a profound logician; the gentleman from Alabama [Mr. UNDERWOOD], a great leader, and the gentleman from Illinois [Mr. MANN], a hairsplitter from Chicago [laughter], may be able to figure that out; but I can not see, to save my life, how the Chair is bound to obey rules which say he shall not do something and at the same time has full license to disobey rules which say he shall do something. [Applause.]

Mr. POU. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. POU. I would like to inquire what the proposition is that is now pending before the House?

The SPEAKER. The proposition pending is the point of order made by the gentleman from Georgia [Mr. HARDWICK] against the motion of the gentleman from Alabama [Mr. UNDERWOOD].

Mr. MANN. Against the motion to suspend the rules.

The SPEAKER. Yes. Now, the situation about this thing is this: The main proposition is that this rule about unanimous consent and suspension of the rules and discharges of committees, and so forth and so on, needs overhauling, and needs to be put into a plain, consistent statement that anybody can understand. When this point was first raised the other day, the Chair said that if the rule were strictly construed, the contention of the gentleman from Georgia [Mr. HARDWICK] is correct, but that he did not believe that the authors of that rule ever intended to work the Unanimous Consent Calendar ahead of the suspensions in the last six days of the session.

Inasmuch as the House has the right to do absolutely what it pleases at any time, and the Chair has no pride of opinion whatever about that quasi ruling, the Chair submits to the House itself the question whether on the last six days of a session the Unanimous Consent Calendar shall take precedence of motions to suspend the rules.

Mr. HARDWICK. On that question I demand the yeas and nays.

Mr. MANN. The Chair can only submit to the House the point of order raised by the gentleman.

The SPEAKER. That is what the Chair is trying to do.

Mr. MANN. That does not involve the last six days. The point of order made by the gentleman from Georgia is that the motion to suspend the rules is not now in order. There is no use going beyond that.

The SPEAKER. The Chair will state it that way. The motion of the gentleman from Alabama [Mr. UNDERWOOD] is to suspend the rules.

Mr. UNDERWOOD. Mr. Speaker, if the Chair will allow me, my motion is only for the purpose of bringing this matter before the House. I intend to withdraw it, whichever way the House decides; but my motion is to suspend the rules and pass the resolution. The gentleman from Georgia makes the point of order that that is not in order, and the question before the House is whether a motion to suspend the rules is in order at this time.

Mr. HARDWICK. A parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. HARDWICK. Is not that what the Chair first stated, in a different way?

The SPEAKER. It may be or may not. The Chair is not going to split hairs about that. No difference how this vote goes, the Chair announces that he is going to recognize gentlemen in charge of conference reports and appropriation bills, in order to get through with the business of the House. [Applause.]

Mr. HARDWICK. I certainly agree with that.

The SPEAKER. The Chair submits to the House the point of order made by the gentleman from Georgia.

Mr. MANN. Is not the question to submit to the House the question whether the motion offered by the gentleman from Alabama [Mr. UNDERWOOD] is in order?

The SPEAKER. Is the motion made by the gentleman from Alabama to suspend the rules in order at this time? Those who believe that will say "aye."

The affirmative vote was taken.

Mr. HENRY of Texas. I make the point of order that no quorum is present.

The SPEAKER. The Chair will put the other half of the question. Those opposed will say "no."

The negative vote was taken.

The SPEAKER. Now, the gentleman raises the point of order that no quorum is present. The Chair will count. [After counting.] Two hundred and three Members present—a quorum.

Mr. HARDWICK. Mr. Speaker, I demand the yeas and nays.

Seventeen Members rose to second the demand for the yeas and nays.

Mr. HARDWICK. The other side.

Mr. UNDERWOOD. I submit that the gentleman is not entitled to that.

Mr. HARDWICK. We did not have tellers on this. I submit that I am entitled to the other side.

The SPEAKER. The gentleman is entitled to the other side. Those opposed to ordering the yeas and nays will rise. [After counting.] One hundred and fifty-six in the negative. The yeas and nays are refused. On the question, Is the motion made by the gentleman from Alabama [Mr. UNDERWOOD] to suspend the rules in order at this time? the ayes have it.

Mr. UNDERWOOD. Mr. Speaker, as this is a decision that ought to go into the RECORD as final in this matter, I ask for a division of the House.

The SPEAKER. The gentleman from Alabama demands a division. Those in favor of the proposition that the motion of the gentleman from Alabama is in order will rise and stand until they are counted.

The question was taken; and on a division there were—ayes 189, noes 23.

The SPEAKER. The ayes have it, and the House decides that the motion of the gentleman from Alabama [Mr. UNDERWOOD] to suspend the rules is in order at this time.

Mr. HARDWICK. A parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. HARDWICK. Do I understand the Chair to rule that under the rules as now construed the first thing in order will be conference reports and appropriation bills?

The SPEAKER. The Chair stated that he would give preference to them.

Mr. HARDWICK. That they will be first in order?

The SPEAKER. That they will be given preference.

Mr. UNDERWOOD. Mr. Speaker, I offered the motion in order that the House might decide the question as to whether a motion to suspend the rules was in order. The House having decided that, my motion is of no further avail, and I ask permission to withdraw it.

The SPEAKER. The gentleman can withdraw it without any permission.

Mr. UNDERWOOD. I withdraw it.

Mr. HARDWICK. I raise the point of order that the gentleman can not withdraw his motion except by unanimous consent.

Mr. FITZGERALD. Under the rule he can.

The SPEAKER. He can in the House, although he could not in Committee of the Whole. In the House a Member making a motion may withdraw it at any time before it is voted on or amended.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. McClintock, one of its clerks, announced that the Senate had passed without amendment bills of the following titles:

H. R. 21714. An act to amend subchapter 2 of chapter 19 of the Code of Law for the District of Columbia; and

H. R. 8921. An act for the relief of William H. Seward.

The message also announced that the Senate had agreed to the reports of the committees of conference on the disagreeing votes of the two Houses on the amendments of the House of Representatives to bills and joint resolution of the following titles:

S. 8178. An act granting pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors;

S. 8274. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors;

S. 8275. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and of wars other than the Civil War, and to certain widows and dependent relatives of such soldiers and sailors;

S. 8314. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors; and

S. J. Res. 143. Joint resolution authorizing the Secretary of War to loan certain tents for use at the meeting of the Imperial Council of the Ancient Arabic Order of the Nobles of the Mystic Shrine to be held at Dallas, Tex., in May, 1913.

LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATION BILL.

Mr. JOHNSON of South Carolina. Mr. Speaker, I call up the legislative, executive, and judicial appropriation bill for the purpose of making a motion upon it.

The SPEAKER laid before the House the bill (H. R. 26680) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1914, and for other purposes.

Mr. MANN. What is the gentleman going to do with this bill? I thought we had disposed of it.

Mr. FITZGERALD. The Senate rejected the conference report.

Mr. JOHNSON of South Carolina. I move that the House further insist upon its disagreement to the amendments of the Senate and consent to the conference asked for.

The SPEAKER. The gentleman from South Carolina moves that the House further insist on its disagreements to the Senate amendments and agree to the conference asked for.

Mr. MANN. May I ask the gentleman from South Carolina if all of the amendments are in disagreement? We have adopted two conference reports. I understand the Senate rejected all of the last conference report.

Mr. JOHNSON of South Carolina. All the amendments involved in the last conference report are in disagreement. The amendments in the first report have been agreed to both by the House and the Senate, and are no longer in disagreement.

Mr. MANN. That is the reason I made the inquiry.

The SPEAKER. The gentleman from South Carolina moves that the House further insist on its disagreements to the amendments included in the last conference report and agree to the conference asked for.

Mr. MURDOCK. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. MURDOCK. Is it not necessary that the gentleman from South Carolina should ask unanimous consent to consider the amendments en bloc?

The SPEAKER. No; the Chair thinks it has passed that stage.

Mr. RAKER. Mr. Speaker, I would like to ask the gentleman from South Carolina a question.

The SPEAKER. Does the gentleman from South Carolina yield to the gentleman from California?

Mr. JOHNSON of South Carolina. Yes.

Mr. RAKER. In regard to the conference report filed February 21, leaving these items that were in disagreement, do I understand these matters are all in disagreement now between the House and the Senate?

Mr. JOHNSON of South Carolina. All in disagreement.

Mr. RAKER. And open for consideration by the two bodies?

Mr. JOHNSON of South Carolina. They are open for consideration between the two bodies.

Mr. SABATH. Is the gentleman in a position to state the various amendments that are in disagreement?

Mr. JOHNSON of South Carolina. I am in a position to state the various amendments that are in disagreement. As a matter of fact, the Senate rejected the conference report because we had not provided for a worthless little assay office up in Nevada; that leaves them all open.

Mr. RAKER. Mr. Speaker, am I entitled to a few moments of time on this matter?

Mr. JOHNSON of South Carolina. How much time does the gentleman want?

Mr. RAKER. I think five minutes will do.

Mr. JOHNSON of South Carolina. I will yield five minutes to the gentleman from California, although I think it is more important to get the bill into conference than it is to talk.

Mr. RAKER. Mr. Speaker, I do not want to say anything in response to that, but I do believe that a man has a right—not only his right, but his duty as a Representative of a great State like California—to raise his voice when that State has unanimously, by its legislature and governor, asked and insisted that the proper offices and officers be provided in that State for the purpose of dealing fairly and squarely with its citizens relative to the collection of the internal revenue of that State. The Legislature of California unanimously passed the following resolution on this important question, namely:

SACRAMENTO, CAL., *February 18, 1913.*

Hon. JOHN E. RAKER,
House of Representatives, Washington, D. C.:

I am forwarding herewith, as per instructions embodied therein, the following resolution. Kindly acknowledge receipt.

Resolution by Senator Boynton.

Whereas the fourth internal-revenue district of California, with headquarters in Sacramento and serving all the counties north of San Francisco to the Oregon line, and also the entire State of Nevada, was abolished on the 1st day of October last; and

Whereas said district did an annual business of nearly $800,000; and

Whereas said district was also consolidated with the first collection district of California, with headquarters in San Francisco, which district was so large that the Los Angeles district was separated from it two years ago; and

Whereas the loss of the fourth district will work injury to this section of California and Nevada without any corresponding benefit to the first district; and

Whereas an amendment known as Senate amendment No. 68 to the House of Representatives bill No. 26680, providing for the reestablishment of the aforesaid fourth revenue collection district of the State of California, has been approved by the Senate of the United States Congress, and now goes to conference: Therefore be it

Resolved by the senate and assembly jointly, That the Legislature of the State of California approves all of the provisions of said amendment, and our Senators in Congress are hereby instructed and our Representatives requested to vote for and use every honorable means to secure the passage of said amendment to said bill; and be it

Resolved further, That copies of this resolution be sent by telegraph to each of our Senators and Representatives in the Congress of the United States.

WALTER N. PARRISH,
Secretary of State.

It never was intended that the amendment to the sundry civil bill which passed the House in 1912 should eliminate from the northern part of California and Nevada the fourth internal-revenue district for the purpose of collecting internal revenue, but when this bill has amendment 68 placing the revenue districts back as they were, and when the entire State of California, paying millions of dollars internal revenue, is asking and demanding that this House give their citizenship their

representation in the collection of their revenue in the method of business, I say it is not economy for this House to set aside these offices and officers to the end that this Government should lose hundreds of thousands of dollars for want of proper officers to collect its revenue.

I ask this House to read the testimony of Mr. Cable, given before the Committee on Appropriations, where he says that this Government loses hundreds of thousands of dollars annually because of insufficient officers to collect the revenue. While I stand for economy, I do not believe in economizing by dispensing with officers necessary to collect the revenue of the country.

Irrespective of the time, irrespective of other appropriation bills, this State ought to have an opportunity to see that its business is provided for. I am satisfied that the conferees of the House will give this matter fair and full consideration, as they do other matters, and I trust they will see their way clear to protect the State of California, so that it will be properly represented in this matter. I have the utmost confidence in the gentlemen acting as conferees on the part of the House, and I submit it to the conferees for their careful consideration. This amendment 68 should be agreed to by the House conferees, and the fourth internal-revenue district reestablished. It is in the interest of proper administration of the laws.

Mr. JOHNSON of South Carolina. Mr. Speaker, the legislative bill does not provide how the revenue districts in the United States shall be arranged. That is a matter of Executive order. We have provided for a sufficient number of revenue districts. It is for the administrative department of the Government to so arrange these districts as to collect the revenues. When the President discontinued the four revenue districts in October, 1912, he did not inquire what districts were not needed in the interest of the public service, but the sole question that confronted him was, what districts could best be dispensed with without political embarrassment.

Mr. MOORE of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. JOHNSON of South Carolina. Yes.

Mr. MOORE of Pennsylvania. Of what earthly use to California will these revenue collectors be, in view of the fact that the House has just voted to keep all of the wine manufactured in California within the limits of the State, the gentleman from California having voted that way?

Mr. FOSTER. Oh, they can send the wine to Philadelphia.

Mr. JOHNSON of South Carolina. Mr. Speaker, we have provided ample money for the collection of the internal revenue. The district in the State that I have the honor in part to represent was discontinued at the same time.

Mr. RAKER. Mr. Speaker, will the gentleman yield?

Mr. JOHNSON of South Carolina. Yes.

Mr. RAKER. Is it not a fact that under the law as it existed before the amendment on the legislative, executive, and judicial appropriation bill for 1912 the President had absolute power and discretion, whenever he saw a district was unnecessary, to consolidate it with some other district. If that is the case, why the necessity for putting the limit upon this bill, to curtail?

Mr. JOHNSON of South Carolina. Because he had not, in the judgment of the committee, exercised the power that he had and ought to have exercised, and we put a provision in the bill that would force him to reduce the number of internal-revenue districts. Mr. Speaker, I demand the previous question.

Mr. FARR. Mr. Speaker, will the gentleman yield?

Mr. JOHNSON of South Carolina. Yes.

Mr. FARR. Mr. Speaker, I desire to ask the chairman if the President abolished the districts that the committee intended he should abolish?

Mr. JOHNSON of South Carolina. Mr. Speaker, our information is that the President never inquired at the Treasury Department what districts ought to be abolished, but that he abolished those that could be abolished without political embarrassment.

Mr. FARR. Mr. Speaker, I would like to be heard upon this question.

The SPEAKER. The gentleman from South Carolina has the floor.

Mr. JOHNSON of South Carolina. How much time does the gentleman want?

Mr. FARR. Three or four minutes.

Mr. JOHNSON of South Carolina. I yield to the gentleman five minutes.

Mr. FARR. Mr. Speaker, the chairman of the committee states, if I properly understood the gentleman, that the President did not abolish the four internal-revenue districts that the committee intended the President should abolish. I want to ask the chairman of the committee and the gentlemen of this House, inasmuch as the President discontinued the districts not intended to be eliminated, why they were not willing to write this bill so as to restore the four districts; one in California, one in the gentleman's district, one in Texas, and the other in Pennsylvania? Every one of them is needed for the good of the service. Their abolishment is a loss to the Government, an inconvenience to the people, and it is the duty of this House to reestablish them. I want to say to the chairman of that committee and to this House that I believe the district in Pennsylvania was abolished by the President for political reasons, because it was Roosevelt territory.

Mr. HARDWICK. Mr. Speaker, I make the point of order that there is no quorum present.

The SPEAKER. The gentleman will suspend. Evidently there is a quorum present, and the gentleman from Pennsylvania will proceed.

Mr. FARR. He abolished the district because of the strong Roosevelt tendency there.

Mr. BUTLER. Mr. Speaker, I do not think the gentleman ought to say that.

Mr. FARR. I say that without fear of successful contradiction. Four other districts were discontinued by order of the President. That order was recalled and rescinded and the four districts mentioned above, including the twelfth in Pennsylvania, were abolished and merged into other districts. The people of my district, with headquarters at Scranton, Pa., were given no opportunity for a hearing or a chance to file a protest against the injury that was to be dealt them. A telegram was sent to the revenue collector on Sunday night, September 29, 1912, that the district was to be abolished the next day, when it was merged into the ninth Pennsylvania district, to the great disadvantage of my constituents.

Mr. BUTLER. I do not think the gentleman ought to say that about the President of the United States.

Mr. FARR. I say that it is my belief that the President of the United States struck at the district in the State of Pennsylvania because of the fact that it would not yield him any political strength, and I make that statement as regards the State of Texas, as regards the State of South Carolina, and as regards the State of California. I want to say to this House that it is our duty to restore those four districts.

Mr. OLMSTED. Mr. Speaker, will the gentleman yield?

Mr. FARR. Certainly.

Mr. OLMSTED. While I do not agree with the gentleman in his statement as to the reason why his district was one of the four cut out, I do agree that that district, which was one of the largest and most important, ought not to have been abolished or consolidated with another. It ought to be restored. The Senate amendment, putting the total number of districts back to 67 instead of 63, ought to be agreed to by the House.

Mr. FARR. The revenues in that district amounted to two and one-half million dollars a year, and within five years they increased $818,000. The district comprised some 20 counties with a population of 1,300,000, and I submit these facts to the House to show the importance of that revenue district.

Mr. GUDGER. Mr. Speaker, I rise to a point of order.

The SPEAKER. The gentleman will state it.

Mr. GUDGER. The only question before the House is, Shall we refer this matter to the conferees? The gentleman is discussing questions as to what ought to be done after it is referred.

The SPEAKER. The point of order is well taken.

Mr. FARR. Mr. Speaker, what is the point of order?

The SPEAKER. The point of order is made by the gentleman from North Carolina that the only proper thing to discuss is whether this bill ought to go to the conferees.

Mr. FARR. Mr. Speaker, I rise to a parliamentary question. The other gentlemen have been permitted to discuss this question, and I was given five minutes——

The SPEAKER. But nobody made a point of order. It is not the business of the Chair to raise the point of order.

Mr. SABATH. Mr. Speaker, I ask unanimous consent that the gentleman may be allowed to proceed for five minutes.

Mr. HAMLIN. I object.

The SPEAKER. Objection is made; the time of the gentleman has expired, and the question is on ordering the previous question.

The question was taken, and the previous question was ordered.

The SPEAKER. The question now is on the motion of the gentleman from South Carolina.

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

The SPEAKER. The Clerk will announce the conferees.

The Clerk read as follows:

Mr. JOHNSON of South Carolina, Mr. BURLESON, and Mr. GILLETT.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. McClintock, one of its clerks, announced that the Senate had insisted upon its amendments to the bill (H. R. 28609) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1914, and for other purposes, disagreed to by the House of Representatives, had agreed to the conference asked by the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. DU PONT, Mr. DIXON, and Mr. JOHNSTON of Alabama as the conferees on the part of the Senate.

The message also announced that the Senate had agreed to the reports of the committees of conference on the disagreeing votes of the two Houses on the amendments of the Senate to bills of the following titles:

H. R. 28730. An act making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June 30, 1914, and for other purposes; and

H. R. 28766. An act to increase the limit of cost of certain public buildings, to authorize the enlargement, extension, remodeling, or improvement of certain public buildings, to authorize the erection and completion of public buildings, to authorize the purchase of sites for public buildings, and for other purposes.

NAVAL APPROPRIATION BILL.

Mr. PADGETT. Mr. Speaker, I ask unanimous consent that the naval appropriation bill (H. R. 28812), with Senate amendments numbered, may be printed.

The SPEAKER. The gentleman from Tennessee asks unanimous consent to print the naval appropriation bill with Senate amendments numbered.

Mr. MANN. Mr. Speaker, reserving the right to object, I would like to call the attention of the gentleman to a matter in connection with the naval appropriation bill. On page 49 of the bill as reported to the House is a paragraph under the head of "Maintenance, Quartermaster's Department, Marine Corps" and under a subhead "Provisions, Marine Corps." That paragraph was stricken out on a point of order made by me. Subsequently the gentleman from Tennessee [Mr. PADGETT] offered an amendment which would include, on page 49 of the original bill, from line 3 down to the word "Army," in line 15. To that amendment I made another point of order, and the Chair sustained it. Thereupon the gentleman from Tennessee offered a third amendment to include that portion of the original paragraph beginning with line 3 down to the sum named in line 12. When the bill went from the reading clerk's desk to the engrossing room it did not show that the item had been stricken out on the point of order at all. It did show that a portion of that item was stricken out, but not all that was stricken out. It shows as though it had been an original proposition and a portion of the matter that was stricken out. Of course that was one of the errors to which I did not refer the other day, caused by the pressure of business which our economical friends on the other side of the House attempt to put upon the clerks at the desk by making them do more work than human endurance can sustain, so errors creep in.

Mr. RODDENBERY. Will the gentleman yield?

Mr. MANN. Not at present. This bill was erroneously engrossed through no fault of the engrossing clerk and sent to the Senate. The Senate has sent over an amendment to insert the same matter as a new item without striking out what is already in the bill. In the engrossed copy there follows after the figures "$890,000" the words—

No law shall be construed to entitle enlisted men on shore duty to any rations or commutation therefor other than such as are now and may hereafter be allowed enlisted men in the Army.

The Senate, without striking out that language, which possibly they intended to, and which was erroneously sent from the Clerk's desk to the engrossing room, insert another amendment between that language and the sum and wind up by repeating this language, and, for fear the conferees would not notice it, I call the attention of the gentleman from Tennessee to the matter. I note also in these Senate amendments nearly every item which went out while the bill was in progress through the House has been reinserted by the Senate. The conferees who will be appointed on the part of the House having already by their report of the bill in the first instance indicated their desire to see these provisions go into the law, one can readily imagine that they are agreed to in fact. I will say to the gentleman from Tennessee of course in the closing hours of a short session of Congress, when the gentleman has the right to move to suspend the rules and send a bill to conference, and when that right will be exercised, if one even demands a separate vote upon a Senate amendment, you can not stop this procedure; but at the long session of Congress, when the right to suspend the rules does not exist during the last six days of the session, because the last six days of the session are not determined until usually a few hours before the session ends, the gentleman will not meet the same acquiescence at the next regular session of Congress in reference to these provisions in the naval bill which he meets now, because then we will have an opportunity to insist upon the consideration of these things in the House or in Committee of the Whole House on the state of the Union.

Mr. RODDENBERY. Will the gentleman yield?

Mr. MANN. I do.

Mr. RODDENBERY. If the naval bill had been engrossed and read from the Speaker's table prior to its transmission to the Senate, would that not have given the gentleman from Illinois [Mr. MANN] an opportunity to have discovered if there existed the very inaccuracy and error he now points out?

Mr. MANN. It would theoretically have given me an opportunity to discover it, but it would not in fact have given me an opportunity to discover it, because I could not have told from the reading of the engrossed copy of the bill from the Clerk's desk whether this item was in or out, not remembering every word in the bill. I remembered enough about it, however, to find it out.

Mr. RODDENBERY. The gentleman remembers the reading of the engrossed bill was dispensed with by an overwhelming vote the other day, does he not?

Mr. MANN. I do not remember, but I have no doubt it was. I have no doubt I voted for it.

Mr. TRIBBLE. Will the gentleman yield?

Mr. MANN. Certainly.

Mr. TRIBBLE. Does the gentleman mean to say, as to the points of order that were made against the bill on the floor of the House and sustained as being legislation, that that legislation has been reinserted by the Senate, and that the conferees will agree to that legislation on the appropriation bill, and that we will finally pass measures that were put out on points of order on the floor of the House?

Mr. MANN. In the main that is correct.

Mr. ROBERTS of Massachusetts. Will the gentleman yield?

Mr. MANN. Certainly.

Mr. ROBERTS of Massachusetts. I understood the gentleman to say that in the next Congress, in the long session, he will not acquiesce in certain procedure with regard to the naval bill as to certain things to which he is now giving tacit assent. Does he intend to announce that that is the only bill that will meet with objection?

Mr. MANN. No; not at all. I make no differentiation in regard to the bills.

Mr. PADGETT. I renew my request for unanimous consent.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

Mr. PADGETT. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the naval appropriation bill, disagree to all of the Senate amendments, and agree to the conference asked by the Senate.

Mr. ROBERTS of Massachusetts. Mr. Speaker, reserving the right to object, I would like to ask the chairman of the committee if he can and will give assurance to the House that there will be another opportunity afforded the House for a record vote on the number of battleships to be carried in the bill before the conferees come to a final agreement with the Senate, in case it should be one battleship?

Mr. PADGETT. If the House desires a separate vote.

Mr. MANN. I think before the gentleman gives any assurance of that he ought to take into consideration the time of this session. There would be an opportunity now, if any gentleman desires, to instruct the conferees, if this can be put in form so it could be done, this (Saturday) afternoon. I take it the House will be in session from now on much of the time, with recesses between, until Tuesday next. I doubt whether there will be many times when there will be as large a membership here as there is this afternoon. If the gentleman desires a vote, the vote might be called some time Sunday when it would be inconvenient to have a point of no quorum made, or Sunday night, when it would be very inconsiderate to have a vote without having all the Members here. Why can not the gentleman fix it and have the vote now?

Mr. ROBERTS of Massachusetts. I will ask the gentleman from Tennessee [Mr. PADGETT] if he will agree to a vote now on the Senate amendment with regard to battleships before trying to put his bill into conference?

Mr. PADGETT. No; I think it ought to go to a conference; and then, before the conferees are announced, will be the proper time for that motion, and it can then be made.

Mr. MANN. But the gentleman has asked unanimous consent——

Mr. PADGETT. I say, so far as I am concerned, I am perfectly willing that the vote shall be taken in the House now on the battleship question, after it is ordered to conference.

Mr. HENSLEY. Mr. Speaker——

The SPEAKER. Does the gentleman from Tennessee [Mr. PADGETT] yield to the gentleman from Missouri [Mr. HENSLEY]?

Mr. PADGETT. Yes, sir.

Mr. HENSLEY. Does not the chairman of the Committee on Naval Affairs regard the vote taken on the proposition only a few days ago a virtual instruction to the conferees?

Mr. PADGETT. I would, unless they gave me later instructions; and they have a right under the rules to demand a vote on that amendment if it is desired.

Mr. HENSLEY. Do I understand you are asking that another vote be taken upon that proposition?

Mr. PADGETT. I am not asking it. I said if it was demanded it could be taken.

Mr. MANN. If the gentleman from Missouri will yield, the House decided the other day on one battleship. The Senate has voted for two battleships, and, under the practice between the two Houses, it is not at all probable that the Senate will recede in conference from the two battleships unless the House has another vote on the question of two battleships; and whichever way the House votes, that will settle the question, in my judgment.

The SPEAKER. The gentleman from Tennessee [Mr. PADGETT] asks unanimous consent——

Mr. RODDENBERY. Reserving the right to object, Mr. Speaker, I would like to inquire of the chairman of the Committee on Naval Affairs, in round numbers, what was the amount of the naval appropriation bill as it passed the House?

Mr. PADGETT. One hundred and thirty-eight millions.

Mr. RODDENBERY. In round numbers, what is the amount of the bill as it comes back from the Senate?

Mr. PADGETT. I have not had opportunity to add it up, but my understanding from the newspapers is that it carries between $148,000,000 and $150,000,000.

Mr. RODDENBERY. In other words, the bill comes back increased between ten and twelve million dollars?

Mr. PADGETT. Something like that.

Mr. RODDENBERY. And what is involved between the two Houses is whether we will get rid of all or a part of that $12,000,000 extra?

Mr. PADGETT. Yes, sir.

Mr. HOBSON. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. HOBSON. Would a vote to instruct to concur in a Senate amendment be in order before the unanimous consent is granted?

The SPEAKER. No; it would have to be after.

Mr. HOBSON. Immediately after and before the conferees are named?

The SPEAKER. That seems to be the practice.

Mr. HOBSON. I ask to be recognized for that purpose.

Mr. MANN. Mr. Speaker, I ask that the gentleman from Tennessee will agree to modify his request to disagree to all the Senate amendments except the one that strikes out "one" and inserts "two" before the word "battleship," and have a separate vote on that in the House.

Mr. PADGETT. Personally I have no objection. I want to expedite the business.

Mr. ROBERTS of Massachusetts. Mr. Speaker, I would suggest to the gentleman that it may save suspension of the rules to get into conference, and save some time.

Mr. PADGETT. I am willing to modify my request, Mr. Speaker, to that effect.

The SPEAKER. The gentleman from Tennessee [Mr. PADGETT] asks unanimous consent to take the naval appropriation bill from the Speaker's table and disagree to all the Senate amendments, except the two-battleship proposition, and ask for a conference.

Mr. SISSON. Now, Mr. Speaker, reserving the right to object——

Mr. HEFLIN. Mr. Speaker, I object.

The SPEAKER. Is there objection?

Mr. HEFLIN. Mr. Speaker, reserving the right to object, what was the statement of the gentleman? Did he desire to concur in the amendment for two battleships?

Mr. PADGETT. No; I simply asked to have a vote on that.

The SPEAKER. The gentleman from Tennessee [Mr. PADGETT] asks unanimous consent to take the naval appropriation bill from the Speaker's table, to disagree to all the Senate amendments except the two-battleship proposition, and agree to a conference.

Mr. ROBERTS of Massachusetts. And have a separate vote as to the battleship proposition.

The SPEAKER. If any gentleman wants to instruct them as to that, he can offer a motion to do it. Is there objection?

Mr. SISSON. I reserve the right to object. I want to ask the gentleman from Tennessee a question. This matter has been settled once in the House. It was debated for quite a number of days, first and last, and the House at that time, when notice was given and everybody understood practically that the battleship question was on, was full, and Members were here to vote. Now, on this evening does it not seem to the gentleman from Tennessee that you might possibly take some gentlemen by surprise who are opposed to two battleships?

Mr. MANN. Mr. Speaker, will the gentleman yield?

The SPEAKER. Does the gentleman yield?

Mr. SISSON. I do.

Mr. MANN. There is no way of preventing a vote, either in this way or by instruction. I voted for one battleship. As a matter of fact, at this time on Saturday afternoon there is likely to be a larger vote than at any other time during the session.

Mr. TRIBBLE. Mr. Speaker, will the gentleman yield?

The SPEAKER. Does the gentleman yield?

Mr. MANN. Yes.

Mr. TRIBBLE. Is it not quite possible that the conferees can not agree, and that they will be back here for another vote anyway?

Mr. MANN. My own judgment is that if the House expresses itself now in favor of one battleship, as I think it is likely to do, the conferees will come to an agreement upon one battleship. Of course if the House at any time declines to agree to the conference report it still has the power to reject it.

Mr. FOSS. Mr. Speaker, I wish to say that I do not think the House is in a condition to pass its judgment upon this battleship proposition at the present time. This bill has not yet been printed with the Senate amendments numbered. The proposition of two battleships affects several paragraphs in this bill, and I think the chairman of the Committee on Naval Affairs has not been able—I know I have not been able—to get a copy of the bill in its accurate and correct form.

Mr. MANN. I will loan my copy to the gentleman.

Mr. FOSS. And the Members of the House are not able to get it. Now, there is no question in my mind but what there will be opportunity for the House to pass upon the question of the number of battleships. The Senate are very insistent upon their provisions, and I presume that this bill will follow the same course which it followed a year ago, when it came back into the House with one amendment in disagreement, or possibly two, namely, the battleship proposition. At that time I made a motion to concur in the Senate provision for two battleships. I trust that this bill may go to conference now without any vote on the battleship proposition at this time, because I do not think the bill is in that shape where we can intelligently pass upon this proposition.

Mr. SISSON. Mr. Speaker, I have reserved the right to object. I agree thoroughly with the gentleman from Illinois [Mr. Foss], because so many amendments have been added to this bill, as I am informed by the gentleman from Tennessee [Mr. PADGETT], that even the members of the committee do not know exactly what is in the bill, and, of course, Members of the House do not.

Mr. FOSS. We have not had an opportunity to examine all the amendments.

Mr. SISSON. So I believe the only wise thing for the House to do now is to let this bill go to conference, as the gentleman from Tennessee [Mr. PADGETT] originally requested. [Applause.] I shall make no objection to that, but I think the House would act unwisely at this time if it attempted to take any vote on the battleship proposition, because the Members do not know how voting the battleships in or out might affect the balance of the bill.

Mr. PADGETT. Mr. Speaker, I renew my request, and I hope it will be agreed to—that we disagree to all the Senate amendments and let the bill go to conference.

The SPEAKER. The gentleman from Tennessee [Mr. PADGETT] asks unanimous consent to take the naval appropriation bill from the Speaker's table, disagree to all the Senate amendments, and agree to the conference asked by the Senate.

Mr. TALBOTT of Maryland. A parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. TALBOTT of Maryland. Of course this will not preclude a motion to concur in the Senate amendment for two battleships when it comes back in disagreement?

The SPEAKER. The Chair does not understand the gentleman.

Mr. TALBOTT of Maryland. Of course, the unanimous consent of the House to send this bill to conference will not preclude the advocates of two battleships from moving to concur in the Senate amendments when that proposition is reported back to the House in disagreement? The House will still have the right to concur in that amendment?

Mr. CALDER. Provided the Senate does not recede.

Mr. TALBOTT of Maryland. If the Senate recedes, that is another thing.

The SPEAKER. That depends on how it comes back here. If the conferees come back with a complete agreement, then you have got to accept the conference report, or reject it as a whole.

Mr. TALBOTT of Maryland. Suppose they come back with an agreement as to all of the bill except the battleships. Then a motion would be in order to concur in the Senate amendment for two battleships, would it not?

The SPEAKER. Certainly.

Mr. TALBOTT of Maryland. I do not want to lose any rights we have.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection; and the Speaker announced as conferees on the part of the House Mr. PADGETT, Mr. GREGG of Texas, and Mr. FOSS.

POST OFFICE APPROPRIATION BILL.

Mr. MOON of Tennessee. Mr. Speaker, I present a conference report, being a partial agreement on the Post Office appropriation bill (H. R. 27148), and I ask that the statement be read in lieu of the report.

The SPEAKER. The gentleman from Tennessee presents a conference report on the Post Office appropriation bill and asks that the statement be read in lieu of the report. Is there objection?

There was no objection.

The statement of the House conferees was read.

The conference report and statement of the House conferees are as follows:

CONFERENCE REPORT.

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 27148) making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1914, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 2, 3, 4, 5, 10, 17, 19, 20, 23, 27, 28, 29, 40, 41, 42, 43, 44, 45, and 57.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 22, 24, 35, 36, 38, 39, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, and 64, and agree to the same.

The conference committee has come to no agreement on amendments numbered 25 and 26.

Amendment numbered 21: That the House recede from its disagreement to the amendment of the Senate numbered 21, and agree to the same with an amendment as follows: Strike out the amount "$500,000" and insert in lieu thereof "$475,000"; and the Senate agree to the same.

Amendment numbered 30: That the House recede from its disagreement to the amendment of the Senate numbered 30, and agree to the same with an amendment as follows: Strike out the word "thirty-two" and insert in lieu thereof the words "three hundred and thirty-four"; and the Senate agree to the same.

Amendment numbered 31: That the House recede from its disagreement to the amendment of the Senate numbered 31, and agree to the same with an amendment as follows: Strike out the words "three hundred and four" and insert in lieu thereof "thirteen hundred and ninety"; and the Senate agree to the same.

Amendment numbered 32: That the House recede from its disagreement to the amendment of the Senate numbered 32, and agree to the same with an amendment as follows: Strike out the words "fifteen hundred and twenty-seven" and insert "four hundred and two"; and the Senate agree to the same.

Amendment numbered 33: That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment as follows: Strike out the words "eleven hundred and sixty-eight" and insert "two thousand seven hundred and eighty-eight"; and the Senate agree to the same.

Amendment numbered 34: That the House recede from its disagreement to the amendment of the Senate numbered 34, and agree to the same with an amendment as follows: Strike out the words "four thousand two hundred and one" and insert "two thousand three hundred and eighteen"; and the Senate agree to the same.

Amendment numbered 37: That the House recede from its disagreement to the amendment of the Senate numbered 37, and agree to the same with an amendment as follows: Strike out the figures "$24,755,850" and insert in lieu thereof "$24,969,990"; and the Senate agree to the same.

JOHN A. MOON,
DAVID E. FINLEY,
JOHN W. WEEKS,
Managers on the part of the House.

JONATHAN BOURNE,
BOIES PENROSE,
J. H. BANKHEAD,
Managers on the part of the Senate.

STATEMENT.

The managers on the part of the House of the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 27148) making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1914, submit the following written statement in explanation of the effect of the action agreed upon in the accompanying conference report on each of the Senate amendments, namely:

The Senate made 64 amendments to the bill, 21 of which involved an increase of $3,812,811 and 5 of which a decrease of $690,150, or a net increase of $3,122,661. The bill as passed by the House carried $280,662,781; the bill as agreed upon by the conferees carries $282,888,081.

Amendment No. 1: This amendment strikes out the proviso authorizing 30 inspectors to be placed under the order of the Fourth Assistant Postmaster General. House agrees.

Amendments Nos. 2, 3, 4, and 5: These amendments relate to traveling expenses of inspectors, changing same from a per diem to an actual-expense basis and increasing the appropriation $87,134, to take care of increasing the maximum allowance for such purposes from $3 to $4. Senate recedes.

Amendment No. 6: This amendment strikes out the proviso prohibiting inspectors from receiving a per diem allowance when making selection and recommendations for the appointment of fourth-class postmasters. House agrees.

Amendment No. 7: This amendment makes more definite the language of the paragraph. House agrees.

Amendment No. 8: This amendment increases the appropriation $10,000 for livery hire incurred by inspectors. House agrees.

Amendment No. 9: This amendment increases the appropriation $7,500 for payment of rewards for the detection, etc., of post-office burglars, etc. House agrees.

Amendment No. 10: This amendment increases appropriation for the Postal Savings System for blank books, forms, etc., $49,000. Senate recedes.

Amendment No. 11: This amendment increases the appropriation for the Postal Savings System for miscellaneous items $2,500. House agrees.

Amendment No. 12: This amendment strikes out the provision eliminating the receipts from the sale of parcel-post stamps in the computation of salaries of first-class postmasters. House agrees.

Amendment No. 13: This amendment is a consolidation of the two items for compensation to clerks in charge of contract stations, decreasing the appropriation $170,000. House agrees.

Amendment No. 14: This amendment increases the appropriation for compensation to substitutes for clerks and employees at first and second class post offices on vacation $25,000. House agrees.

Amendment No. 15: This amendment reduces the appropriation for rent, light, and fuel $200,000. House agrees.

Amendment No. 16: This amendment increases the appropriation for miscellaneous items necessary and incidental to post offices of the first and second class $25,000. House agrees.

Amendment No. 17: This amendment decreases the amount for the pay of letter carriers and substitute letter carriers $200,000. Senate recedes.

Amendment No. 18: This amendment strikes out the House paragraph and provides a rate of 40 cents an hour for substitute letter carriers in the City Delivery Service and substitute post-

office clerks employed in first and second class post offices when working for a carrier or clerk absent without pay. House agrees.

Amendment No. 19: This amendment increases the appropriation for pay of substitutes for letter carriers absent with pay $215,000 and makes not exceeding $300,000 of the appropriation immediately available. Senate recedes.

Amendment No. 20: This amendment increases the appropriation for horse-hire allowance, etc., $300,000. Senate recedes.

Amendment No. 21: This amendment increases the appropriation $50,000 for car fare and bicycle allowance. House agrees with an amendment.

Amendment No. 22: This amendment enables the department to receive compensation for return of old time recorders. House agrees.

Amendment No. 23: This amendment decreases the appropriation for experimental village delivery service $50,000. Senate recedes.

Amendment No. 24: This amendment increases the appropriation for inland transportation by steamboat $35,000. House agrees.

Amendment No. 25: This amendment continues the personnel of the membership of committees and commissions created in the Post Office appropriation act approved August 24, 1912. No agreement.

Amendment No. 26: This amendment increases the appropriation for inland transportation by railroad routes $2,500,000; fixes the rate of pay for special transfer and terminal service at the Union Station at East St. Louis, Ill., and at the Union Station at St. Louis, Mo., not to exceed $20,000; authorizes a weighing of mails on account of the increased weight resulting from establishment of parcel post; this discontinues the transportation of second-class mail matter in fast freight trains. No agreement.

Amendments Nos. 27, 28, and 29: These amendments increase the salaries of 15 division superintendents, 4 assistant superintendents, and 15 assistant division superintendents $500, $300, and $500, respectively. Senate recedes.

Amendments Nos. 30, 31, 32, 33, and 34: These amendments change the number of clerks in grades indicated to conform with the department's estimate. House agrees with amendments.

Amendments Nos. 35 and 36: These amendments provide for an increase of 400 railway postal clerks in grades 1 and 2. The House agrees.

Amendment No. 37: This amendment reduces the appropriation for the Railway Mail Service $70,150 and limits the aggregate appropriation to be expended for that service to $24,969,990. House agrees with an amendment.

Amendment No. 38: This amendment authorizes the Postmaster General to make necessary appointments and promotions in the Railway Mail Service. House agrees.

Amendment No. 39: This amendment allows any railway postal clerk not entitled to annual leave under other provision of law leave of absence with pay for a period not exceeding 30 days, his duties to be performed without expense to the Government during the period for which leave is granted, or to provide a substitute at his own expense. House agrees.

Amendment No. 40: This amendment authorizes Postmaster General to rent quarters at terminal stations, to pay rental for post-office cars standing at terminal stations, and increases the appropriation for rent, light, fuel, etc., to carry out the purpose of the amendment $200,000. Senate recedes.

Amendments Nos. 41, 42, 43, 44, and 45: These amendments relate to the traveling expenses of four assistant superintendents, limiting the per diem allowance covering actual expenses to $4, and increasing the appropriation $1,277. Senate recedes.

Amendment No. 46: This amendment increases the appropriation for inland transportation of the mail by electric and cable cars $47,400. House agrees.

Amendments Nos. 47, 48, 49, 50, and 51: These amendments are for the purpose of perfecting the language of the paragraph and correcting grammatical errors. House agrees.

Amendment No. 52: This amendment is for the purpose of making the proviso permanent law. House agrees.

Amendment No. 53: This amendment relates to the manufacture of adhesive postage stamps, etc., and increases the appropriation $22,000. House agrees.

Amendment No. 54: This amendment relates to manufacture of stamped envelopes and increases appropriation $164,000. House agrees.

Amendment No. 55: This amendment relates to the pay of agents and assistants to examine and distribute stamped envelopes, the supervision and manufacture of official envelopes being under the Bureau of the Fourth Assistant. House agrees.

Amendment No. 56: This amendment relates to the manufacture of postal cards and increases the appropriation $35,000. House agrees.

Amendment No. 57: This amendment is consolidation of the two items for payment of limited indemnity for the loss of domestic and international registered articles and increasing the appropriation $20,000. Senate recedes.

Amendment No. 58: This amendment relates to blank books, printed matter, etc., increasing the appropriation $2,000. House agrees.

Amendment No. 59: This amendment perfects the language of the paragraph. House agrees.

Amendments Nos. 60 and 61: These amendments are merely for the purpose of making the language of the paragraphs conform to that of the previous law. House agrees.

Amendments Nos. 62 and 63: These amendments relate to the shipment of supplies and are for the purpose of correcting a clerical error and increasing the appropriation $15,000, to accord with the correction made. House agrees.

Amendment No. 64: This amendment is for the purpose of continuing the availability of the $500,000 appropriated in the last Post Office appropriation act for experimental purposes in connection with the improvement of highways. House agrees.

JOHN A. MOON,
DAVID E. FINLEY,
JOHN W. WEEKS,
Managers on the part of the House.

Mr. MOON of Tennessee. Mr. Speaker, I move that the House agree to the conference report; that it concur in Senate amendment 25, and further insist on its disagreement to Senate amendment 26 and ask for a conference.

Mr. MURDOCK. Mr. Speaker, I ask that the motion to concur and disagree be put separately.

Mr. MANN. The gentleman can only make a motion to adopt the conference report.

The SPEAKER. For what purpose does the gentleman from Illinois rise?

Mr. MANN. The gentleman from Tennessee has stated three motions together. The motion is to adopt the conference report.

Mr. CALLAWAY. Mr. Speaker, I want to ask the gentleman a question. Under amendment 25 I understand the motion is to concur in that amendment.

Mr. MOON of Tennessee. The motion was made that way, but I take it that the Speaker will put the motion separately.

Mr. COOPER. Mr. Speaker, I desire to ask the gentleman from Tennessee whether there is anything in this report about the increase or decrease of second-class postage?

Mr. MOON of Tennessee. No, sir.

Mr. LLOYD. Mr. Speaker, I did not hear all of the conference report read. What was the disposition of amendment 25?

Mr. MOON of Tennessee. There was no agreement.

Mr. LLOYD. The gentleman proposes to submit to the House the question whether it will agree to Senate amendment 25?

Mr. MOON of Tennessee. Certainly. Amendments 25 and 26 are not involved in the motion to agree to the conference report.

The SPEAKER. The Chair will state that the Senate amendments 25 and 26 are not involved in this motion of the gentleman from Tennessee to agree to the conference report.

Mr. HARDWICK. Mr. Speaker, I would like to ask the gentleman a question. There has been a good deal of controversy about whether the railway mail clerks and employees were to get the advances in pay in accordance with what some of us thought was the intent of the act of Congress passed some years ago. Has that matter been disposed of in this bill?

Mr. MOON of Tennessee. The House provision on that subject was very clear in providing for a promotion and increased pay according to the construction of the act by the House. The Senate has receded on every single proposition.

Mr. HARDWICK. On the proposition as it now stands the low-grade employees will get the increase?

Mr. MOON of Tennessee. They will.

Mr. COX. Mr. Speaker, I would like to ask the gentleman if amendment 25 be adopted it will continue these commissions?

The SPEAKER. The Chair will state again, as he has already stated, amendments 25 and 26 are not involved in the motion of the gentleman from Tennessee. The motion of the gentleman from Tennessee is to agree to the conference report.

The question was taken, and the conference report was agreed to.

Mr. MOON of Tennessee. Now, Mr. Speaker, I move that the House concur in Senate amendment 25.

The SPEAKER. The gentleman from Tennessee moves that the House concur in Senate amendment numbered 25, which the Clerk will report.

The Clerk read as follows:

For the transmission of mail by pneumatic tubes or other similar devices, $962,200 (25): *Provided*, That the personnel of the membership of the committees and commissions created and provided for in sections 1 and 8 of the act entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1913, and for other purposes," approved August 24, 1912, shall continue with the same authorities, powers, and provisions for expenses until final report is made to Congress.

Mr. SISSON. Mr. Speaker, I would like to ask the gentleman from Tennessee the question I intended to ask prior to the vote on the conference report. I notice in the last appropriation bill that passed the House there were 10 commissioners or committee men on the Post Office and Post Roads Commission, 6 on the Parcel Post Commission, 6 on the Second-class Mail Matter Commission, and 4 on the pneumatic-tube matter. This bill proposes to continue these 26 committee men?

Mr. MOON of Tennessee. To continue the four committees, because they have not yet reported to Congress in accordance with the order of the House.

Mr. SISSON. How much has the personnel changed?

Mr. MOON of Tennessee. There are four commissions and four vacancies.

Mr. SISSON. I notice no provision is made for the payment of the commissioners or committee men—some portions of the act call them committee men and some joint commissioners.

Now, is it in the mind of the committee that these gentlemen who are soon to be retired from Congress will be paid a salary?

Mr. MOON of Tennessee. No; it is not the purpose that they are to be paid a salary. They could not be paid a salary under the law. There is no provision here for it, and they are not asking for a salary.

Mr. SISSON. I understand they could not be paid any under this act, but the gentleman knows the rule—that when a man has served on these committees or commissions without pay they have a way of getting it subsequently, as they attempted to for the California Exposition and the Buffalo Hygienic Congress, to get the United States to pay them.

Mr. MOON of Tennessee. Mr. Speaker, I know of no such rule. Of course we can not tell what the next Congress may do on the subject of pay if it is asked for it, but I want to say to the gentleman that these gentlemen are not anxious to retain the position here. I have talked with two of them about it, and they say they would be glad to continue in the service as members of this committee, but under no circumstances would they permit this Congress to pay them for it, because no other member would be paid.

Mr. SISSON. Mr. Speaker, if 4 members out of the 26 have gone out of Congress, what objection would there be to filling the vacancies on these various committees from the respective parties, so as to keep up the personnel in reference to the political parties as the commissions now exist?

Mr. MOON of Tennessee. Mr. Speaker, I have made this motion to concur in order that this matter may come before the House, and that the House may take just such action in respect to it as it desires to take. It is utterly immaterial to me whether it concurs or nonconcurs, but it looks to me like a part of common sense, if we continue the commissions at all, that we continue the personnel of the commissions, for the reason that these commissions have been at work and they have gathered much information of value. It so happens in this case that one or two of the gentlemen who go out have been the most active and valuable men connected with these commissions and possess more information than others. I do not think because a Member of the House happens to go out, after he has rendered a service on this commission, that the House ought to disarrange the work and action of the commission on that account, but it would better move along smoothly, as it has heretofore, and get the benefit of the experience and labor of these gentlemen.

Mr. SISSON. Mr. Speaker, I want to ask the gentleman this one question. Since the appointment of these committees, so far as the Senate is concerned, and I believe that so far as one of these committees is concerned, the political complexion of the Congress has changed. Does not the gentleman believe that it would be better if we are going to have these committees continued, that the power be in the next House or in the next Senate to appoint these committees or commissions, if they are necessary, in accordance with the political complexion of the two respective Houses?

Mr. MOON of Tennessee. Mr. Speaker, I will say to the gentleman from Mississippi that I do not look at public questions just exactly in that way. This is not a political question and ought not to be, and is not in any sense. It is not political with any well-balanced and orderly mind. [Laughter.] If these questions are to be decided according to the law and facts and the business interests of the country, it appears to me that the men who have in part performed the service and who are capable of performing the service, and who are willing without compensation to continue, ought to be continued as a matter of benefit to the Government of the United States.

It does not matter to me, and ought not to the gentleman, the snap of a finger whether some man who goes off is a Republican or a Democrat, if the work is being done well or properly. There is no political question involved, and if there was and the gentleman thinks the Democratic Party is going to be hurt by it, I suggest to him that we are going to have a majority in the next Senate, and a hundred in this House and they certainly have sense enough to take care of the interests of the Democratic Party.

Mr. SISSON. Mr. Speaker, I want to say this, that so far as I am personally concerned, I always believed that a man's mind is not in the least disordered when he thinks a good Democrat can do anything better than a good Republican.

Mr. MOON of Tennessee. I have seen it happen both ways.

Mr. COX. Mr. Speaker, will the gentleman yield?

Mr. MOON of Tennessee. I yield to the gentleman from Indiana [Mr. Cox].

Mr. COX. Mr. Speaker, I offer the following preferential motion, which I send to the desk and ask to have read.

The Clerk read as follows:

Amend Senate amendment 25 by adding at the end thereof the following:

"Which shall be made on or before March 4, 1914."

Mr. COX. Mr. Speaker, I move to concur with that amendment, which I submit.

Mr. CALLAWAY. Mr. Speaker, will the gentleman yield?

Mr. MOON of Tennessee. I yield to the gentleman from Texas.

Mr. CALLAWAY. Mr. Speaker, I see in amendment 25 that the personnel of the membership of those committees is continued as it is now, and I understand that four of those go out of this Congress.

Mr. MOON of Tennessee. Yes; that has all been stated on the floor two or three times.

Mr. CALLAWAY. I understand from the gentleman from Tennessee that there is no provision to pay these people any salary for continuing on this work.

Mr. MOON of Tennessee. None whatever.

Mr. CALLAWAY. And I understand the gentleman to say that he wants these people continued on these commissions without any provision for salary at all.

Mr. MOON of Tennessee. I did not say that I wanted anything done at all. I said I presented the matter to the House for its judgment. My own opinion is that the amendment ought to be concurred in, and as a matter of law there is no salary carried with the service.

Mr. CALLAWAY. The gentleman wants them to continue?

Mr. MOON of Tennessee. I have no objection.

Mr. CALLAWAY. The gentleman would continue them without any salary?

Mr. MOON of Tennessee. Certainly.

Mr. CALLAWAY. Does the gentleman believe these men will continue their services without any compensation?

A MEMBER. If they do not, they will resign.

Mr. MOON of Tennessee. I have had expression from two of them, who will continue the work provided no salary comes to them, and they would not touch it with a salary.

Mr. CALLAWAY. Does the gentleman think this House ought to pass a law here continuing the personnel of that commission without any salary?

Mr. MOON of Tennessee. The other members do not get a salary; nobody gets a salary connected with it.

Mr. CALLAWAY. I know they do not; but they are in the public service as Congressmen, drawing their salaries as Representatives of the people, and when put on this commission they are expected to serve without a salary or anything except their expenses.

Mr. MOON of Tennessee. It is a very simple proposition. If they do not want to serve without a salary they can resign. That power is vested here now. I want to say further, as a reason for a continuation of this, that they have in part performed this service. They are familiar with what has been done and what ought to be done and with all the papers in connection with this work, and to break up this commission and put new men in means to start fresh.

Mr. CALLAWAY. If they have performed this service in part by collecting data, and so forth, that data is a matter of record and can be come-at-able by any other men put on the commission, would it not?

Mr. MOON of Tennessee. Yes; Euclid is come-at-able to any man who gets his hands on it, but it does not mean he understands it.

Mr. MANN. Will the gentleman permit a question? Does the gentleman have any objection to the amendment offered by the gentleman from Indiana [Mr. Cox]?

Mr. MOON of Tennessee. No; I have no objection to that amendment.

The SPEAKER. The question is on the motion made by the gentleman from Indiana [Mr. Cox] to concur with an amendment.

The question was taken and the motion was agreed to.

Mr. MOON of Tennessee. Mr. Speaker, I move that the House further insist on its disagreement to Senate amendment No. 26 and ask for a conference.

Mr. MANN. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. MANN. The gentleman from Indiana having offered an amendment to the Senate amendment, was that amendment just agreed to or was the Senate amendment agreed to?

Mr. MOON of Tennessee. I understood the Chair to announce the amendment was agreed to as amended.

The SPEAKER. The motion of the gentleman from Indiana was to concur with an amendment, and the Chair so declared. Now, the gentleman from Tennessee will state his motion over again.

Mr. MOON of Tennessee. That the House further insist on its disagreement to Senate amendment No. 26 and ask for a further conference.

The SPEAKER. The gentleman from Tennessee moves that the House insist upon its disagreement to Senate amendment No. 26 and ask for a further conference.

Mr. MURDOCK. Mr. Speaker, I desire to offer a preferential motion. I move that the House recede from its disagreement to Senate amendment No. 26 and concur in the same with an amendment as follows: Strike out the following words in Senate amendment No. 26:

Provided further, That on account of the increased weight of mails resulting from the establishment of the parcel post the Postmaster General is authorized and directed to weigh the mails on railroad routes, for not less than 30 successive working days, and to readjust compensation from the date of the commencement of said weighing at not exceeding the rates provided by law: *Provided further,* That from the commencement of said weighing the transportation of second-class matter in fast freight trains and the manner of handling incident thereto shall be discontinued, and thereafter said mail shall be carried in the regular mail trains and compensation allowed therefor, the purpose being to reestablish the system in vogue prior to the establishment of the blue-tag system.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Stuart, one of its clerks, announced that the Senate had passed bill of the following title, in which the concurrence of the House of Representatives was requested:

S. 8575. An act to authorize the town of Okanogan, Wash., to construct and maintain a bridge across the Okanogan River.

POST OFFICE APPROPRIATION BILL.

The SPEAKER. The Clerk will report Senate amendment No. 26 and then report the amendment offered by the gentleman from Kansas.

The Clerk read as follows:

Provided, That no part of this appropriation shall be paid for carrying the mail over the bridge across the Mississippi River at St. Louis, Mo., other than upon a mileage basis: *But provided further,* That the Postmaster General may, in his discretion, pay within the present law a fair and reasonable price for the special transfer and terminal service at the Union Station at East St. Louis, Ill., and at the Union Station at St. Louis, Mo., including the use, lighting, and heating of the mail building, and transfer service at St. Louis, Mo., provided the amount so paid shall not exceed $20,000: *Provided further,* That on account of the increased weight of mails resulting from the establishment of the parcel post the Postmaster General is authorized and directed to weigh the mails on railroad routes, for not less than 30 successive working days, and to readjust compensation from the date of the commencement of said weighing at not exceeding the rates provided by law: *Provided further,* That from the commencement of said weighing the transportation of second-class matter in fast freight trains and the manner of handling incident thereto shall be discontinued, and thereafter said mail shall be carried in the regular mail trains and compensation allowed therefor, the purpose being to reestablish the system in vogue prior to the establishment of the blue-tag system.

The SPEAKER. Now, the Clerk will report the amendment of the gentleman from Kansas [Mr. MURDOCK].

The Clerk read as follows:

Strike out the following words in Senate amendment No. 26:

"*Provided further,* That on account of the increased weight of mails resulting from the establishment of the parcel post the Postmaster General is authorized and directed to weigh the mails on railroad routes for not less than 30 successive working days and to readjust compensation from the date of the commencement of said weighing at not exceeding the rates provided by law: *Provided further,* That from the commencement of said weighing the transportation of second-class matter in fast freight trains and the manner of handling incident thereto shall be discontinued, and thereafter said mail shall be carried in the regular mail trains and compensation allowed therefor, the purpose being to reestablish the system in vogue prior to the establishment of the blue-tag system."

Mr. ANDERSON. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman rise?

Mr. ANDERSON. For a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. ANDERSON. The proposal of the gentleman from Kansas is to strike out two substantive propositions. Is it in order to demand a division of that question?

The SPEAKER. It is not on the question of striking out two substantive propositions; it is a question of whether the amendment itself contains more than one substantive proposition.

Mr. MURDOCK. Mr. Speaker, Senate amendment numbered 26 to the House bill provides several things.

First, it makes the ordinary appropriation of a lump sum for transportation of mail by railroad routes. Then comes the first proviso in the paragraph, one relating to a reduction in the compensation made to the St. Louis Terminal Co. for the transportation of mail across the bridge at St. Louis, a matter of frequent controversy, but which just now is comparatively a minor matter.

Mr. MOON of Tennessee. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. MOON of Tennessee. Is the gentleman from Kansas [Mr. MURDOCK] entitled to the floor? I have not yielded it.

The SPEAKER. Of course the gentleman from Tennessee [Mr. MOON] is entitled to the floor, and can yield as much time as he wishes.

Mr. MURDOCK. Of course the gentleman from Tennessee is entitled to the floor.

Mr. MOON of Tennessee. How much time does the gentleman from Kansas [Mr. MURDOCK] wish?

Mr. MURDOCK. About 10 minutes.

Mr. MOON of Tennessee. I think we can stand the gentleman for 10 minutes.

Mr. MURDOCK. All right; I hope the gentleman can.

The SPEAKER. The gentleman from Kansas [Mr. MURDOCK] is recognized for 10 minutes.

Mr. MURDOCK. The second proposition in this amendment is a very important one. It proposes a special weighing of the mails throughout the entire country. The third proposition in this amendment is one which seeks to return to the regular mail service second-class matter which has been recently taken out of the regular mail service and dispatched, with economy, by fast freight. Now, the item in toto involves an increased expenditure to the Government of $9,857,000.

Mr. MOON of Tennessee. May I ask the gentleman to explain it?

Mr. MURDOCK. The gentleman has given me only 10 minutes.

Mr. MOON of Tennessee. I will give the gentleman more time on that.

Mr. MURDOCK. Now, if the gentleman will, and does not shut me off, I will explain. That expenditure is divided as follows: The increase to the Government by reason of the increased weights found in a special weighing of the regular mail, and not parcel-post mail, will be annually $3,361,000. The increase by reason of increased weight due to the addition of parcel post to the mail system will be $4,011,000. The increase in expenditure through abandoning the blue-tag system and taking certain second-class mail matter out of fast freights and putting it back in the regular mail system will be $1,485,000.

Mr. WEEKS. Will the gentleman yield?

Mr. MURDOCK. I will not yield at this time. Let me complete this proposition.

The cost of the special weighing itself will be $500,000. Now, I want to say to the House I fully appreciate there is an added burden upon the railroads by reason of the adoption of a parcel-post system. The weights are heavier because of that; but there is no reason under heaven why Congress should grant increased pay to the railroads on classes of mail matter other than parcel post. And I make that statement with the following idea in mind: This country, for the weighing of the mails, is divided into four different sections. New England is one section; the South is another; west of the Mississippi is another; and the Central States compose the fourth. The mails are weighed in one of these four sections once every four years. The original rate of pay to the railroads was based on the proposition that these weighings in the sections were to be quadrennial; that there would be an increase in the weight of mail during the passage of four years after the weighing in each one of these sections. Now, the proposition of this Senate amendment is to depart from the old system of the quadrennial weighing without changing the basis of pay to the railroads, and to have an annual weighing for the whole country.

Mr. MOON of Tennessee. Will the gentleman yield?

Mr. MURDOCK. I yield to the gentleman.

Mr. MOON of Tennessee. I understand the gentleman does not agree to this amendment?

Mr. MURDOCK. Certainly not. I do not agree to it in toto. I agree to a part of it.

Mr. MOON of Tennessee. I do not agree to it either. I do not see that there is any dispute between us.

Mr. MURDOCK. I want to get this House on record on this proposition. The gentleman from Tennessee knows that at this late hour in the session, after this bill has gone again to conference and has come again here in the rush of business it will be impossible to get a separate vote on this proposition.

Mr. MOON of Tennessee. Let me ask the gentleman further. The gentleman concedes he opposes this amendment. The three House conferees are in opposition to it. Do you want to tie the hands of the conferees by instructions, and keep us continually passing over here to the Senate on the question?

Mr. MURDOCK. Not at all, but I want the House to have a separate vote on this proposition. It is of major importance. The amount involved in this paragraph is considerably more than the cost of a battleship. We have a commission at present investigating this matter of railway mail pay. Why start in now, why come in at this point with an absolute change of system, involving an increased expenditure on the part of the Government of millions of dollars?

I desire to say to the gentleman that if the Government is to abandon the quadrennial weighing of the mails as a basis for the pay, then there should be material changes in the rate of pay, and it should not come piecemeal. The Government should not be foreclosed its rights in the premises, and we ought not to change one part of the system, namely, the matter of weight, without changing the other part of the system, which is the matter of rate of pay.

Now I want to yield to the gentleman from Massachusetts [Mr. WEEKS], whom I took off the floor, I fear, rather unfairly.

Mr. WEEKS. What I wish to ask of the gentleman from Kansas is how accurate his figures are, and where he gets them?

Mr. MURDOCK. I understand they were given to the Senate by the Post Office Department.

Mr. WEEKS. Of course they are estimates at best.

Mr. MURDOCK. Oh, they are absolutely estimates. But I want to ask the gentleman from Massachusetts, Why can we not ascertain what the parcel post has added to the mails and increase the pay to the railroads on the basis of that ascertainment? Why increase the pay on regular mail matter?

Mr. WEEKS. Let me ask the gentleman from Kansas how he would do it?

Mr. MURDOCK. I would first have a weighing, and then increase the pay in proportion to the weight carried by respective railroads.

Mr. LEWIS. Mr. Speaker, may I ask a question of the gentleman from Massachusetts?

Mr. MURDOCK. Yes; I yield to the gentleman for that purpose.

Mr. LEWIS. The Post Office Department for statistical purposes will be taking the weight of all the parcels shipped. It will also be taking the zones to which they are destined. The zones and the weight together will give them an aggregate of the express parcel matter. From that the department can determine how much is owing to the railroads as a whole for this excess traffic. It can then agree to pay the railroads for this excess service, not letter rates, but express railway rates, which are less than one-half the rates paid for carrying letters.

The SPEAKER. The time of the gentleman from Kansas has expired.

Mr. MURDOCK. Mr. Speaker, I will ask the gentleman from Tennessee [Mr. MOON] to yield to me five minutes more, and then I shall not encroach on his good nature further.

Mr. MANN rose.

Mr. MOON of Tennessee. All right. Mr. Speaker, I yield five minutes more to the gentleman from Kansas.

Mr. MURDOCK. Now I yield to the gentleman from Illinois [Mr. MANN].

Mr. MANN. I want to ask the gentleman as to a question of procedure. This amendment is the only Senate amendment left in disagreement, is it not?

Mr. MURDOCK. I was not aware of that fact.

Mr. WEEKS. It is.

Mr. MANN. Oh, yes. Every amendment was disposed of except two in the conference report, and we have just agreed to the other one. That being the case, if the conference report comes back here it comes back squarely on that one amendment. Would it not be advisable to disagree to the Senate amendment and permit the bill to go to conference, so that if the conference committee does not report back an arrangement that is satisfactory to the gentleman, he can then make his fight?

Mr. MURDOCK. I am sorry to see the gentleman take that view. Here is an opportunity. There is no reason why we should not have action at the present time.

Mr. MANN. The gentleman has prepared an amendment, but I have not the slightest idea as to what it is.

Mr. MURDOCK. It is a simple amendment. It strikes out that part referring to the special weighing and the blue-tag provision, and otherwise it is the same as the original Senate amendment.

I want to say further that the trend of opinion in this country among many who understand the question or who are active in regard to it is, in my opinion, to get away from weight as the basis for the payment of the transportation of the mail, and to take up space as a basis.

Now, after long, long years of fraud, the graft has been boiled out of the weight proposition in the carriage of the mails. Within the last 5 years, and for the first time in 35 years, the weight basis has been honest. Before that it was dishonest. Now, the tendency is to get away from the tangible, visible element of weight as a basis of pay, and go into a thing like space as a basis, space used in the railroad cars for the carriage of mails, 10, 20, 30, 40, or 50 feet of space in a car.

Mr. LLOYD. Mr. Speaker, will the gentleman yield?

Mr. MURDOCK. Just a moment. As soon as this special weighing proposition becomes a law, that moment, in my opinion, you will have the last weighing covering this country. And thereafter, by reason of the drift in this matter, we will pass from weight as a basis of pay entirely and go into the matter of space, with a resultant increase of expenditure to the Government, not of two or three or five or nine million dollars, but of many million dollars more.

Mr. LLOYD. Is the gentleman aware of the fact that the railroad companies, who are the other party interested in the question of railway-mail pay, are opposed to the space basis, and in all the hearings thus far had before the railway-mail pay commission they have opposed it vigorously?

Mr. MURDOCK. They never have in discussing it with me, I will say to the gentleman.

I yield back the balance of my time. I hope the House will adopt my amendment. [Applause.]

Mr. MOON of Tennessee. Mr. Speaker, on account of the insistence of the gentleman from Kansas [Mr. MURDOCK], while there was no direct agreement made to do so, it was impliedly understood in the House from what I said when this matter went to conference that the conferees would bring this question back to the House for consideration. We have purposely done so, making a partial report, leaving only two items to be disposed of in the whole bill; and then, on a motion to concur, we disposed of that one in the House this evening, leaving the single question at issue in which the gentleman from Kansas is concerned.

We did this in order that he might have, if he wanted it, a separate vote upon the question, which he could not have had if a full report had been brought in. Now he seeks to impose upon the conferees an instruction. He ought to know that on the questions involved in this proposition the Senate, by an almost unanimous vote, having put this amendment in, we can not go back and have a full and free conference. If we are instructed, we can only say to them what the opinion of the House is upon the question, and they can reply to us that that is not the opinion of the Senate, and we shall go through the futile and senseless performance of coming back here and again asking for further instruction. I think it is not a wise thing to agree to the gentleman's amendment or to tie the hands of the conferees. We can probably reach an agreement that will be satisfactory to this House if we have a full and free conference. If we do not do that, it is in the power of the House, there being but this one question at issue, to vote upon the matter and determine it as it will. I hope the House will not vote to sustain this proposition of the gentleman from Kansas.

The SPEAKER. The question is on the motion of the gentleman from Kansas to recede and concur as to Senate amendment 26.

The question being taken, the Speaker announced that the noes appeared to have it.

Mr. MURDOCK. Division, Mr. Speaker.

The House divided; and there were—ayes 76, noes 67.

Mr. MOON of Tennessee and Mr. HENRY of Texas made the point of no quorum present.

The Speaker, after counting, announced 181 Members present, not a quorum.

Mr. HARDWICK. I move a call of the House.

The SPEAKER. It is automatic. The Doorkeeper will lock the doors, the Sergeant at Arms will notify absentees, and the Clerk will call the roll. Those in favor of the motion of the gentleman from Kansas [Mr. MURDOCK] will vote "yea," those opposed "nay."

The question was taken; and there were—yeas 118, nays 168, answered "present" 13, not voting 82, as follows:

YEAS—118.

Aiken, S. C.	Faison	James	Rubey
Ainey	Farr	Johnson, Ky.	Scully
Akin, N. Y.	Fergusson	Jones	Sharp
Allen	Fields	Kendall	Sisson
Anderson	Floyd, Ark.	Kent	Sloan
Ashbrook	Fornes	Kinkaid, Nebr.	Smith, Tex.
Bathrick	Foster	Kitchin	Stedman
Berger	Fowler	Kopp	Stephens, Cal.
Borland	Francis	Lafean	Stephens, Miss.
Callaway	French	La Follette	Stephens, Tex.
Campbell	Gallagher	Lenroot	Stone
Candler	Goldfogle	Lindbergh	Talcott, N. Y.
Cary	Good	Lobeck	Taylor, Ark.
Claypool	Goodwin, Ark.	McKellar	Taylor, Colo.
Cline	Graham	Macon	Thomas
Collier	Gray	Maguire, Nebr.	Townsend
Cooper	Green, Iowa	Martin, Colo.	Tribble
Copley	Hamlin	Morgan, La.	Underhill
Cox	Hammond	Morgan, Okla.	Vare
Cullop	Hardwick	Murdock	Volstead
Daugherty	Hardy	Nelson	Warburton
Davis, Minn.	Harrison, Miss.	Norris	Whitacre
Dickinson	Haugen	Oldfield	White
Dies	Helgesen	O'Shaunessy	Willis
Difenderfer	Helm	Pepper	Witherspoon
Dixon, Ind.	Henry, Tex.	Rainey	Woods, Iowa
Donohoe	Hensley	Raker	Young, Kans.
Doremus	Howard	Randell, Tex.	Young, Tex.
Doughton	Jackson	Rees	
Esch	Jacoway	Roddenbery	

NAYS—168.

Adair	Driscoll, M. E.	Henry, Conn.	Padgett
Adamson	Dupré	Higgins	Page
Alexander	Dwight	Hill	Patton, Pa.
Austin	Dyer	Hinds	Peters
Barnhart	Edwards	Holland	Plumley
Bartholdt	Ellerbe	Houston	Post
Bartlett	Estopinal	Howell	Pou
Bates	Evans	Howland	Powers
Beall, Tex.	Fairchild	Hughes, Ga.	Pray
Bell, Ga.	Finley	Humphrey, Wash.	Prince
Blackmon	Fitzgerald	Humphreys, Miss.	Pujo
Brantley	Flood, Va.	Johnson, S. C.	Ransdell, La.
Broussard	Fordney	Knowland	Roberts, Mass.
Browning	Foss	Konop	Roberts, Nev.
Buchanan	Fuller	Langham	Rodenberg
Bulkley	Gardner, Mass.	Langley	Rouse
Burgess	Gardner, N. J.	Lawrence	Russell
Burke, Pa.	Garner	Lee, Pa.	Saunders
Burke, S. Dak.	Garrett	Lewis	Scott
Burleson	Gill	Linthicum	Sherley
Burnett	Gillett	Littlepage	Sherwood
Butler	Godwin, N. C.	Lloyd	Slemp
Byrnes, S. C.	Goeke	McCoy	Small
Byrns, Tenn.	Gould	McDermott	Smith, Saml. W.
Calder	Greene, Mass.	McGuire, Okla.	Speer
Cannon	Greene, Vt.	McKenzie	Stephens, Nebr.
Cantrill	Gregg, Pa.	McKinley	Sterling
Carlin	Gregg, Tex.	McLaughlin	Stevens, Minn.
Carter	Griest	McMorran	Sweet
Clayton	Gudger	Mann	Taylor, Ala.
Conry	Guernsey	Matthews	Thayer
Covington	Hamill	Mays	Thistlewood
Cravens	Hamilton, Mich.	Miller	Tilson
Crumpacker	Hamilton, W. Va.	Moon, Tenn.	Towner
Curley	Harrison, N. Y.	Moore, Tex.	Turnbull
Dalzell	Hart	Morrison	Tuttle
Davis, W. Va.	Hawley	Moss, Ind.	Watkins
De Forest	Hay	Mott	Weeks
Dent	Hayden	Murray	Wilder
Denver	Hayes	Needham	Wilson, Ill.
Draper	Heald	Nye	Wood, N. J.
Driscoll, D. A.	Heflin	Olmsted	Young, Mich.

ANSWERED "PRESENT"—13.

Booher	Hull	Sabath	Stanley
Clark, Fla.	McCreary	Shackleford	
Glass	Parran	Slayden	
Hobson	Payne	Sparkman	

NOT VOTING—82.

Ames	Harris	Madden	Rucker, Colo.
Andrus	Hartman	Maher	Rucker, Mo.
Ansberry	Hughes, W. Va.	Martin, S. Dak.	Sells
Anthony	Kahn	Merritt	Simmons
Ayres	Kennedy	Mondell	Sims
Barchfeld	Kindred	Moon, Pa.	Smith, J. M. C.
Boehne	Kinkead, N. J.	Moore, Pa.	Smith, N. Y.
Bradley	Konig	Morse, Wis.	Stack
Brown	Korbly	Neeley	Steenerson
Burke, Wis.	Lafferty	Palmer	Sulloway
Crago	Lamb	Patten, N. Y.	Switzer
Currier	Lee, Ga.	Pickett	Taggart
Curry	Lever	Porter	Talbott, Md.
Danforth	Levy	Prouty	Taylor, Ohio
Davenport	Lindsay	Rauch	Underwood
Davidson	Littleton	Redfield	Vreeland
Dickson, Miss.	Longworth	Reilly	Webb
Dodds	Loud	Reyburn	Wilson, N. Y.
Ferris	McCall	Richardson	Wilson, Pa.
Focht	McGillicuddy	Riordan	
George	McKinney	Rothermel	

So the motion was lost.

The following additional pairs were announced:

For the session:

Mr. RIORDAN with Mr. ANDRUS.

Mr. TALBOTT of Maryland with Mr. PARRAN.

Until further notice:

Mr. LAMB with Mr. LAFFERTY.

Mr. GLASS with Mr. MCCREARY.

Mr. SIMS with Mr. MADDEN.

Mr. LEVER with Mr. MERRITT.

Mr. SPARKMAN with Mr. DAVIDSON.

Mr. AYRES with Mr. VREELAND.

Mr. BOEHNE with Mr. AMES.

Mr. BURKE of Wisconsin with Mr. ANTHONY.

Mr. DAVENPORT with Mr. BARCHFELD.

Mr. DICKSON of Mississippi with Mr. J. M. C. SMITH.

Mr. WILSON of New York with Mr. BRADLEY.

Mr. MAHER with Mr. CRAGO.

Mr. FERRIS with Mr. DODDS.

Mr. GEORGE with Mr. FOCHT.

Mr. KONIG with Mr. HUGHES of West Virginia.

Mr. KINKEAD of New Jersey with Mr. KAHN.

Mr. LEVY with Mr. KENNEDY.

Mr. LITTLETON with Mr. MCKINNEY.

Mr. MCGILLICUDDY with Mr. MARTIN of South Dakota.

Mr. NEELEY with Mr. MOORE of Pennsylvania.

Mr. PALMER with Mr. LONGWORTH.

Mr. PATTEN of New York with Mr. PICKETT.

Mr. RAUCH with Mr. PORTER.

Mr. REILLY with Mr. PROUTY.

Mr. RICHARDSON with Mr. REYBURN.

Mr. ROTHERMEL with Mr. SELLS.

Mr. RUCKER of Missouri with Mr. SIMMONS.

Mr. RUCKER of Colorado with Mr. SPEER.

Mr. SMITH of New York with Mr. STEENERSON.

Mr. TAGGART with Mr. SWITZER.

Mr. WEBB with Mr. TAYLOR of Ohio.

Mr. SLAYDEN with Mr. MOON of Pennsylvania (commencing Feb. 27, ending Monday next).

Mr. SPARKMAN. Mr. Speaker, has the gentleman from Wisconsin, Mr. DAVIDSON, voted?

The SPEAKER. He is not recorded.

Mr. SPARKMAN. I am paired with the gentleman from Wisconsin. I voted "no," and I wish to withdraw that vote and answer "present."

Mr. CLARK of Florida. Mr. Speaker, has the gentleman from New Mexico, Mr. CURRY, voted?

The SPEAKER. He is not recorded.

Mr. CLARK of Florida. I voted "no." I would like to withdraw that and answer "present."

The result of the vote was then announced as above recorded.

The SPEAKER. A quorum is present, and the Doorkeeper will open the doors. The question now recurs on the motion of the gentleman from Tennessee that the House further insist on its disagreement to Senate amendment 26 and agree to the conference asked for.

The motion was agreed to.

The SPEAKER appointed as conferees on the part of the House Mr. MOON of Tennessee, Mr. FINLEY, and Mr. WEEKS.

ARMY APPROPRIATION BILL.

Mr. HAY. Mr. Speaker, I call up the conference report on the bill H. R. 27941, the Army appropriation bill, and ask unanimous consent that the statement be read in lieu of the report.

The SPEAKER. The gentleman from Virginia calls up the conference report on the Army appropriation bill and asks unanimous consent that the statement be read in lieu of the report. Is there objection?

There was no objection.

The conference report and statement are as follows:

CONFERENCE REPORT (NO. 1602).

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 27941) making appropriations for the support of the Army for the fiscal year ending June 30, 1914, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 4, 5, 7, 14, 16, 19, 35, 36, 38, and 39.

That the House recede from its disagreement to the amendments of the Senate numbered 6, 8, 9, 11, 12, 13, 15, 17, 18, 20, 21, 22, 24, 25, 27, 28, 32, 33, and 34, and agree to the same.

Amendment numbered 1: That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment as follows: In lieu of

the matter proposed to be inserted by said amendment insert the following: "and the actual and necessary traveling expenses incurred by military attachés abroad under orders from the Secretary of War"; and the Senate agree to the same.

Amendment numbered 2: That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment as follows: Restore the language proposed to be stricken out by said amendment, amended as follows: In line 4, after the word "increased," strike out the word "fifty" and in lieu thereof insert "thirty-five"; and the Senate agree to the same.

Amendment numbered 3: That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by said amendment insert the following: ": *Provided*, That hereafter, in determining the eligibility, under the provisions of the act of Congress approved August 24, 1912, of troop, battery, or company officers for detail as officers of the various staff corps and departments of the Army, except the General Staff Corps, service actually performed by any such officer with troops prior to December 15, 1912, as a regimental, battalion, or squadron staff officer, shall be deemed to have been duty with a battery, company, or troop: *Provided further*, That regimental, battalion, and squadron quartermasters and commissaries shall hereafter be required to perform the duties of officers of the Quartermaster Corps, including the receipting for any money or property pertaining to said corps, when no officer of the Quartermaster Corps is present for such duties, and nothing contained in the Army appropriation act approved August 24, 1912, shall hereafter be held or construed so as to prevent competent authority from requiring any officers of the Army to act temporarily as quartermasters wherever there shall be no officers of the Quartermaster Corps and no regimental, battalion, or squadron quartermasters or commissaries present for such duty"; and the Senate agree to the same.

Amendment numbered 10: That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment as follows: At the end of the matter inserted by said amendment, after the word "seven," insert the following: ": *Provided*, That this shall not be so construed as to increase the total number of officers now in the Regular Army"; and the Senate agree to the same.

Amendment numbered 23: That the House recede from its disagreement to the amendment of the Senate numbered 23, and agree to the same with an amendment as follows: In lieu of the amount proposed in said amendment insert "$7,052,648"; and the Senate agree to the same.

Amendment numbered 26: That the House recede from its disagreement to the amendment of the Senate numbered 26, and agree to the same with an amendment as follows: After the amount proposed in said amendment insert: ": *Provided*, That of this appropriation the sum of $150,000 shall be spent for the construction of the necessary officers' quarters and other buildings required at the remount depot, Front Royal, Va."; and the Senate agree to the same.

Amendment numbered 29: That the House recede from its disagreement to the amendment of the Senate numbered 29, and agree to the same with an amendment as follows: In lieu of the amount proposed in said amendment insert "$1,534,412"; and the Senate agree to the same.

Amendment numbered 30: That the House recede from its disagreement to the amendment of the Senate numbered 30, and agree to the same with an amendment as follows: In line 2 of the matter proposed to be inserted by said amendment, after the word "used," insert "by the Board of Road Commissioners for Alaska"; and the Senate agree to the same.

Amendment numbered 31: That the House recede from its disagreement to the amendment of the Senate numbered 31, and agree to the same with an amendment as follows: In line 3 of the matter proposed to be inserted by said amendment, before the word "years," strike out the word "ten" and in lieu thereof insert the word "six"; and the Senate agree to the same.

Amendment numbered 37: That the House recede from its disagreement to the amendment of the Senate numbered 37, and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by said amendment insert the following:

"Automatic machine rifles: Authority is hereby conferred upon the Secretary of War, if in his opinion it be for the best interests of the service, to contract for the construction of automatic machine rifles and their appurtenances to the extent of not exceeding $150,000, prior to June 30, 1914."

And the Senate agree to the same.

Amendment numbered 40: That the House recede from its disagreement to the amendment of the Senate numbered 40, and agree to the same with an amendment as follows: At the end of the matter inserted by said amendment, after the word "passed," insert: "*Provided*, That prior to July 1, 1913, the President may, when deemed by him necessary, empower any officer competent under the terms of this act to appoint the general courts-martial which it authorizes, to appoint general courts-martial authorized by exising law"; and the Senate agree to the same.

JAMES HAY,
JAMES L. SLAYDEN,
GEO. W. PRINCE,
Managers on the part of the House.
H. A. DU PONT,
F. E. WARREN,
JOS. F. JOHNSTON,
Managers on the part of the Senate.

STATEMENT.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 27941) making appropriations for the support of the Army for the fiscal year ending June 30, 1914, submit the following written statement explaining the effect of the amendments agreed upon by the conferees and recommended in the accompanying conference report.

Amendment No. 1: Provided for the cost of special instruction of students and attachés abroad, and the House receded with an amendment providing for actual and necessary expenses of attachés abroad when traveling under orders of the Secretary of War.

Amendment No. 2: Struck out the provision of the House which provided for increased pay for Army aviators, and the House receded with an amendment providing 35 per cent additional pay instead of the 50 per cent increase provided by the House.

Amendment No. 3: Provided for a change in the detached service clause contained in the act approved August 24, 1912, and the House receded with the following amendment:

Provided, That hereafter in determining the eligibility, under the provisions of the act of Congress approved August 24, 1912, of troop, battery, or company officers for detail as officers of the various staff corps and departments of the Army, except the General Staff Corps, service actually performed by any such officer with troops prior to December 15, 1912, as a regimental, battalion, or squadron staff officer, shall be deemed to have seen duty with a battery, company, or troop: *Provided further*, That regimental, battalion, and squadron quartermasters and commissaries shall hereafter be required to perform the duties of officers of the Quartermaster Corps, including the receipting for any money or property pertaining to said corps, when no officer of the Quartermaster Corps is present for such duties, and nothing contained in the Army appropriation act approved August 24, 1912, shall hereafter be held or construed so as to prevent competent authority from requiring any officers of the Army to act temporarily as quartermasters wherever there shall be no officers of the Quartermaster Corps and no regimental, battalion, or squadron quartermasters or commissaries present for such duty.

Amendment No. 4: Provided for the exemption of Capt. Frank Parker from the operation of the act approved August 24, 1912, and the Senate receded.

Amendment No. 5: Provided for a change in the act of August 24, 1912, with regard to all employees in the unclassified service under the jurisdiction of the War Department, and the Senate receded.

Amendment No. 6: Inserted the total amount appropriated for clerks, messengers, etc., and the House receded.

Amendment No. 7: Struck out the House provision that hereafter no further appointments of pay clerks shall be made, and the Senate receded.

Amendment No. 8: Provided for an increase in the number of nurses, and the House receded.

Amendment No. 9: Provided for an increase of the amount appropriated for nurses, and the House receded.

Amendment No. 10: Provided for an increase of one major in the Judge Advocate General's Department, and the House receded with an amendment providing that such increase should not add another officer to the Army.

Amendment No. 11: Provided that $100,000 of the fund for mileage to officers and others shall be immediately available, and the House recedes.

Amendment No. 13: Provides for the purchase of land suitable for Field Artillery, out of the appropriation for encampment and maneuvers, Organized Militia, and the House recedes.

Amendment No. 14: Increases the appropriation provided by the House, $90,000, and the Senate recedes.

Amendment No. 15: Provides for the expenses incident to holding an international rifle-shooting competition at Camp Perry, Ohio, and the House recedes.

Amendment No. 16: Provides for rations and commutation of rations for employees of the harbor-boat service, and the Senate recedes.

Amendment No. 17: Inserts the word "regulation" for the purpose of complying with existing law, and the House recedes.

Amendment No. 18: Provides for expense of subsistence of West Point cadets while attending the inaugural ceremony, and the House recedes.

Amendment No. 19: Increases the appropriation provided for by the House, $41,580, and the Senate recedes.

Amendments Nos. 20 and 21: Changes the wording to comply with the law, and the House recedes.

Amendment No. 22: Provides for seeds and implements required for the raising of forage on military reservations in the Hawaiian and Philippine Islands, and the House recedes.

Amendment No. 23: Provides for an increase of the appropriation provided by the House, and the House recedes with an amendment reducing the amount by $7,505.

Amendment No. 24: Inserts the word "discharge" in lieu of the word "discharges," and the House recedes.

Amendment No. 25: Provides that $100,000 of the appropriation for horses for Cavalry, Artillery, and Engineers, etc., shall be immediately available, and the House recedes.

Amendment No. 26: Increases the appropriation for barracks and quarters, and the House recedes with an amendment providing that $150,000 of the appropriation shall be expended at the remount depot, Front Royal, Va.

Amendment No. 27: Provides that $1,300 shall be spent out of the appropriation for military post exchange for the payment of existing indebtedness on the chapel building at Fort Sam Houston, Tex., and the House recedes.

Amendment No. 28: Provides for not more than $1,500 for a sidewalk out of the appropriations for roads, walks, wharves, and drainage at Winthrop, Mass., and also for the sale of ripe timber in the Fort Canby Military Reserve, Wash., and the House recedes.

Amendment No. 29: Increases the appropriation for waters and sewers, and the House recedes with an amendment decreasing the appropriation made by the Senate by $5,498.

Amendment No. 30: Increases the appropriation made by the House $55,000, the increased appropriation to be used for the protection of the Signal Corps buildings and terminal grounds of the Alaska military cable and telegraph system at Valdez, Alaska, and the House recedes.

Amendment No. 31: Provides that the heads of the several executive departments be authorized to lease fireproof storage accommodations at rates not exceeding 25 cents per square foot, and the House recedes with an amendment providing that the lease shall not exceed six years.

Amendment No. 32: Provides for an increase of the appropriation for claims for damages to and loss of private property by $1,160.95, and the House recedes.

Amendment No. 33: Strikes out the word "ambulance" and inserts the word "ambulances," and the House recedes.

Amendment No. 24: Inserts a comma, and the House recedes.

Amendment No. 35: Increases the appropriation made by the House for the Medical and Hospital Department by $25,000, and the Senate recedes.

Amendment No. 36: Strikes out the limitation on the price of powder fixed by the House, and the Senate recedes.

Amendment No. 37: Provides an appropriation of $150,000 for the purchase and manufacture of automatic machine rifles, and the House recedes, with an amendment providing that the Secretary of War may expend that amount for that purpose, if in his opinion it is for the best interests of the service.

Amendment No. 38: Provides that hereafter appropriations made for the Ordnance Department shall be available for the payment of royalties on all royalty contracts, and the Senate recedes.

Amendment No. 39: Provides that the Pacific Branch of the National Home for Disabled Volunteer Soldiers, at Santa Monica, Cal., be transferred to the War Department, and the Senate recedes.

Amendment No. 40: Provides for a change in the law governing courts-martial, and the House recedes, with an amendment providing that the same may take effect prior to July 1, 1913, this being rendered necessary by the assembling of troops in Texas.

The amount added to the bill by the Senate was $680,000.

The amount deducted by the action of the conferees was $319,583.

JAMES HAY,
JAMES L. SLAYDEN,
GEO. W. PRINCE,
Managers on the part of the House.

Mr. HAY. Mr. Speaker, if any gentleman desires to ask a question, I will try and answer him.

Mr. RODDENBERY. That is the purpose for which I rose. There was a little disorder, and I could not understand whether the conference report covered a complete agreement or whether it was only on certain items.

Mr. HAY. It is a complete agreement.

Mr. RODDENBERY. Has the gentleman made any accurate calculation as to the amount that the bill will carry as agreed upon over what it was when it passed the House?

Mr. HAY. The Senate added $680,000 to the bill, and receded from $319,000.

Mr. RODDENBERY. Leaving a net increase of about $300,000 over the amount as it passed the House?

Mr. HAY. Yes.

Mr. RODDENBERY. What about the powder item?

Mr. HAY. The Senate receded and leaves the limitation upon the price of powder as passed by the House.

Mr. RODDENBERY. The limitation fixed in the bill as passed by the House?

Mr. HAY. Yes.

Mr. RODDENBERY. I understood that the Senate had receded with the limit fixed by the House removed.

Mr. HAY. No; the statement read that the Senate receded from its action in striking out the limitation fixed by the House.

Mr. TILSON. Will the gentleman yield to me?

Mr. HAY. I yield to the gentleman from Connecticut.

Mr. TILSON. Mr. Speaker, as is well known to many Members of the House, I have been deeply interested in the establishment of a national military reserve. For nearly two years I have been studying this subject. About a year ago I introduced a bill (H. R. 24601) providing for such a reserve, and a little later submitted to the House some observations on behalf of the bill. Unfortunately, that bill sleeps the sleep of the just in the archives of the Committee on Military Affairs. The principle of it, however, was recognized in a rider to the current appropriation bill, in which the period of enlistment was fixed at seven years, but instead of fixing the period of service with the colors at three or, better, two years and with the reserve four or five years, four years are required with the colors and only three in the reserve.

I sincerely believe that an adequate military reserve of trained men is one of the absolute necessities of a proper system of national defense, and that it must be established in the near future if those responsible for the maintenance of our military establishment would escape serious blame for any national disaster suffered for lack of it.

In the last issue of the Infantry Journal is a brief article written by me on the subject of "The necessity for a military reserve." I ask unanimous consent to extend my remarks in the RECORD by printing the article referred to, together with an editorial on the subject by Maj. Evan M. Johnson, jr., and extracts from advance sheets of an article by Maj. Carl Reichmann on the same general subject.

The article, editorial, and extracts referred to are as follows:

THE NECESSITY FOR A MILITARY RESERVE.

(By Hon. JOHN Q. TILSON, M. C., lieutenant colonel Second Infantry, Connecticut National Guard.)

Like many others, I had assumed that if substantially half the enlisted men of a military organization were well trained, this half would rapidly train the other half, especially in time of war. Our system of having a prescribed war strength in our regulations and an actual peace strength of a little more than half the number seems to have been founded upon this theory.

The skeleton regiments of certain foreign countries would indicate that the same notion has prevailed elsewhere. It has never been tried out in our Army, even in time of peace. Prior to the mobilization of a division in Texas in the spring of 1911 no large maneuvers of regular troops exclusively were held in the United States. Many of the organizations mobilized there were below the authorized peace strength. As trouble on the Mexican border was confidently expected, recruiting was rushed and recruits sent forward to fill up the various organizations as rapidly as possible. Some of the companies had as high as 45 per cent of new men. Company commanders and higher officers complained bitterly of the demoralization caused by the injection of so large a percentage of untrained men. Many officers expressed the opinion that if it were a case of real fight they would rather go into it with the peace-strength company of trained men than with a war-strength company nearly half of whom are raw recruits. In other words, that 60 trained men would be more effective in battle than 60 trained men plus 40 raw recruits mingled with them. If this be so, and its acceptance by so many of the best-informed officers of the Army would indicate that it is coming to be generally accepted, then something should be done.

There are at least three ways of meeting the situation.

First, by reducing the prescribed war strength to the present peace strength. An insuperable objection to this plan is that the small number of rifles as compared to the number of officers would make such an organization extravagantly expensive in case of a large army in time of

war. In addition to the increased expense, such an organization would make the usual tactical units too small for the greatest efficiency.

Second, by increasing the present peace strength to the prescribed war strength. This method would be most acceptable to the Army itself, provided that the number of organizations and the commissioned strength were not diminished while the enlisted strength was so greatly increased. The expense of maintaining such a force in time of peace would, of course, greatly increase the total expense of the Army, a thing of itself undesirable.

Third, by the establishment and maintenance of a reserve in such a way as to be able at short notice to fill the ranks of all organizations to the prescribed war strength with trained men.

The reserve provided for in H. R. 24601, introduced by me last year, contemplates accomplishing just this purpose. In this bill the proposed reserve is divided into two classes, somewhat imperfectly described as active and inactive. Under its provisions the active reserve is to be carried on the rolls of the several organizations of the Regular Army and of the Organized Militia, but not to serve with the colors, except for a brief period each year at maneuvers. The inactive reserve is intended to constitute a second line of defense, and to serve as a reservoir from which to draw men to supply wastage in the first line.

The essential and distinguishing feature of the proposed reserve is that it shall consist of men already trained, and that these men shall be available for immediate service. With such a plan in operation the Army would become essentially a school for the training of soldiers, and that under such conditions that the men would be withdrawn from their several civil pursuits during the period of schooling only, but be available for immediate service in case of war.

In all schemes not purely ideal or visionary it is incumbent upon the proposer to show the practicability of the proposed plan. In a speech delivered in the House of Representatives last July, I submitted figures showing the approximate cost of such a reserve and how it could be established and maintained. It was there shown that a reserve large enough to fill every organization of the Army to the prescribed war strength could be maintained for $775,000, or just about the cost of maintaining two infantry regiments. I shall speak here only of the necessity for such a reserve.

The wars of the future will come suddenly and be decided quickly. The transmission of intelligence by electricity and the wonderful development of firearms combine to make this a certainty. The possibilities of destruction are at present so great as to make it impossible for wars to long endure. Time was when the country having the greater resources usually won in the long run. The time is at hand when the country that is ready for war will win while the country with great resources only is still absorbed in making preparation. "In time of peace prepare for war" is a truism so generally accepted that few would attempt to deny its truth or wisdom. If it were possible for us to know, for instance, that on July 4, 1915, the United States would be at war with a first-rate power, what busy months of preparation we should see. A few extra millions properly expended during the two and a half years interim would save billions of dollars, thousands of lives, and possibly the result of the war itself.

When war comes not only is there no time to train men to shoot and to take care of themselves in the field, but other more absorbing matters prevent this even when there is time. It is common knowledge that at the first battle of Bull Run both sides lacked training. Just before the Federal troops broke and ran away only Jackson's Stone Wall Brigade—the one that gave him his immortal title—stood between the Confederate Army and demoralization. Maj. Gen. Upton, in speaking of the causes of this disaster, begins as follows:

"First among them was the popular but mistaken belief that because our citizens individually possess courage, fortitude, and self-reliance they must necessarily possess the same qualities when aggregated as soldiers. And next to this error was the fatal delusion that an army animated by patriotism needed neither instruction nor discipline to prepare it for battle."

Unfortunately the mistaken belief and fatal delusion referred to by Gen. Upton still have a place in the popular imagination. At the battle of Antietam, although there were seasoned veterans on both sides, there were a number of regiments, especially on the Union side, absolutely without training. Many men engaged in that battle fired the first shot of their lives on that day, and unfortunately for many of them the last shot as well. I recall the history of two Connecticut regiments, which played a gallant part throughout their service, but were far from ready for such a battle at that time. The Fourteenth Regiment Connecticut Volunteer Infantry was mustered into service August 23, 1862, and the Sixteenth Connecticut was mustered in on August 24, 1862. Both participated in this the bloodiest one-day battle of the war on September 17, 1862. These two organizations serve only as illustrations, for there were others in the same condition in this battle and in others throughout the war. It is sad to note the losses among these untrained troops, and sadder still to observe that, in spite of all their individual courage and heroism, they were ineffective until they had received their training.

So far as preparation was concerned, very little seems to have been learned from the terrible lessons of the Civil War. The Spanish War found the country in practically the same situation. Again, there was neither time nor facilities for properly training new organizations. In many regiments no provision whatever was made to teach the men how to shoot. Nor was this the fault of regimental commanders. In the regiment to which I belonged there was no opportunity whatever for rifle practice, although the commanding officer was capable and unusually energetic in seeking every means to fit his command for service. After three months of carrying his rifle at drill, a lean, lanky Tennessee mountaineer in that regiment expressed it thus in his own language: "This is the fust d——d gun I ever toted till I wore it out without shootin' it." On account of his previous experience with a squirrel rifle this particular soldier might have been dangerous to the enemy in battle, but there were many in that regiment and in others without such experience who in battle would have been quite as dangerous to friend as foe.

All agree that a reserve of rifles should be established and maintained. Year after year Congress has appropriated for this purpose, until we now have almost a million rifles, with about 180,000,000 rounds of ammunition. Perhaps the most urgent need of the Army to-day, so far as matériel is concerned, is a reserve of field guns with an adequate reserve of ammunition. The present Congress is asked to make a substantial appropriation for this purpose, and it will undoubtedly do so, if it acts wisely. Even clothing, equipment, and tentage are all kept in reserve. In fact, we have reserves of everything except the most important thing of all—we have no reserve of men. In every war of our history such a reserve would have been of inestimable value and would have saved many times its cost in treasure as well as in human lives. In the speech above referred to I pointed out the increasing necessity for such a reserve of trained men. Every passing year will accentuate the need. If in a war of the future it shall turn out that no steps have been taken to thus avail ourselves of our greatest resource, our trained men, we shall not be free from blame who have had the responsibility and have failed to meet it wisely.

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RESERVES.

[Editorial by Maj. Evan M. Johnson, jr.]

Among the great nations of the world, the United States occupies the unique position of having no system of reserves whereby to raise her peace organizations to war strength when the occasion arises for their use. Only in States like Uruguay, Peru, Siam, Mexico, Santo Domingo, and Haiti is a similar condition found. Our policy is to depend upon patriotism or, this failing, upon bounties offered by the States and the United States to swell the ranks when war demands the services of our citizens, for it is evident that the only source from which we can draw the recruit with which to swell our armies is our untrained citizens. We should have profited by the lesson of the past, but, alas, final success has made us forget the unnecessary and frightful toll paid in death through disease and on the battle field. In the Civil War veteran regiments dwindled into nothingness through lack of reserves, and their places were taken by new ones, raw and untrained, who in turn paid their toll to the grim reaper, and in turn disappeared for like cause.

The little Regular Army that in 1898 fought at Santiago averaged but 560 men per regiment, it having been impossible to obtain the recruits necessary to raise them to the required 1,200 each before embarking on the expedition. And had this been possible it may be doubted whether the influx of a mass of raw, untrained material would not have made them so ineffective that the expedition would at that time have been impossible. Those who went were at least trained soldiers, and as such won an almost impossible victory. At the close of the campaign, due to the battle losses and tropical conditions, the Army was so depleted as to be ineffective. Had the war happily not terminated we would have been without regulars and would have been obliged to continue with untrained volunteers. The loss among these, as it was, without the vicissitudes of campaign, was appalling. What this loss would have been had their use therein been necessary one does not like to consider. To remedy this condition there is a means so simple, so economical, that the failure to apply it is difficult to understand. As already stated, practically every nation provides for a reserve of trained men whereby to fill to war strength the ranks of its peace organizations, and to replenish loss during war, but until the last moments of the last session of Congress no steps had even been taken by our lawmakers to make like provision, although the urgent necessity had again and again been pointed out by Presidents, War Secretaries, and generals. At this session an amendment made to the Army appropriation bill provided for a reserve to the Regular Army. The measure, as stated, was tacked on to the bill during the last moments of the session, and probably was therefore not given that consideration its importance deserved. But while open to many objections, it had one redeeming feature in that it recognized, for the first time, the principle which may be said to be vital to any military system. The law is more in the nature of a bounty system than a reserve, and embodied all the evil features of that system which since the days of the Revolution has been a fertile source of fraud and desertion. No provision is made for the pay or for the continued service necessary to retain men, to enable the Government to keep track of them, and the soldier in touch with his duties. However, looking back over the past, let us thank God for so much good, and trust that steps will shortly be taken to correct the faults of the present measure and that it may be the first step in the direction of that "policy" which it is hoped may become our law.

The system thus recognized is believed to have far-reaching effects, for while primarily intended for the Army, it must be remembered that in order to avail themselves of the Federal allotments the Organized Militia must conform to the organization of the Army. Two or three States have already taken steps to do this as regards reserves, and it is hoped that others will soon follow suit, for if the system is vital to the Regular Army with its trained officers and nucleus of trained soldiers, how much more so is it vital to the commander of a National Guard company, who will probably take into the field but 40 half-tained men, his company to be filled to 150. It can readily be understood how his labors will be lessened, how much more quickly this company will be ready to go to the front, should there be available to swell the ranks 110 even partially trained men, rather than the raw, undisciplined, untrained material he otherwise must "lick into shape."

It is said that such a system would entail too much labor on the part of officers of militia organizations, but a method might easily be devised for a State reserve and the organizations relieved of responsibility. In any event, if war be considered, the return in the saving in work, responsibility, and life would be so enormous that the extra labor in time of peace is well worth while.

Elsewhere in this magazine is an article by the Hon. JOHN Q. TILSON, M. C., which deals most admirably with the subject. Mr. TILSON is the author of a bill now before Congress looking to the creation of a reserve system for our Regular Army, Militia, and Volunteers. This bill, if passed, would remedy one of our greatest military defects. It deserves the earnest consideration and support of everyone interested in the military establishment, our success in war, and economy in life during war. It should find place in any "policy" adopted.

[Extracts from article by Maj. Carl Reichmann.]

OUR RESERVE SYSTEM.

The law passed by Congress last session, while generally prescribing four years' service with the colors and three with the reserve, provides for a number of alternatives, so that it is difficult to calculate just what the reserve produced thereby will be. The conscript system produces nearly 100 per cent of reservists from its annual inflow, but our service is affected by many circumstances that do not influence those of foreign armies, so that no comparison can be made with them, except perhaps with the British Army, which is recruited in a manner similar to ours.

By taking the ratio of the average number of discharges by expiration of enlistments for a number of years past, to the average number of enlistments and reenlistments for the same period, and applying it on the basis of four years' service with the colors, we may get some approximation to what the probable strength of the reserve will be. We find that from 1904 to 1911, both inclusive, the average number of annual enlistments and reenlistments was 29,846, and of discharges by expiration of term of service 16,494, i. e., 52 per cent of the men enlisted and reenlisted were discharged by expiration of term of service, as follows.

	Enlistments and reenlistments.	Discharges by expiration of term of service.
1904	28,003	16,592
1905	34,415	22,254
1906	24,752	9,948
1907	20,649	12,816
1908	42,420	18,485
1909	31,911	12,903
1910	18,580	11,911
1911	38,041	27,042
	238,771	131,951
Average	29,846	16,494

These figures closely approximate the British service, where the annual inflow yields 58 per cent in reservists, if our figures are correct, as follows:

	Total gain, all sources.	Transfers to reserve.
1907	45,853	32,776
1908	47,338	27,161
1909	44,885	21,296
1910	37,115	20,586
	175,191	101,819
Average	43,788	25,455

Assuming that under the present law with four years' service with the colors (and disregarding the alternatives) the company of infantry of 65 men receives an annual inflow of one-fourth of its strength, namely, 16.25 men, and that a like number goes out, then, according to our proportion, only 52 per cent of the 16.25 men, or 8.45, would be discharged by expiration of term of service, or rather would on completion of four years' service with the colors pass to the reserve for three years. By the end of the seventh year the company would have 65 men in ranks and three times 8.45 men in reserve, so could take the field with 65 plus 25.35, or 90 men. Allowing for a further loss of 5 per cent from natural causes among the reservists, the company would take the field with 86 men.

It will be remembered that opinions were divided as to length of service with the colors and with the reserve. A number of officers were for five years' service with the colors; the War Department advocated three years' service with the colors and four in the reserve, and has expressed itself generally in favor of the short service with the colors and long service in the reserve. Legislation has fixed the length of service with the colors at four years and in the reserve at three years.

Our present peace strength is 65 men per company, and the Field Service Regulations contemplate that it shall be raised to 108 men for war service. How far it will be possible to effect this augmentation with trained men from the reserve appears from the following table:

Years of service.		Strength of company.	Annual in and out flow.	Available for reserve.	Strength of company after seven years.	
With colors.	In the reserve.				Total.	Deducting 5 per cent.
2	5	65	32.5	16.9	150	142
3	4	65	21.7	11.23	110	105
4	3	65	16.25	8.45	90	86
5	2	65	13	6.75	79	75

It is evident at once that under the present law the company will produce in three years but 21 reservists and that it will be necessary to add 22 recruits to bring it up to the strength of 108 men contemplated in the Field Service Regulations. If service with the colors were two years and in the reserve five years, the company would have a surplus of 34 trained men, enough to keep its fighting strength up to the maximum for several months.

From the viewpoint of national defense, short service with the colors is preferable. It yields the larger reserve, it avoids preparatory work, such as recruit drill, at a time when everything of that kind should be completed; it throws all this preparatory training into the period of peace, where it belongs, but largely increases the work of the officers and noncommissioned officers during that period. Long service with the colors, on the other hand, furnishes long-service soldiers, entails a minimum of work in time of peace, and throws the maximum recruit training and similar preparatory work into the war period, where it is out of place.

The committee of the General Staff on the organization of our land forces has recommended a company of Infantry of 100 men in peace and of 150 in war. The subjoined table shows the reserve-producing capacity of this company:

Years of service.		Strength of company.	Annual in and out flow.	Available for reserve.	Strength of company after seven years.	
With colors.	In the reserve.				Total.	Deducting 5 per cent.
2	5	100	50	26	230	217
3	4	100	33⅓	17.33	169	161
4	3	100	25	13	139	132
5	2	100	20	10.4	121	115

Again we find that the present law requiring four years of service with the colors will not furnish a sufficient reserve to raise the company from 100 to 150 men. If the service with the colors were three years and with the reserve four, the company would have 161 men, and after transferring to the reserve its sick, its weaklings, and its old men it would perhaps just be able to take the field with 150 able men, leaving 11 noneffectives at home, and would have no reserve to fill up the gaps made by the first battles.

The foregoing is not to be understood as advocating the management of the reserve system by company; that unit has merely been selected here for convenience in calculating the probable numerical effect of the present law.

Mr. HAY. Mr. Speaker, I yield 10 minutes to the gentleman from Illinois.

Mr. PRINCE. Mr. Speaker, I entered this body as a Member in the Fifty-fourth Congress. I was appointed as a member of the Committee on Military Affairs in the Fifty-seventh Congress. When I entered upon my duties as a member of that committee I found two very distinguished members then upon that committee who are now the only Members, aside from myself, who were Members of the Fifty-seventh Congress. The present distinguished chairman of that committee, Mr. HAY, of Virginia, became a member of the Military Affairs Committee in the Fifty-sixth Congress, and the gentleman from Texas [Mr. SLAYDEN], an equally distinguished member of that committee, became a member in the Fifty-seventh Congress.

Our relations from the Fifty-seventh Congress down to the present moment as members of that committee have been cordial and pleasant. I take this opportunity to say that I have a very high regard for the faithful, vigilant, able, well-equipped chairman of the Military Affairs Committee, the distinguished gentleman from Virginia. [Applause.]

The side of the House of which he is a Member have in this Congress taken charge of public affairs, and I leave it to my colleagues here on both sides that few of the chairmen have been so well equipped to handle difficult matters like those before the Military Affairs Committee, or any large appropriation, amounting in the aggregate to ninety-odd million dollars, touching the various ramifications of our country as the military affairs bill does. He is always courteous, prompt, and possessed of knowledge when you ask him in reference to the bill he has in charge. At the last session we did not agree along the lines of how the legislation should be made, but it was an honest difference. We were each seeking to advance the Army as an Army, not seeking to get personal legislation for officers connected with the Army. The personnel of the Army is one thing. The Army as an arm of a great Government of which we are a part is another thing. That has been the aim of the chairman. That has been the aim of the gentleman from Texas [Mr. SLAYDEN], and that has been the aim of myself, to move along for the betterment of this great military establishment called a Regular Army. I do not know why it should be called a Regular Army. The young men who become officers volunteer their services. They ask to be sent to West Point or, so far as the naval branch of the military establishment is concerned, to Annapolis. They volunteer to give their service for life. The men who enlist in the Army go to the recruiting stations and volunteer their services for this country, to serve it, and they serve it well.

I have had something to do with the various Secretaries of War since I have been a member of this Committee on Military Affairs. I say now, and I say it without fear of successful contradiction, that next to Edwin M. Stanton, the great Civil War Secretary of War, no man has been the equal of the Hon. ELIHU ROOT, when he was Secretary of War under the administration of William McKinley. [Applause.] He it was who took the Army in the shape it was then and reorganized it. He it was who made the officers cease to be careless and indifferent so far as their military duties were concerned, and he it was who started them along the way of the schools and gave to them an impetus and an ambition to become distinguished officers of the most distinguished Army that there is in the world. I desire to pay my respects to him and others who have held that high position. Especially do I want to say that the Army officers and enlisted men are of a high type and are worthy successors of those who have gone before as members of the Army of this country.

Just one word more, Mr. Speaker. We are mobilizing our forces, as it were, along the border of our country, and I want to say this: That the one thing in my judgment which will stand out and commend itself for all time to the credit of the distinguished gentleman who occupies the office of President, Mr. William Howard Taft, is the fact that he declined to intervene in the trouble in Mexico and make a slaughter pen for the American soldiers of this Republic. [Applause.] Whatever else he may have done, history will accord to him the high distinction of being able to stand steady as the Rock of Gibraltar against the interests that sought to force him to intervene in

another country. And I firmly believe that the distinguished gentleman who will soon become President of the United States, the son of a minister, a believer in the Master, and peace on earth, good will to men, will follow in the footsteps of his illustrious predecessor, Mr. Taft, and that he will not intervene in the border troubles that may arise. [Applause.]

That is all I desire to say. [Prolonged applause.]

Mr. HAY. Mr. Speaker, I desire to make just a brief statement. I want to say that I have served on the Committee on Military Affairs since the Fifty-fifth Congress, and during the most of that service I have had the pleasure and honor of serving upon it with the distinguished gentleman from Illinois [Mr. PRINCE], who I regret to say is about to leave his service on that committee. During that time he has been most faithful and efficient and of great benefit to the country and to this House. [Applause.] I am sure that we all regret that we are to lose his valuable services, which have been made so efficient by reason of the long time that he has been a member of that committee, and we part with him with great regret. [Applause.]

The SPEAKER. The question is on agreeing to the conference report.

The conference report was agreed to.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had passed bill of the following title, in which the concurrence of the House of Representatives was requested:

S. 1142. An act to protect the monuments already erected on the battle field of Bull Run, Va., and other monuments that may be there erected.

PENSION APPROPRIATION BILL.

Mr. BARTLETT. Mr. Speaker, I submit a conference report on the bill (H. R. 28730), making appropriations for the payment of invalid and other pensions of the United States, for the fiscal year ending June 30, 1914, and for other purposes, and I ask unanimous consent to have the statement read in lieu of the report.

The SPEAKER. The gentleman from Georgia submits a conference report on the pension appropriation bill and asks unanimous consent that the statement be read in lieu of the report. Is there objection?

There was no objection.

The Clerk read the statement.

The statement and conference report are as follows:

CONFERENCE REPORT (NO. 1603).

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 28730) making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June 30, 1914, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment.

C. L. BARTLETT,
WM. P. BORLAND,
JAMES W. GOOD,
Managers on the part of the House.
P. J. MCCUMBER,
B. F. SHIVELY,
HENRY E. BURNHAM,
Managers on the part of the Senate.

STATEMENT.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 28730) making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June 30, 1914, and for other purposes, submit the following written statement in explanation of the effect of the action agreed upon and recommended as to that amendment in the accompanying conference report:

Strikes out the paragraph, inserted by the Senate, making available the unexpended balance of the appropriation for clerk hire and other services at pension agencies for the fiscal year 1913 for payment of traveling and other incidental expenses of clerks transferred from the various pension agencies to Washington.

C. L. BARTLETT,
WM. P. BORLAND,
JAMES W. GOOD,
Managers on the part of the House.

Mr. BARTLETT. Mr. Speaker, the Senate placed upon the pensions appropriation bill an amendment which provided for the payment of the expenses of employees who were employed in the pension agencies which were abolished by the last Congress. The House disagreed to that amendment. The conferees on the part of the House did not think it was a proper charge against the Government. There were no itemized statements, and we declined to concur in the amendment. The Senate receded from the amendment.

I ask that the conference report be adopted.

Mr. RODDENBERY. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. Yes.

Mr. RODDENBERY. The gentleman states that the Senate recedes and acquiesces in the position of the House conferees upon that item. This bill will carry a total of how much?

Mr. BARTLETT. One hundred and eighty million dollars, the amount carried when it left the House; not a cent more.

Mr. RODDENBERY. What was the bill when it passed the House for the current year?

Mr. BARTLETT. I think $152,000,000; something in that neighborhood.

Mr. RODDENBERY. Will the gentleman yield me five or six minutes?

Mr. BARTLETT. I yield the gentleman six minutes.

Mr. RODDENBERY. Mr. Speaker, we are now confronted with the adoption of a conference report that disposes of the small sum, insignificant, it is true, of $180,000,000. We discover that since a year ago $30,000,000 is necessary for the country to comply with its obligations of gratitude and honor in the payment of pensions. But that is not all. The deficiency bill that was just passed yesterday carried $15,000,000 more, making, in round numbers, $200,000,000. I can not, as I have said before, understand why, when these increases are made, it is not possible for this legislative body to take out of this pension legislation the people's millions that are being paid to foreigners and aliens who do not live in this Republic and who have not lived here in 40 years. I can not understand why this legislative body can not exercise its powers and expunge from the pension roll men who are drawing pensions from the taxes of the people of this country and at the same time drawing a salary of $7,000, of $6,000, of $5,000, of $4,000, and of $3,000 for services rendered to the Government. Mark you, these people encumber the roll as invalid pensioners.

I can not understand why gentlemen rise on this floor and say that they know of men drawing these pensions who are worth $20,000,000, Members rising on this floor and saying they know of men drawing pensions who are worth $10,000,000, and yet vote for them. The man at the plowshare, at the anvil, at the saw, the man laboring in the pit and toiling on the housetop is taxed year by year in the name of national gratitude and public duty to pay taxes to pension these millionaires, the wealthy, the rich, and the opulent. Why can not deserters and imposters be expunged from the pension pay roll and thus taken off the backs of honest toiling men. It can not be founded in justice, it can not rest on right, it can not be in obedience to the law of national honor. It is an imposition, it is treachery to the masses of our countrymen; it is burdensome to legitimate business; and it is unwise legislation, more especially so when we have a decadent Senate increasing the river and harbor bill $7,000,000, when we have a Republican Senate, which is now breathing its last breath, burdening the House bill with $12,000,000 more for the Navy. It is loading the people, whom we represent, down with indefensible burdens. There can be no honorable defense if we permit a Republican Senate, under pretense of passing supply bills, to load down the sundry civil bill with $8,000,000; to increase the Indian appropriation bill by $6,000,000 more; and all this by a Senate that the people of this country have repudiated in the last election with their ballots. After the House has passed a fair and equitable public building bill we behold the spectacle of a discredited Senate loading it down with $22,000,000, and before three more suns are set they will have been retired from public office and Senators will come in whom the people have chosen. I announce now that it is an unsound, indefensible policy for the Sixty-second Congress to permit a repudiated legislative body to burden the people of this country with $50,000,000 when in three days' time they will have been driven from power and the Representatives whom the people have chosen will be clothed with power to legislate for them.

Mr. BYRNES of South Carolina. Mr. Speaker, I wish to ask the gentleman from Georgia to yield me five minutes.

Mr. BARTLETT. I yield the gentleman five minutes.

Mr. BYRNES of South Carolina. Mr. Speaker, in the time yielded to me by the gentleman from Georgia I desire to refer to the criticism of the Pujo investigating committee by the gen-

tlemen from Pennsylvania, Mr. MOORE and Mr. BURKE. When these gentlemen addressed the House on Thursday morning the members of our committee were not on the floor, being engaged in preparing the report which has been filed. The committee was criticized because they incurred expenses in excess of the amount first appropriated and delayed asking for an additional appropriation until this time, when the investigation is completed. The facts are that Mr. PUJO, the chairman of the committee, introduced in the House the resolution providing for the additional appropriation not recently but as far back as May, 1912, and he at that time informed the other members of our committee that he was told by members of the Committee on Accounts that they would not report the resolution at that time, but would wait until it was definitely known what amount would be needed to defray all expenses, and thus save bringing in a third resolution. The gentleman from Pennsylvania, Mr. BURKE, thinks that the lawyers on the committee should have conducted the investigation instead of employing an attorney. This investigation was ordered by a Democratic caucus, and the resolution authorizing it passed this House by a vote of 214 to 15, and it specifically authorized the committee to employ counsel. No criticism has ever been heard of the committee appointed by a Republican Senate to investigate the Lorimer matter or of other committees that have employed attorneys; and if our committee had employed an attorney unacquainted with the subject matter of the investigation and, as a result, the inquiry have been ineffective, there would be no criticism. But the committee saw fit to employ an attorney who was qualified to conduct the inquiry, and, as a result, the hearings have resulted in the disclosure by the leaders of finance of conditions which they themselves declared should be remedied, and the committee has proposed the remedy.

The gentleman from Pennsylvania [Mr. MOORE] stated that we should have gone to some "potato patch in Missouri" to get a representative of the common people to conduct the inquiry, instead of going to the city of New York. I have no doubt such a course would have pleased him, but we did not take that view of it. This was a most complex subject, involving not an investigation of any one concern, but of a large number of the leading financial institutions and industrial corporations and their relations to each other; an exceedingly technical subject involving a knowledge of the conduct of the stock exchanges as well as the financial institutions, and it would have been impossible for any attorney, no matter how well equipped he might be for the ordinary practice of the law, to have conducted this investigation as it has been conducted, without having specialized in this particular branch of the law. Every question in this examination was directed to the resolution under which we acted and the facts have been presented in a clear and logical manner. The interests opposed to the investigation and their friends at first charged that nothing would come of it. As the hearings developed admissions from the bankers themselves of existing evils they changed their course. They decided it was no longer to be ignored and they then proceeded to criticize the committee for permitting counsel to conduct the examinations. The committee did this because they believed that the facts could be presented in better order if questions were asked by one person instead of having them asked by the 11 members of the committee, making the record so voluminous that no one on earth could ever follow it. We are satisfied with the correctness of our decision. As I stated yesterday in answer to the gentleman from Massachusetts the statement is absurd that the committee agreed to ask no questions unless they were approved by counsel. The reverse is true. The committee reserved the right to disapprove of questions by counsel, but in the conduct of the investigation there has never been the slightest friction between the committee and counsel. The Republican as well as the Democratic members of that committee will bear me out in that statement.

I have no doubt the gentlemen from Pennsylvania, representing the districts they do, would have preferred that we employ an incompetent man, but we employed one who has contributed to an investigation which will, during a Democratic administration, result in remedial legislation.

But Mr. MOORE did not content himself with this criticism. He proceeded to do something unworthy of him. Holding in his hand the publication "Who's Who," he purported to read from it, stating, "He says he is now the senior member of the firm of Guggenheim. Oh, what a horrid name to the people of this country." And a moment afterwards, referring to some client of Mr. Untermyer's, he referred to "copper" interests. The name of Guggenheim is a horrid name to the people of the country; but it is a Republican, not a Democratic name. Furthermore, it is not the name of the partner of Mr. Untermyer, and Mr. MOORE knew it, because the book he purported to read from states the name of Mr. Untermyer's partner to be "Guggenheimer," not Guggenheim; and Mr. MOORE's eyesight is good; he saw it, and it was unworthy of him to misrepresent this man and misread this book in order to lead the people to believe that the counsel to this committee was an associate of one of the Guggenheim's of copper fame.

But, Mr. Speaker, at the suggestion of Mr. DALZELL, Mr. MOORE included in his remarks, as extended in the RECORD, an editorial from the New York Sun of that morning criticizing counsel to the committee. Of course, it was to be expected that the great financial interests opposed to this investigation would do everything in their power to destroy its work. This inspired attack upon counsel was withheld until the morning of the day they expected the committee to file its report. The questions asked in this editorial refer to the decision of a court in a case tried 32 years ago. Believing that by an attack upon counsel they would distract attention from the report, they conducted an investigation into the career of counsel of the committee. The persons inspiring this attack knew that once before, when Mr. Untermyer incurred the displeasure of the great insurance companies, the New York Herald, that defender of the rights of the people, had indulged in similar criticism of Mr. Untermyer, and they could have answered their own questions by printing the reply of Mr. Untermyer which appeared in the New York Herald on August 20, 1906, which was as follows:

[Extract from New York Herald, Aug. 20, 1906.]

STOCK DEALS DENIED BY MR. UNTERMYER—DECLARES HE MADE NO PROFITS OUT OF LITIGATION IN CASE OF SEE V. HEPPENHEIMER—GIVES HISTORY OF THE CASE—SAYS JUDGE PITNEY'S DOCUMENT IN STRAW PAPER TRANSACTIONS WAS IN NO SENSE AN OPINION.

To the Editor of the Herald:

I note from to-day's issue of your paper that in connection with the insurance controversy you have given up two entire columns to the publication of what purports to be part of an opinion in a transaction 15 years old, entitled "In the case of See *v.* Heppenheimer," in which it is implied that I made large profits out of that transaction which I was required to refund.

The implication is grossly untrue, and you are perhaps not aware that in making that publication you are not protected in it as being the record of a judicial proceeding.

I accordingly herewith ask that you publish this letter. The suit in question has been settled between the parties, with the formal approval of the court, the appropriate order had been entered, and the money paid for more than two months before this document was prepared and sent by Judge Pitney for publication.

It was in no sense an opinion in a pending litigation over the subjects discussed in so far as we were concerned. All the parties to the adjusted controversy protested against the filing of that document, including our opponents in the litigation, as it had been clearly understood by all parties that the case would not otherwise have been adjusted, since no liability was recognized. All these facts and negotiations were known to Judge Pitney, who was a party to the settlement, having approved it on behalf of the receiver fully two months before he placed this document on file.

The result of filing that paper months after the case had been settled and against the objection of all parties concerned was to deprive the defendants of the right to appeal. An attempt was then made to get back the money or to obtain the right of an appeal, but the answer was made that the case had long since been settled and discontinued, and there was therefore nothing from which to appeal.

The true facts as to the controversy are, briefly summarized, as follows: In 1891 my firm was retained by Messrs. Beard & Stein to prepare certain papers in the form of options on straw paper mills. We were told that Messrs. Poor & Greenough had agreed to finance the required money by the purchase of an issue of bonds with a bonus of stock. Some months later we were informed that Messrs. Poor & Greenough had been unable to market the bonds, and we were persuaded to do so on the faith of certain written representations which we subsequently discovered were grossly inaccurate.

My partners and myself bought a large part of the bonds, and the bulk of the balance was taken by our friends.

It is not true that any of us ever made a dollar of profit out of the transaction in any form, directly or indirectly. On the contrary, we lost over $400,000 of our own money, of which my personal loss was over $150,000. We never received a dollar of compensation for our services or otherwise, but put large additional moneys of our own into the property in an attempt to save our friends, whom we did not ask to contribute.

The ground on which a stock liability was sought to be enforced did not involve any claim of wrongdoing. It was a purely technical statutory claim, based on the ground that the bonus stock which went with the bonds was charged with a liability. This was disputed. On the one hand it was claimed that the property was not worth the amount of stock that had been issued for it. We claimed, on the other hand, that we bought the bonds believing that the bonds had that value, and that we had been deceived as to the facts.

There is nothing in the record of the case to support the assumption that anybody concerned with the transaction made a dollar out of it.

It is with great reluctance that I have departed from my rule not to permit the great issues involved in the insurance controversy to be obscured by answering personal attacks that have no relation to that subject. I have, however, felt that as this was represented to be a judicial determination in an actual controversy it might be inferred that I could have appealed if it was wrong.

SAMUEL UNTERMYER.

NEW YORK, *August 19, 1906.*

The gentleman from Pennsylvania knew that it was unfair to give additional circulation to this attack when the man attacked had not the privileges of the floor to reply to him. It was as unfair as if I should include in my remarks a clipping from the Philadelphia North American, a newspaper opposed to him politically, referring to the case of the city of Philadelphia

against J. HAMPTON MOORE, without his having the opportunity to explain the legal questions involved in the case and which brought about the litigation.

But, Mr. Speaker, these efforts will be of no avail. The people have during the conduct of this investigation learned something of the concentration of control of credit in this country in the hands of a few men; they have learned that some of the bankers themselves regard it as a serious menace to the welfare of the people, and this report will be considered on its merits. The States will, as a result of the recommendations of the committee, remedy many of the evils which can be best regulated by their legislatures, and by the enactment of the two bills recommended by this committee much will be done by Congress to restore competition in this country.

The SPEAKER. The question is on agreeing to the conference report.

The question was taken, and the conference report was agreed to.

On motion of Mr. BARTLETT, a motion to reconsider the vote by which the conference report was agreed to was laid on the table.

CANCELING MACHINES.

Mr. McCOY. Mr. Speaker, I ask unanimous consent to withdraw from the files of the House Report No. 1570, House Calendar 412, under House resolution 109, to investigate the Post Office Department.

The SPEAKER. Is there objection?

There was no objection.

GOVERNMENT ARCHIVES OUTSIDE OF WASHINGTON, D. C. (H. DOC. NO. 1443).

The SPEAKER laid before the House the following message from the President of the United States, which was read and, with the accompanying papers, ordered to be printed and referred to the Committee on the Library:

To the Senate and House of Representatives:

I transmit for the information and consideration of the Congress a report by the Librarian of Congress in reference to the archives of Government offices outside of the city of Washington.

WM. H. TAFT.

THE WHITE HOUSE, *March 1, 1913.*

Mr. HARDWICK. Mr. Speaker, I make the point of order that there is no quorum present.

The SPEAKER. Evidently there is a quorum present. The Chair will count. [After counting.] One hundred and ninety-eight gentlemen are present—a quorum.

ALASKA RAILROAD COMMISSION (H. DOC. NO. 1346, PART 2).

The SPEAKER also laid before the House the following message from the President of the United States, which was read and, with the accompanying documents, referred to the Committee on the Territories, the message ordered to be printed and the accompanying documents to be disposed of as the committee deem best:

To the Senate and House of Representatives:

I transmit herewith 18 plates of maps and profiles, constituting Part II of the report of the Alaska Railroad Commission which was transmitted to the Congress on February 6, 1913.

WM. H. TAFT.

THE WHITE HOUSE, *March 1, 1913.*

Mr. HUMPHREYS of Mississippi. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. HUMPHREYS of Mississippi. Is it necessary, Mr. Speaker, in view of the order passed a few days ago, authorizing this report of the Alaska Railroad Commission to be printed with illustrations, to have an additional order now to print them?

Mr. MANN. Undoubtedly; with illustrations, if they want them.

Mr. HUMPHREYS of Mississippi. May I ask unanimous consent now to print the report with illustrations?

The SPEAKER. The gentleman from Mississippi [Mr. HUMPHREYS] asks unanimous consent to have the report printed with illustrations. Is there objection? [After a pause.] The Chair hears none, and it is so ordered.

RELATIONS BETWEEN THE UNITED STATES AND THE REPUBLIC OF COLOMBIA (H. DOC. NO. 1444).

The SPEAKER also laid before the House the following message from the President, which was read and, with the accompanying documents, ordered to be printed and referred to the Committee on Foreign Affairs:

To the Senate and House of Representatives:

I transmit herewith, for the information of the Congress, a report made to me on February 20, 1913, by the Secretary of State on the subject of relations between the United States and the Republic of Colombia.

WM. H. TAFT.

THE WHITE HOUSE, *March 1, 1913.*

ENROLLED BILLS SIGNED.

Mr. CRAVENS, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles, when the Speaker signed the same:

H. R. 4718. An act to authorize the use of certain unclaimed moneys now in the registry of the United States District Court for the Northern District of Ohio for the improvement of the libraries of the United States courts for said district;

H. R. 27806. An act granting a pension to Mary McArthur;

H. R. 18213. An act to refund to the Sparrow Gravely Tobacco Co. the sum of $173.52, with penalty and interest, the same having been erroneously paid by them to the Government of the United States;

H. R. 26078. An act for the relief of Charles S. Kincaid;

H. R. 21724. An act to amend subchapter 2 of chapter 19 of the Code of Law for the District of Columbia; and

H. R. 8921. An act for the relief of William H. Seward.

The SPEAKER announced his signature to enrolled bills of the following titles:

S. 267. An act to provide assistance to persons in Alaska who are indigent and incapacitated through nonage, old age, sickness, or accident, and for other purposes;

S. 8275. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and of wars other than the Civil War, and to certain widows and dependent relatives of such soldiers and sailors;

S. 8314. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors;

S. 271. An act to authorize the collection of the military and naval records of the Revolutionary War with a view to their publication;

S. 8274. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors;

S. 8178. An act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors;

S. J. Res. 143. Joint resolution authorizing the Secretary of War to loan certain tents for use at the meeting of the Imperial Council of the Ancient Arabic Order of the Nobles of the Mystic Shrine to be held at Dallas, Tex., in May, 1913;

S. 8565. An act to authorize the Virginia & Carolina Southern Railroad Co. to construct a bridge across the Lumber River at or near the town of Lumberton, N. C.; and

S. 7802. An act to amend section 103 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911.

ENROLLED BILLS PRESENTED TO THE PRESIDENT FOR HIS APPROVAL.

Mr. CRAVENS, from the Committee on Enrolled Bills, reported that this day they had presented to the President of the United States, for his approval, the following bills:

H. R. 25762. An act for the construction of a bridge across the Mississippi River at or near Baton Rouge, La.;

H. R. 28635. An act to amend section 81 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, and for other purposes;

H. R. 23568. An act to amend section 55 of an act to amend and consolidate the acts respecting copyright, approved March 4, 1909;

H. R. 12131. An act for the reimbursement of Ralph E. Hess for two horses lost while hired by the United States Geological Survey;

H. R. 21709. An act to amend subchapter 11 of chapter 49 of the Code of Law for the District of Columbia;

H. R. 11627. An act to correct the military record of Barkley S. Denison;

H. R. 27323. An act to provide for refund or abatement under certain conditions of penalty taxes imposed by section 38 of the act of August 5, 1909, known as the special excise corporation-tax law;

H. R. 24661. An act for the relief of James Parsons;

H. R. 23939. An act to legalize titles in the District of Columbia to certain citizens;

H. R. 25264. An act for the relief of W. A. Kelly;

H. R. 18213. An act to refund to the Sparrow Gravely Tobacco Co. the sum of $173.52, with penalty and interest, the same having been erroneously paid by them to the Government of the United States;

H. R. 4718. An act to authorize the use of certain unclaimed moneys now in the registry of the United States District Court for the Northern District of Ohio for the improvement of the libraries of the United States courts for said district;

H. R. 27806. An act granting a pension to Mary MacArthur;

H. R. 26078. An act for the relief of Charles S. Kincaid;

H. R. 27875. An act authorizing the President to convey certain land to the State of Texas;

H. R. 28469. An act granting two condemned cannon to the Wallkill Valley Cemetery Association, of Orange County, N. Y.;

H. R. 24703. An act to extend the authority to receive certified checks drawn on national and State banks and trust companies in payment for duties on imports and internal taxes and all public dues;

H. R. 18294. An act for the relief of John C. Sullivan;

H. R. 12339. An act to refund certain taxes paid by the Louisiana Distillery Co. (Ltd.), of New Orleans, La.;

H. R. 16319. An act to extend and widen Western Avenue NW., in the District of Columbia;

H. J. Res. 326. Joint resolution providing for extending provisions of the act authorizing extension of payments to homesteaders on the Coeur d'Alene Indian Reservation, Idaho;

H. R. 22913. An act to create a department of labor;

H. R. 22593. An act to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, by providing for a valuation of the several classes of property of carriers subject thereto and securing information concerning their stocks, bonds, and other securities;

H. R. 21315. An act for the relief of Robert Ross;

H. R. 23676. An act to regulate the officering and manning of vessels subject to the inspection laws of the United States; and

H. R. 20511. An act for the relief of Samuel Butter & Co.

SENATE BILLS REFERRED.

Under clause 2 of Rule XXIV, Senate bills of the following titles were taken from the Speaker's table and referred to their appropriate committees as indicated below:

S. 8306. An act to amend an act entitled "An act to require the erection of fire escapes in certain buildings in the District of Columbia, and for other purposes," approved March 19, 1906, as amended by the act approved March 2, 1907; to the Committee on the District of Columbia.

S. 7723. An act to regulate the hours of employment and safeguard the health of females employed in the District of Columbia; to the Committee on the District of Columbia.

WOMAN SUFFRAGE PROCESSION.

Mr. TAYLOR of Colorado. Mr. Speaker, I call up from the Speaker's table Senate joint resolution 164 and ask its adoption.

Mr. HEFLIN. Mr. Speaker, I demand a second.

Mr. TAYLOR of Colorado. I move, Mr. Speaker, that a second be considered as ordered.

Mr. HARDWICK. Mr. Speaker, I reserve the point of order. I do not know whether there is a similar House resolution or not.

The SPEAKER. The Chair would inquire of the gentleman from Colorado what is the number of the resolution?

Mr. TAYLOR of Colorado. It is Senate joint resolution 164.

The SPEAKER. The Clerk will report it.

The Clerk read as follows:

Senate joint resolution (S. J. Res. 164) stopping traffic and preventing interference with the suffrage procession.

Resolved, etc., That the superintendent of police of the District of Columbia be, and he is hereby, directed to stop all the ordinary traffic and travel, including the operation of street railroads, along Pennsylvania Avenue from the Peace Monument to Seventeenth Street, between the hours of 3 and 5 p. m., on Monday, the 3d day of March, A. D. 1913, and to prevent any interference with the suffrage procession on that day.

[Applause.]

The SPEAKER. There is an identical joint resolution reported from the House committee and on the calendar.

Mr. HARDWICK. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. HARDWICK. Does the gentleman from Colorado [Mr. TAYLOR] call this up by authority of the committee?

Mr. TAYLOR of Colorado. Yes; he calls it up under his right.

Mr. HARDWICK. As a matter of law he must call it up by authority of the committee.

The SPEAKER. Has the gentleman the committee's authority?

Mr. TAYLOR of Colorado. I have the authority of the chairman of the committee, Mr. JOHNSON of Kentucky.

The SPEAKER. That is not enough. There is no dispute about what the rule is any more, and that is that it takes an authorization of the committee.

Mr. HEFLIN. The gentleman ought to move to suspend the rules.

Mr. TAYLOR of Colorado. Mr. Speaker, I move to suspend the rules and pass the resolution.

Mr. HEFLIN. I demand a second.

Mr. MANN. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. MANN. Has the gentleman from Alabama been recognized for that purpose?

The SPEAKER. The Chair will recognize him for that purpose. The gentleman from Alabama [Mr. HEFLIN] demands a second.

Mr. TAYLOR of Colorado. Mr. Speaker, I ask unanimous consent that a second be considered as ordered.

The SPEAKER. Is there objection?

Mr. HARDWICK. I object, Mr. Speaker.

The SPEAKER. The gentleman from Colorado [Mr. TAYLOR] and the gentleman from Alabama [Mr. HEFLIN] will act as tellers. Those in favor of seconding this motion to suspend the rules will pass between the tellers and be counted.

The House divided; and the tellers reported—ayes 116, noes 13.

Mr. HARDWICK. Mr. Speaker, I make the point of order that there is no quorum present.

The SPEAKER. The Chair will count. Evidently there is a quorum present. There are 225 men on the floor of the House. A second is ordered. The gentleman from Colorado [Mr. TAYLOR] has 20 minutes and the gentleman from Alabama [Mr. HEFLIN] has 20.

Mr. TAYLOR of Colorado. Mr. Speaker, on the 29th of last month the Congress passed a Senate joint resolution providing for the regulation of traffic on the streets of this city during inauguration, but when the ladies who expect to conduct the woman's suffrage parade in this city on next Monday—some 10,000 of them—came to ask the superintendent of police to stop traffic and protect their line of march he informed them that he had no authority to do so under that resolution passed by Congress. The matter was taken up with the District Commissioners and with the Interstate Commerce Commission, and also with the superintendent of police, and they all determined that the only way in which authority could be given to the superintendent of police and relieve the District of legal liability and permit the policing and roping off and stopping of traffic during the hours from 3 to 5 on Monday afternoon was by having a joint resolution passed for that purpose. I introduced this resolution several days ago, and it was this morning introduced in the Senate. It passed the Senate this afternoon by a unanimous vote, and it is now on the calendar of the House. I ask the favorable consideration of it by the House. It is not a question of equal suffrage; it is a question of fair treatment of the women of this country. [Applause.] They have a right to parade down Pennsylvania Avenue next Monday without interference. That is all this resolution provides. If the street car companies were willing to stop their cars during two hours of the suffrage pageant there would be no necessity for this resolution; but owing to the fact that they will not do so, and the superintendent of police says he has no authority to compel them to, in view of the fact that there will be 150,000 visitors here and the streets will be thronged, there is no way of protecting that parade. The parade can not possibly be had unless this resolution is passed. With the hundreds of thousands of people that will be on the streets that day, unless all vehicles, street cars, and all traffic is absolutely stopped and Pennsylvania Avenue is roped off from the Peace Monument to Seventeenth Street and the line of march is protected by 500 police the procession will be utterly impossible.

I reserve the remainder of my time.

Mr. HEFLIN. Mr. Speaker, how much time did the gentleman consume?

The SPEAKER. Five minutes.

Mr. HEFLIN. I hardly think the gentleman has a right to reserve 15 minutes in which to close, when there are only 20 minutes. I should like to have him divide his time.

The SPEAKER. The gentleman has a right to reserve his time.

Mr. TAYLOR of Colorado. I will yield time to others.

Mr. HEFLIN. I yield five minutes to the gentleman from Illinois [Mr. MANN].

Mr. MANN. Mr. Speaker, upon inaugural day there will be a very large number of visitors in this city, many of whom will reach the city Monday afternoon. I desire to read a statement from the president of the Capital Traction Co., the company that operates the street car lines on Pennsylvania Avenue, before the House acts upon this resolution.

THE CAPITAL TRACTION CO.,
Washington, D. C., February 28, 1913.

Hon. JAMES R. MANN,
House of Representatives.

DEAR SIR: Noting the introduction of a resolution directing the cars of the Capital Traction Co. to cease running on the Avenue during the presentation of the suffragist pageant on the afternoon of Monday, March 3, I request that in the event the passage of this resolution is pressed to submit that to stop the running of the cars on that afternoon, or any part thereof, would seriously incommode a great number of people who are coming to Washington to participate in the inauguration of the President-elect.

The experience of the past shows that by reason of the delays on steam railroads incident to the heavy traffic, a very great number of those coming reach Washington during the afternoon preceding the day of the inauguration.

It is a difficult thing to get the crowds from the station. The capacity of every street railway leading to and from the station is taxed to the utmost, and it is quite impossible to maintain, by reason of the conditions referred to, usual or satisfactory schedules.

The people coming into Washington are, for the most part, strangers, and are dependent upon the street cars for transportation to their destinations.

The Avenue line is one of the most direct arteries of transportation from the Union Station westward; not only that, but it is crowded with people coming in from Virginia over the Aqueduct Bridge, and all of this is in addition to the usual afternoon rush-hour traffic.

To meet measurably the conditions imposed upon us, we have to shorten our headway and increase the service by the addition of every available car.

To stop the cars on the afternoon of Monday for any period of time would interrupt the service, increase congestion at many points, would add to the crowded and uncomfortable conditions at the Union Station, and would incommode thousands of citizens coming from every part of the country.

In my judgment, this should not be done unless it were required for a governmental function or necessity, and hence the refusal of the company to stop the cars because of the intended parade of the suffragettes.

Very respectfully,

GEORGE E. HAMILTON, *President.*

If, instead of permitting the strangers who come to the city on that afternoon to reach their points of destination through street car transportation, the House desires to hold up transportation for practically the afternoon it is within the power of the House to do so; but I submit that it is not fair to the strangers who come here, practically invited for inauguration day, to subject them to this inconvenience and probably render impossible the reaching of their destinations during the afternoon.

I yield back the remainder of my time.

Mr. LAFFERTY. Will the gentleman answer a question? Is it not possible for all of those cars to be routed west from the Union Station on G Street or F Street?

Mr. MANN. It is not possible, because there will be cars on those lines running as frequently as the headway will permit, anyhow.

Mr. TILSON. And there is no physical connection between the lines of the two companies.

Mr. MANN. It is not possible. The cars ought to be permitted to run on Pennsylvania Avenue. The parade can march on Pennsylvania Avenue without holding up the street cars. Pennsylvania Avenue is a wide avenue; there is plenty of room for a procession or parade without inconveniencing every stranger who comes to the town at this time. However, most of them will be our Democratic friends. I anticipate that people of my own political persuasion will not be here in great numbers; but I think the strangers coming to the town are entitled to decent treatment. [Applause.]

Mr. TAYLOR of Colorado. I yield five minutes to the gentleman from California [Mr. RAKER].

Mr. RAKER. Mr. Speaker, this resolution stops the cars for two hours in the city of Washington, on Pennsylvania Avenue—one street—to the end that the women of this country, representing an idea and a principle, may have an opportunity and the privilege of marching down it in order, with protection surrounding them.

We hear an appeal, as we have always heard from the business interests, that they can not delay their traffic for two hours, that these good women may have the opportunity to demonstrate to the world that the women of this land can march with respect and with decency and with honor, with their banners flying, to represent a principle that is coming just so sure as the sun shall shine to-morrow. That one-half of this country will not be permitted to rule alone, but that the other half, as intelligent, as honest, and patriotic for representative government, shall have an opportunity to participate. I say as a Representative that this Congress ought to give this protection for these noble and loyal women for the short space of two hours. I trust that the resolution will pass.

The SPEAKER. The time of the gentleman has expired.

Mr. TAYLOR of Colorado. I yield 4 minutes to the gentleman from Wyoming [Mr. MONDELL].

Mr. MONDELL. Mr. Speaker, a large number of good women of many States of the Union, engaged in promoting a cause in which they believe, and in which an increasing number of American citizens believe, propose to have a parade on Pennsylvania Avenue for two hours on the 3d of March. The Capital City of this great Nation owes it to the women of the Nation to see that that procession is properly guarded and those participating in it given an opportunity to march down the Avenue without interference, interruption, or annoyance.

I regret to say that the chief of the police of this city has not shown himself in that harmony with this movement that a man charged with the maintenance of order in this Capital City of the Nation should be. If he had so shown himself to be in sympathy with the movement sufficient to insure adequate protection I doubt if this resolution would have been considered necessary. The stoppage of traffic for two hours on this one street will discommode but few people, and that for a brief period. I am of the opinion there are few citizens coming here to participate in the inauguration of the President of this Republic who will not be perfectly willing to be discommoded for a short time that the Capital City of the Nation may properly guard and show proper respect for this splendid demonstration of good women in their effort to spread the gospel of better government throughout the Union. [Applause.]

Mr. HEFLIN. Mr. Speaker, I yield two minutes to the gentleman from Illinois [Mr. CANNON].

Mr. CANNON. Mr. Speaker, I passed through the tellers against the seconding of the motion, and I did so for the reason that under this motion there is no opportunity to amend this bill. I listened to the remarks of my colleague [Mr. MANN] and the letter that was read. Pennsylvania Avenue is a very wide avenue. On it are the tracks of the Capital Traction Co. I do not regard the interests of that company as paramount, but for the reasons stated, it seems to me that these American citizens who desire to march on the 3d of March could have marched just as well on the 4th. But let that pass, and say if they desire to march on the 3d they have that right. I would have offered an amendment if it had been in order, as it would have been if this was not a motion to suspend the rules, directing the Commissioners of the District to rope the streets and to afford police protection and preserve order, but I would have allowed the street cars to run. There is room or space to throw to the birds on both sides of the tracks to enable the women to march 20 deep, if they should so desire.

My mother was a woman, my wife was a woman, and I have no sons. I have two daughters and two granddaughters, and somehow the family runs to women. [Laughter.] I have a great respect for the opinions of all American citizens. The women are citizens and have a right to believe in woman suffrage and resort to all peaceable and proper means to secure that end.

The SPEAKER. The time of the gentleman has expired.

Mr. TAYLOR of Colorado. I yield one minute to the gentleman from Colorado [Mr. RUCKER].

Mr. RUCKER of Colorado. Mr. Speaker, I am the oldest member of the organization known as suffragists in this House. I will be the oldest woman of this House in the parade on Monday, and I need protection. I am therefore in favor of the resolution. [Laughter.]

Mr. HEFLIN. Mr. Speaker, I have not the time to elaborate my views on the question of woman suffrage. I will not undertake to discuss that question now, but I intend to discuss it in the near future, and I will extend a challenge to the member of the Alabama delegation who favors the suffragette movement to meet me in joint debate and discuss that subject. I understand that my colleague, Mr. HOBSON, will take part in the suffragette parade that will take place in this city next Monday. It is rumored that he will command a portion of the suffragette paraders. If he does, I want him to march clad in the paraphernalia of a woman. [Applause and laughter.] And I now suggest that he don a bonnet and wear a dress on that occasion. [Applause and laughter.]

Mr. Speaker, the gentleman from Colorado [Mr. TAYLOR] admits that this is not a question of woman suffrage, but merely a question of getting permission for these suffragette women to parade up and down Pennsylvania Avenue.

I am willing to rope off the right side and the left side of the Avenue and allow them and other people to parade if they so desire, but I am opposed to stopping the cars from running down

the middle of the Avenue; cars on which my constituents and your constituents, gentlemen, may ride for 5 cents apiece, when, if the cars stop, they will have to pay two or three dollars for a cab to ride around another way. The parade can be had without stopping the cars. While I have no sympathy with this suffragette movement or the proposed suffragette parade, let them parade if they want to, and let Mr. HOBSON command them if he chooses. [Applause and laughter.] Now, ho for that day.

The lark was up to meet the sun,
The bee was on the wing;
And soon the sufferin'-yets begun
To make the "welkin ring."

[Applause and laughter.]

They gathered around a laundryman.
"Protect yourself, sir, if you can,"
They thundered in his aching ear.
"Don't move," said one; "you stand right there."

[Applause and laughter.]

"It's votes for women, votes for women;
You'll soon be under the bottom;
We want votes; we want votes." He said,
"Women, I ain't got 'em."

[Applause and laughter.]

They screamed and yelled and tore their hair
And wildly, madly rent the air;
Marched back and forth, here and yonder,
While the absence of our wives, daughters, and mothers from the parade made the heart grow fonder.

[Applause and laughter.]

Mr. Speaker, there is already trouble in the land caused by the suffragette paraders from New York to Washington. A little bird tells me that some of these suffragettes were entertained at the home of Sarah Saxton one night; and Rufe Ruffin, the hero of Squash Center, relates this story:

Sarah Saxton tuck kere uv the sufferinettes one night, but she didn't know whut they wus up to, an' when she found that she was entertainin' sich as they it purty neer killed her. And nex' mornin' everything was outen jint. The hens refused ter lay, and in er body tried to follow the sufferinyets off up the road.

[Applause and laughter.]

The big red rooster looked lack his hart wood brake, an' he flew in front of a speckle hen and tried to purswade hur to behave and return, an', by golly, she crowed right in his face.

[Applause and laughter.]

The hen did finally return, Mr. Speaker, so the story goes, but she still crows like a rooster.

Said the big red rooster
To the little speckled hen,
"The way you air crowin'
Around here is a sin."

[Applause and laughter.]

Said the little speckled hen
To the big red rooster,
"I'll crow around here
Whenever I chooster."

[Applause and laughter.]

Another message from Squash Center, Mr. Speaker. Yad Potter says:

Don't be alarmed, men, this here crazy movement among certain women will soon disappear. There air bound to be a few female cranks along man's pathway.

I remember when I wus a boy my daddy put 25 settin's of eggs under 25 different hens, an' when they hatched out the entire hill wus covered with little chickens, and most of 'em wus hens, and, by golly, there wern't but one crowin' hen in the whole bunch—

[Applause and laughter.]

but she caused more confusement in the barnyard than ever you saw in your lifetime—

[Applause and laughter.]

Whenever she crowed the roosters charged at her, and when they got there and found she wus not a rooster they wus pestered powerful.

[Applause and laughter.]

Now, Mr. Speaker, I do not want to deny women or men the right to go up and down the Avenue Monday or any other day, but a woman suffragette calling herself "general" and another one calling herself "colonel" is going to cause more "confusement" in this city than you ever saw in your born days. [Loud and continuous applause and laughter.]

Mr. Speaker, this brigade of women marching from New York to Washington was commanded by Gen. Rosalie Jones. Who is Rosalie Jones? He is a woman. [Applause and laughter.] I understand that Col. Craft commanded the rear guard of the suffragette army. Who is Col. Craft, the children cry? He, too, is a woman. [Applause and laughter.] I am told that when marching about sundown one afternoon a faithful family cow came out and planted herself in front of them in the road. Gen. Jones addressed a few hot remarks to the cow, but the cow lowed back friendly greetings, and she finally made herself understood and said, "I mean no harm; I just saw you women coming down the road and, thinking that it was milking time, I planted myself in the road." [Applause and laughter.]

Mr. Speaker, I understand there will be speaking on the Avenue by women. I am reminded of another suffragette speaking. It is said that one damsel mounted a goods box and said, "I pant for the day when I can take a stand alongside of man and cast a vote just as he can, I pant for political paraphernalia, I pant"—and then a fellow in the audience said, "Yes, you pant to wear a pair of pants." [Laughter and applause.] Mr. Speaker, here comes the suffragette brigade, marching, tramp, tramp, tramp on to Washington, and here is a poem, a touching poem from Truth, a Buffalo magazine, that I wish to read:

The road is rough, and long the way.
Step along, O Rosalie.
Keep straight ahead, don't go away,
Rosy Jones, O Rosalie.
When you arrive count up your gains,
Your corns, and aches, and pains,
And coming back don't miss the trains;
You'll need them, my Rosalie.

[Applause and laughter.]

Mr. Speaker, I can fancy on Monday next, when the suffragettes are charging up and down the Avenue, the spirit of Washington coming back, with Thomas Jefferson standing by his side. I can fancy Washington, as he looks down upon these females of the species, and hear him saying:

"Who've come here since we've been gone?"

Jefferson:

"Voters and stump speakers with dresses on."

[Loud and continuous laughter and applause.]

Mr. TAYLOR of Colorado. Mr. Speaker, a parliamentary inquiry. How much time have I left?

The SPEAKER. Nine minutes.

Mr. TAYLOR of Colorado. I yield five minutes to the gentleman from Alabama [Mr. HOBSON]. [Applause.]

Mr. HOBSON. Mr. Speaker, I thought when the gentleman from Alabama [Mr. HEFLIN], my distinguished colleague, was charging about here that he was very much like the rooster in his father's barnyard, except with this contrast, he did not stop when he met the crowing hen. [Laughter and applause.] Evidently, Mr. Speaker, he prefers to fight rather than to be friendly. [Laughter and applause.] But, Mr. Speaker, to be serious, it comes with poor grace from the champion of man's kingly position in creation, as a protector of women, that my good friend is not willing that these of the weaker sex should have the protection that is given everywhere even to a circus parade or given to almost any large procession in this city. Think of his proposition, that he wants his constituents to be able to go down the Avenue; that they have come here to see the Washington Monument or other points of interest. Those who come here by Monday have come to see that parade. You will do nothing more to spoil the happiness of the stranger who will be here than to interfere with the success of that parade. As a matter of fact, Mr. Speaker, in going from the Union Station to any point where the Pennsylvania Avenue cars lead, or coming down Pennsylvania Avenue in the opposite direction, there is not one place that would be more than a block from where other cars would proceed—cars on F Street and G Street. There is simply no sound objection based on reason to this proposal. The elemental instincts of gallantry should prompt unanimous action on our part. It is not a question of the merits of equal suffrage, but simply a question of courtesy, called for by common hospitality. Mr. Speaker, my friend from Alabama intimates that he is going to challenge me to meet him. I will be glad to meet him. [Laughter and applause.] I do not know whether it will be on the hustings in Alabama or here on the floor of this House.

Mr. HEFLIN. Both places, if the gentleman desires.

Mr. HOBSON. I expect it will be both. I have smoked him out. I have convictions on the subject. It is one of the great, progressive, evolutionary questions of our age. It can not be laughed out of court. Woman has a right to the franchise. No democracy is complete till woman's half of the population is enfranchised. Woman's world—the world of home economics, child life, public health, and morals—ought to be projected into legislation, and can only be so projected through the participation of woman directly in our political affairs. The main objection advanced is that women are not endowed with capacity for self-government, are not qualified for political action. It is indisputable that the capacity for self-government can not be fully developed unless it is developed in both sexes, for women are the mothers of the men. I venture to say that the admirable traits of my friend from Alabama are largely inherited from his mother. I have observed that whenever you find anything eminently admirable in a man you can trace it to his

mother. The capacity for self-government is no exception. It comes under the great law of heredity. Any breeder of horses or other animals, or of any other living thing, desiring to develop a quality in an animal is more careful to see that the characteristic is developed in the mother than in the father. If the capacity for political government is as low in women as my friend intimates, then he ought to hasten to develop that capacity by giving women political activities.

Mr. HEFLIN. I have made no such statement.

Mr. HOBSON. It is only when the women in the world get fully developed that we can expect the greatest progress in the world. It is only when woman's angle of view as well as man's angle of view is brought upon man's activities that the greatest efficiency can be realized in these activities, and only when man's angle of view as well as woman's angle of view is brought to bear on woman's activities that the greatest efficiency can be realized in these activities; only when man and woman join together in their activities that the highest sympathy and happiest lives can be attained in the home.

The SPEAKER. The gentleman from Colorado has three minutes.

Mr. TAYLOR of Colorado. Mr. Speaker, in answer to the gentleman from Alabama [Mr. HEFLIN] in regard to amending the resolution, I will simply say this: That the police and the people of this city know that if the street cars run, the people will be getting off the cars and on all along the line all the time, and it will be a physical impossibility to maintain the streets clear for the parade. They will be getting on and off at every street corner, and the whole march will be thrown into confusion and will be a failure. We know from experience that there is no other way of protecting the march except by absolutely stopping the street cars and all other vehicles along the parade from 3 to 5 p. m. next Monday.

It does seem to me that every fair-minded man in this House ought to support this resolution as a matter of common decency and fairness to the millions of good women of this country. [Applause.]

I now ask the adoption of the joint resolution.

Mr. EDWARDS. Mr. Speaker, I offer an amendment.

The SPEAKER. The gentleman can not offer an amendment; it is under suspension of the rules. The question is on suspending the rules and passing the joint resolution.

The question was taken, and the Speaker announced the noes seemed to have it.

On a division (demanded by Mr. TAYLOR of Colorado) there were—ayes 148, noes 70.

Mr. SABATH. Mr. Speaker, I ask for the yeas and nays on this vote. [Cries of "No!" "No!"]

The SPEAKER. The gentleman from Illinois demands the yeas and nays.

Mr. SABATH. I change my demand for tellers instead of the yeas and nays.

Mr. HENRY of Texas. Mr. Speaker, I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 201, nays 52, answered "present" 8, not voting 120, as follows:

YEAS—201.

Adair	Dyer	Hensley	Lobeck
Adamson	Edwards	Higgins	Longworth
Akin, N. Y.	Esch	Hill	McCall
Allen	Farr	Hinds	McCoy
Anderson	Fergusson	Hobson	McDermott
Ashbrook	Fields	Houston	McKellar
Austin	Flood, Va.	Howell	Maguire, Nebr.
Barnhart	Focht	Howland	Martin, Colo.
Bathrick	Foster	Hughes, Ga.	Mays
Beall, Tex.	Fowler	Hull	Miller
Borland	Francis	Humphreys, Miss.	Mondell
Buchanan	French	Jackson	Moon, Tenn.
Bulkley	Gallagher	Johnson, Ky.	Morgan, La.
Burke, S. Dak.	Garner	Kendall	Morgan, Okla.
Burnett	Good	Kennedy	Mott
Butler	Graham	Kent	Murdock
Byrns, Tenn.	Gray	Kindred	Murray
Calder	Green, Iowa	Kinkaid, Nebr.	Needham
Cantrill	Greene, Mass.	Kitchin	Neeley
Carlin	Gregg, Pa.	Knowland	Nelson
Carter	Gregg, Tex.	Konop	Norris
Cary	Griest	Kopp	Nye
Cline	Guernsey	Lafean	Oldfield
Cooper	Hamill	Lafferty	Olmsted
Copley	Hamilton, Mich.	La Follette	Padgett
Cox	Hamilton, W. Va.	Lamb	Palmer
Cullop	Hamlin	Langham	Patton, Pa.
Curley	Harrison, N. Y.	Lawrence	Payne
Daugherty	Hart	Lee, Pa.	Pepper
Davis, Minn.	Haugen	Lenroot	Peters
De Forest	Hawley	Lever	Plumley
Dickinson	Hayden	Levy	Porter
Dixon, Ind.	Hayes	Lindbergh	Post
Dodds	Helgesen	Linthicum	Pou
Donohoe	Helm	Littlepage	Pray
Driscoll, D. A.	Henry, Tex.	Lloyd	Prouty
Rainey	Scully	Stephens, Nebr.	Underwood
Raker	Shackleford	Stephens, Tex.	Vare
Randell, Tex.	Sherley	Sterling	Volstead
Ransdell, La.	Sherwood	Stone	Warburton
Rauch	Simmons	Taggart	Weeks
Richardson	Slemp	Talcott, N. Y.	Wilder
Roberts, Mass.	Small	Taylor, Ala.	Willis
Roberts, Nev.	Smith, Saml. W.	Taylor, Colo.	Wilson, Ill.
Roddenbery	Smith, N. Y.	Thayer	Witherspoon
Rothermel	Smith, Tex.	Thistlewood	Wood, N. J.
Rubey	Speer	Thomas	Young, Kans.
Rucker, Colo.	Stanley	Townsend	Young, Mich.
Russell	Stedman	Turnbull	
Saunders	Steenerson	Tuttle	
Scott	Stephens, Cal.	Underhill	

NAYS—52.

Aiken, S. C.	Cravens	Fordney	Macon
Andrus	Crumpacker	Gardner, Mass.	Mann
Bartholdt	Dalzell	Gardner, N. J.	Moore, Pa.
Bartlett	Davis, W. Va.	Gillett	Page
Blackmon	Dent	Godwin, N. C.	Rouse
Boehne	Denver	Gould	Sabath
Browning	Dies	Gudger	Sisson
Burgess	Difenderfer	Heflin	Stephens, Miss.
Burke, Wis.	Doughton	Holland	Tilson
Callaway	Dupré	Howard	Tribble
Claypool	Ellerbe	Jacoway	Watkins
Conry	Fitzgerald	Jones	Webb
Covington	Floyd, Ark.	McLaughlin	Young, Tex.

ANSWERED "PRESENT"—8.

Bell, Ga.	Booher	Clayton	Loud
Berger	Clark, Fla.	Collier	Stevens, Minn.

NOT VOTING—120.

Ainey	Evans	Kinkead, N. J.	Prince
Alexander	Fairchild	Konig	Pujo
Ames	Faison	Korbly	Redfield
Ansberry	Ferris	Langley	Rees
Anthony	Finley	Lee, Ga.	Reilly
Ayres	Fornes	Lewis	Reyburn
Barchfeld	Foss	Lindsay	Riordan
Bates	Fuller	Littleton	Rodenberg
Bradley	Garrett	McCreary	Rucker, Mo.
Brantley	George	McGillicuddy	Sells
Broussard	Gill	McGuire, Okla.	Sharp
Brown	Glass	McKenzie	Sims
Burke, Pa.	Goeke	McKinley	Slayden
Burleson	Goldfogle	McKinney	Sloan
Byrnes, S. C.	Goodwin, Ark.	McMorran	Smith, J. M. C.
Campbell	Greene, Vt.	Madden	Sparkman
Candler	Hammond	Maher	Stack
Cannon	Hardwick	Martin, S. Dak.	Sulloway
Crago	Hardy	Matthews	Sweet
Currier	Harris	Merritt	Switzer
Curry	Harrison, Miss.	Moon, Pa.	Talbott, Md.
Danforth	Hartman	Moore, Tex.	Taylor, Ark.
Davenport	Hay	Morrison	Taylor, Ohio
Davidson	Heald	Morse, Wis.	Towner
Dickson, Miss.	Henry, Conn.	Moss, Ind.	Vreeland
Doremus	Hughes, W. Va.	O'Shaunessy	Whitacre
Draper	Humphrey, Wash.	Parran	White
Driscoll, M. E.	James	Patten, N. Y.	Wilson, N. Y.
Dwight	Johnson, S. C.	Pickett	Wilson, Pa.
Estopinal	Kahn	Powers	Woods, Iowa

So (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

The Clerk announced the following additional pairs:

For the session:

Mr. COLLIER with Mr. WOODS of Iowa.

For the day:

Mr. MORRISON with Mr. HUMPHREY of Washington.

Until further notice:

Mr. PUJO with Mr. MCMORRAN.

Mr. WHITE with Mr. SWITZER.

Mr. SHARP with Mr. TAYLOR of Ohio.

Mr. SCULLY with Mr. SLOAN.

Mr. RUCKER of Missouri with Mr. SELLS.

Mr. REILLY with Mr. RODENBERG.

Mr. MOSS of Indiana with Mr. REYBURN.

Mr. LEWIS with Mr. POWERS.

Mr. JOHNSON of South Carolina with Mr. REES.

Mr. JAMES with Mr. PRINCE.

Mr. HAY with Mr. MERRITT.

Mr. HARRISON of Mississippi with Mr. MATTHEWS.

Mr. HARDY with Mr. MCKINLEY.

Mr. HARDWICK with Mr. MCKENZIE.

Mr. HAMMOND with Mr. MCGUIRE of Oklahoma.

Mr. GOODWIN of Arkansas with Mr. LOUD.

Mr. GOLDFOGLE with Mr. LANGLEY.

Mr. GOEKE with Mr. HENRY of Connecticut.

Mr. GARRETT with Mr. HEALD.

Mr. FINLEY with Mr. GREENE of Vermont.

Mr. FAISON with Mr. FULLER.

Mr. ESTOPINAL with Mr. FOSS.

Mr. DOREMUS with Mr. FAIRCHILD.

Mr. CANDLER with Mr. DWIGHT.

Mr. BYRNES of South Carolina with Mr. MICHAEL E. DRISCOLL.

Mr. BURLESON with Mr. DRAPER.

Mr. BROUSSARD with Mr. CAMPBELL.

Mr. BRANTLEY with Mr. ANTHONY.

Mr. FORNES with Mr. BURKE of Pennsylvania.
Mr. ALEXANDER with Mr. AINEY.
Mr. CLAYTON with Mr. CANNON.
The result of the vote was announced as above recorded.

NAVAL APPROPRIATION BILL.

Mr. PADGETT. Mr. Speaker, I desire to submit a request for unanimous consent. I notice in the naval appropriation bill that the Senate has amended many of the items in the bill, but overlooked amending the totals. And if any of them should be agreed to the totals, being the same text in the House and in the Senate, would not be so in conference. And I ask unanimous consent that it be in order for the conferees to change the totals so as to make them correspond with the report.

Mr. MANN. With the items?

Mr. PADGETT. With the items.

The SPEAKER. The gentleman from Tennessee [Mr. PADGETT] asks unanimous consent that the conferees on the naval appropriation bill be empowered to make the correct totals. Is there objection? [After a pause.] The Chair hears none.

PROCEEDINGS AT DINNER TO REPRESENTATIVE CANNON (H. DOC. NO. 1445).

Mr. HUMPHREYS of Mississippi. Mr. Speaker, I ask unanimous consent to have printed as a House document the proceedings had at the dinner recently given by the House of Representatives to the Hon. JOSEPH G. CANNON.

The SPEAKER. The gentleman from Mississippi [Mr. HUMPHREYS] asks unanimous consent to print as a public document the proceedings at the recent dinner given to the Hon. JOSEPH G. CANNON. Is there objection?

There was no objection.

RECESSES OF THE HOUSE.

Mr. UNDERWOOD. Mr. Speaker, from now on it will probably be necessary for the House to take recesses instead of adjournments. It will probably be necessary to meet to-morrow, and the House will not wish to carry to-morrow's date on the RECORD. I ask unanimous consent that it may be in order as a matter of privilege, from now until the end of the session, to make a motion to take a recess.

The SPEAKER. The gentleman from Alabama [Mr. UNDERWOOD] asks unanimous consent that it shall be a matter of privilege from now to the end of the session to make a motion to take a recess instead of to adjourn.

Mr. RODDENBERY. Mr. Speaker, reserving the right to object, I would like to ask the gentleman with reference to the probability of being in session a part of to-morrow. It is not the idea that we will hold any session on Sunday except for the consideration of supply bills, is it?

Mr. UNDERWOOD. Well, we shall have to hold sessions for the consideration of the business that comes before the House. The "gentleman from Alabama" can not limit what the House shall do. The House must determine that.

Mr. RODDENBERY. What I had in mind at the time the unanimous-consent request was being preferred by the gentleman, he having stated that it might be necessary, in connection with taking these recesses, to hold sessions to-morrow, was that I did not care for that statement to go along with the unanimous consent without attention being called to it now, so that an objection to it hereafter, if made, would not appear to be inconsistent with the assent at this time.

Mr. UNDERWOOD. Of course the gentleman knows that it is perfectly in order to-night to move to adjourn so that we can meet to-morrow, or suspend the rules and meet to-morrow. I am merely trying to expedite business.

Mr. RODDENBERY. I will ask the gentleman further: A recess might be taken, or an adjournment might be taken, whichever might be preferred, to meet to-morrow—that is, Sunday—for the consideration of supply bills, conference reports, and matters to close up legislation that gentlemen seem to be of opinion should pass; but does the gentleman mean to include in that, by taking a recess to meet to-morrow, that it might be contemplated by the House that we would take up and move to suspend the rules to pass some general legislative bill on Sunday that is not now in conference or which did not involve an appropriation?

Mr. UNDERWOOD. I can not answer the gentleman. I can not tell what the House will do when it meets. I ask unanimous consent, Mr. Speaker.

The SPEAKER. Is there objection?

There was no objection.

RECESS.

Mr. UNDERWOOD. Then, Mr. Speaker, I move that the House do now take a recess until 8 o'clock to-night.

Mr. MANN. Would it not be better to make it 8.30?

Mr. UNDERWOOD. Mr. Speaker, at the request of some gentlemen here, who want a little more time, I will modify my request, and ask that the House take a recess until 8.30, with the request that all Members be here to-night.

The SPEAKER. The gentleman from Alabama [Mr. UNDERWOOD] moves that the House take a recess until half past 8 to-night.

The motion was agreed to; accordingly (at 6 o'clock and 49 minutes p. m.) the House stood in recess until 8.30 p. m.

EVENING SESSION.

At the expiration of the recess the House resumed its session.

MONUMENTS ON BULL RUN BATTLE FIELDS.

Mr. HAY. Mr. Speaker, I ask to call up from the Speaker's table the bill (S. 1142) to protect the monuments already erected on the battle fields of Bull Run, Va., and other monuments that may be there erected, a similar bill having been reported by the House committee.

The SPEAKER. The Clerk will report the bill.

Mr. HARDWICK. I reserve a point of order against it, because under the statement of the gentleman so far made it would not be privileged, and he could not call it up in that way.

The SPEAKER. The gentleman from Georgia reserves the point of order.

Mr. HAY. I move to suspend the rules and pass the bill.

The SPEAKER. The gentleman from Virginia moves to suspend the rules and pass a bill which will be reported by the Clerk.

The bill was read, as follows:

Whereas United States troops belonging to the Department of Washington, in the month of June, 1865, took possession of certain lands on the battle fields of Bull Run and erected thereon two monuments, about 1 mile apart, and dedicated the same in memory of the patriots who fell July 21, 1861, and August 28, 29, and 30, 1862, in the battles known as the first and second Bull Run; and

Whereas the said monuments still stand on private property, the title to which has never been acquired by the United States; and

Whereas many military organizations which took part in said battles desire to suitably commemorate the same; and

Whereas the State of Virginia has ceded to the United States their jurisdiction over land that may be acquired for the purposes herein named, not to exceed 200 acres: Therefore

Be it enacted, etc., That the Secretary of War is hereby directed to inquire into the practicability of purchasing the land upon which the aforesaid monuments stand, the advisability of making the purchase thereof, and the price which will have to be paid therefor.

The SPEAKER. Is a second demanded?

Mr. FOSTER. I demand a second.

The SPEAKER. The gentleman from Illinois demands a second.

Mr. HENRY of Texas. Mr. Speaker, I make the point of no quorum present.

The SPEAKER. Evidently there is no quorum present.

Mr. HAY. I move a call of the House.

The motion was agreed to.

The SPEAKER. A call of the House is ordered. The Doorkeeper will lock the doors, the Sergeant at Arms will notify absentees, and the Clerk will call the roll.

The Clerk proceeded to call the roll, when the following Members failed to answer to their names:

Aiken, S. C.	Fordney	Langley	Redfield
Ames	Foss	Lee, Ga.	Reilly
Ansberry	French	Lever	Reyburn
Ayres	Fuller	Lindsay	Richardson
Barchfeld	Garrett	Littleton	Riordan
Bartlett	George	Longworth	Roberts, Mass.
Bates	Gillett	McCall	Rodenberg
Berger	Glass	McCreary	Scully
Bradley	Gould	McDermott	Sells
Brown	Green, Iowa	McGillicuddy	Sisson
Buchanan	Greene, Vt.	McGuire, Okla.	Sloan
Burke, Pa.	Guernsey	McKellar	Smith, J. M. C.
Burnett	Hamilton, Mich.	McKinney	Smith, N. Y.
Byrnes, S. C.	Hardy	Madden	Stack
Callaway	Harris	Maher	Stanley
Cannon	Harrison, N. Y.	Martin, S. Dak.	Sulloway
Clayton	Hart	Matthews	Sweet
Copley	Hartman	Merritt	Switzer
Crago	Heald	Moon, Pa.	Talbott, Md.
Cravens	Helm	Moon, Tenn.	Taylor, Ohio
Currier	Henry, Conn.	Moore, Tex.	Thayer
Curry	Hinds	Morgan, Okla.	Thomas
Danforth	Hobson	Morse	Tilson
Davenport	Howell	Mott	Vreeland
De Forest	Hughes, Ga.	Nelson	Watkins
Dent	Hughes, W. Va.	Olmsted	Weeks
Dickson, Miss.	Jackson	Palmer	Whitacre
Dodds	Kinkead, N. J.	Parran	White
Draper	Knowland	Patten, N. Y.	Wilder
Evans	Konig	Payne	Wilson, Ill.
Ferris	Korbly	Powers	Wilson, N. Y.
Finley	Lafferty	Pujo	Wilson, Pa.
Focht	Lamb	Ransdell, La.	Wood, N. J.

The SPEAKER. On this roll call 249 Members have answered—a quorum.

Mr. UNDERWOOD. Mr. Speaker, I move to dispense with further proceedings under the call.

The motion was agreed to, and the Doorkeeper was directed to open the doors.

The SPEAKER. The question is on ordering a second.

Mr. HAY. Mr. Speaker, I ask unanimous consent that a second may be considered as ordered.

The SPEAKER. The gentleman from Virginia asks unanimous consent that a second may be considered as ordered. Is there objection?

There was no objection.

The SPEAKER. The gentleman from Virginia [Mr. HAY] has 20 minutes and the gentleman from Illinois [Mr. FOSTER] has 20 minutes.

Mr. HAY. Mr. Speaker, unless the gentleman from Illinois wishes to ask me some question I do not desire to address the House.

Mr. FOSTER. I would like to ask the gentleman from Virginia with reference to the bill. I observe that the bill as originally introduced, and very much the same in the Senate, provided for the buying of not more than 200 acres of land, and there was an appropriation proposed of $50,000. As it passed the Senate all that matter has been stricken out, and it provides that the Secretary of War shall be directed to inquire into the practicability of purchasing the land on which the monuments stand, and the price that will have to be paid therefor. I want to ask the gentleman if this land which it is proposed to buy will cost $50,000?

Mr. HAY. I think not. The Committee on Military Affairs of the House reported the bill in the identical words as it passed the Senate. They reported it in that way and struck out the provision for the appropriation, because they thought that $50,000 was too much and that the land could be bought for very much less. We want information from the War Department in order that we may know just what the land is worth. However, I will say that the gentleman from Virginia [Mr. CARLIN] is the Representative of that district and knows more about the value of the land than I do, and I yield such time as he may desire.

Mr. MANN. Will the gentleman yield?

Mr. HAY. I will.

Mr. MANN. The bill the gentleman now calls up is the Senate bill. Is that the same as the committee amendment to the House bill?

Mr. HAY. In the same words.

Mr. MANN. Providing for an investigation as to the practicability of purchasing or acquiring the land on which the monuments are erected on the Bull Run battlefield?

Mr. HAY. Yes.

Mr. FOSTER. I would like to ask the gentleman from Virginia [Mr. CARLIN] to give the House some idea of what this land can be secured for.

Mr. CARLIN. I have no definite idea as to the value of it, but I should think somewhere in the neighborhood of $75 or $100 an acre—perhaps more and perhaps less.

Mr. FOSTER. Does the gentleman believe that the land down there is worth $75 or $100 an acre?

Mr. CARLIN. I do; yes.

Mr. FOSTER. Mr. Speaker, I do not know, of course, what this land is worth, but this is an investigation looking to the feasibility of acquiring this land for the purposes of care and protection of the monuments on the first and second Bull Run battle fields. I believe that it is proper and right that the Government should ascertain the advisability of securing land for that purpose.

Mr. Speaker, this inquiry, I take it, is to be made by the Secretary of War and will not cost the Government anything, and if Congress in the future decides not to purchase the land at the option offered there will be no obligation to buy it.

Mr. CARLIN. The gentleman is correct.

Mr. FOSTER. I see the interest of the gentleman from Virginia in preserving these historic battle fields, and I believe that, so far as I am concerned, I will not object to it.

Mr. COX. How much land are they going to buy?

Mr. FOSTER. Not more than 200 acres.

Mr. SISSON. Will the gentleman yield?

Mr. FOSTER. Yes.

Mr. SISSON. I have been over the battle field, and I am in sympathy with the object of the bill, but I am doubtful whether 200 acres will cover the engagement and scope of the monuments there.

Mr. FOSTER. It is the intention to buy the land on which the monument stands, not to buy all of the land on which the battles were fought. It is only to take in the land on which the monuments are erected.

Mr. MANN. This bill is to acquire information. It does not pledge the Government to buying anything.

Mr. SISSON. I understand; but the acreage is limited to 200 acres.

Mr. MANN. No; it is not.

Mr. SISSON. I so gathered from the reading of the bill.

Mr. COX. Does not the gentleman think the bill states in the beginning the proposition to purchase many hundreds of acres?

Mr. MANN. The cession of the State of Virginia is limited to 200 acres—the jurisdiction of the State of Virginia.

Mr. SISSON. In this bill?

Mr. CARLIN. The Legislature of the State of Virginia would extend the jurisdiction if the Federal Government desires it.

Mr. SISSON. From an examination of the battle field I really do not believe that 200 acres will cover what the Government ought to preserve, and I want to say another thing. I believe that the gentleman from Virginia has placed the land valuations entirely too high. I made some inquiries respecting that.

Mr. FOSTER. But the gentleman would not expect the gentleman from Virginia to price the land in his own State at a low figure.

Mr. SISSON. Oh, no.

Mr. FOSTER. I am sure the gentleman from Mississippi would not price land in Mississippi at a low figure.

Mr. CARLIN. If I were pricing the land in Mississippi I would perhaps have made it lower, but this is valuable, desirable land.

Mr. MANN. This bill does not provide for even acquiring information about the battle field of Bull Run, but only as to the land upon which two monuments are now erected, and I judge as to the land between those monuments.

Mr. CARLIN. That is all.

The SPEAKER. The question is on suspending the rules and passing the Senate bill.

The question was taken, and (two-thirds having voted in favor thereof) the rules were suspended, and the bill was passed.

COAL-MINING COMPANIES IN OKLAHOMA.

The SPEAKER laid before the House the bill (S. 3843) granting the coal-mining companies in the State of Oklahoma the right to acquire additional acreage adjoining their mine leases, and for other purposes, with House amendments thereto.

The Clerk read the House amendments.

Mr. CARTER. Mr. Speaker, I move that the House insist upon its amendments and agree to the conference asked.

The motion was agreed to.

The SPEAKER announced the following conferees: Mr. CARTER, Mr. HAYDEN, and Mr. CAMPBELL.

WORKMEN'S COMPENSATION BILL.

Mr. BRANTLEY. Mr. Speaker, I move to suspend the rules and pass the bill (S. 5382) to provide an exclusive remedy and compensation for accidental injuries, resulting in disability or death, to employees of common carriers by railroad engaged in interstate or foreign commerce, or in the District of Columbia, and for other purposes, with amendments thereto, which I send to the desk and ask to have read.

The Clerk read as follows:

Be it enacted, etc., That every common carrier, including express companies, engaged in interstate or foreign commerce by railroad, including commerce between the District of Columbia and a State (hereinafter designated employer), shall pay compensation in the amounts hereinafter specified to any employee who, while employed in such commerce by such employer, sustains personal injury by accident arising out of and in the course of his employment and resulting in his disability, or to the dependents, as hereinafter defined, of such employee in case such injury results in his death.

SEC. 2. That every common carrier, including express companies, by railroad in the District of Columbia (hereinafter designated employer) shall pay compensation in the amounts hereinafter specified to any employee who sustains personal injury by accident arising out of and in the course of his employment and resulting in his disability, or to the dependents, as hereinafter defined, of such employee in case such injury results in his death.

SEC. 3. That except as provided herein no such employer shall be civilly liable for any personal injury to or death of any such employee resulting from any such accident.

SEC. 4. That the first five calendar days of disability resulting from any injury shall be excluded from the period of time for which compensation is hereinafter specified, but this shall not be construed to reduce the length of time over which payments shall extend wherever specific periods are herein fixed: *Provided, however*, That during said five days the employer shall furnish all medical and surgical aid and assistance that may be reasonably required, including hospital services.

SEC. 5. That after the expiration of the five days mentioned in the foregoing section the employer shall continue to furnish such medical and surgical aid and assistance as may be reasonably required, including hospital services, in an amount not exceeding $200: *Provided*, That if the employee elects to furnish his own physician or surgeon or to care for himself he shall receive from his employer such expenses incurred therefor by him as are reasonable and just, not to exceed $200. The compensation hereinafter provided shall be in addition to all such

surgical, medical, and hospital services as set forth in this and the preceding section.

SEC. 6. That no compensation or benefits shall be allowed for the injury or death of any employee where it is proved that his injury or death was occasioned by his willful intention to bring about the injury or death of himself or of another, or that the same resulted from his intoxication while on duty: *Provided*, That this clause as to intoxication shall not apply if the employer knew or in the exercise of ordinary care might have known that the employee was intoxicated or that he was in the habit of becoming intoxicated.

SEC. 7. That it shall be the duty of the injured employee, immediately upon the happening of the accident, or as soon thereafter as practicable, and not later than 90 days thereafter, and likewise in case of his death by such accident the duty of one or more of the dependents of an employee, within 90 days thereafter, to give or cause to be given to the employer written notice of the accident causing such injury or death, stating in ordinary language the time and place thereof, the name of the injured or dead employee, his class of service, and the address of the injured employee or person giving the notice: *Provided*, That where it is made to appear that the party herein required to give such written notice has been prevented from giving it through or by reason of mental or physical incapacity, ignorance of law or of fact, or the fraud or deceit of some other person, or from other good cause, the same may be given after the expiration of said 90 days, but not later than six months from the date of the accident or death.

In the absence of such written notice the employer shall not be liable to pay any compensation under this act unless it is made to appear that such employer had knowledge or information of the injury or death: *Provided*, That in case of death resulting within 48 hours from the time of the accident notice thereof shall not be required.

No defect or inaccuracy in the written notice herein required shall be deemed material unless the employer shall show that he was prejudiced thereby, and then only to the extent of such prejudice; and such written notice may be substantially in the following form:

"FORM OF NOTICE OF ACCIDENT AND CLAIM.

"To be filled out by an injured employee or by a dependent of a deceased employee or by a person acting for either.

"To ———:

"You are hereby notified that ——— ——— (name of deceased or injured employee), your employee, met with an accident on or about the —— day of ———, 19—, at or near ———, in the State of ———, and that the accident occurred in the course of his employment by you as ——— (class of service), and resulted in his ——— (disability or death) on the —— day of ———, 19—, and claim for compensation is hereby made.

"Name ——— ——— (person giving notice),
"Address ——— ———."

But no variation from this form shall be material if the notice is sufficient to advise the employer that a certain employee by name met with an accident in the course of his employment (stating the nature of such employment) on or about a specified time at or near a certain place which resulted in his disability or death. The notice may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action under the laws of the State or Territory or the District of Columbia where the accident occurred, or upon any station agent, or by sending it by registered mail to the employer, addressed to the principal office or to any division superintendent of such employer, or to any such agent aforesaid.

SEC. 8. That it shall be lawful at any time after the expiration of 14 days from the date of an injury, unless an award or findings shall have previously been made, for the employer and employee to settle by agreement according to the limitations of amount and time in this act established, the compensation due under this act, which agreement shall be in writing signed and acknowledged by the parties, and shall specify the compensation, if any, due and unpaid by the employer to the employee up to the date of the agreement, and, if agreed upon, the amount of the monthly payments thereafter to be made by the employer to the employee, and the time such monthly payments shall continue. In case of death it shall be lawful for the employer and any of the dependents of the deceased employee to settle by agreement in like manner and with the same effect the compensation payable to such dependent under this act. The periods of compensation provided for permanent total disabilities or for the permanent partial disabilities specifically mentioned in subdivision one, clause (D) of section 21, or for death, and the provisions of this act with respect to periodic payments and the percentage which such payments shall bear to the monthly wages shall not be varied by such agreement. Such agreement may be substantially as follows:

"In the matter of the claim of ——— ——— for personal injury received by ——— ———, in the service of ———.

"——— and ——— ———, an employee of said ———, injured in ——— service (or in case of death, ——— ———, dependent of ——— ———, deceased, an employee injured in the service of said ———), hereby agree to the following adjustment under the Federal accident compensation act of the liability for injuries (or death resulting from injuries) to ——— ———, received in the course of and arising out of his employment by said ——— (or receiver, as the case may be), in interstate (or foreign) commerce (or in the District of Columbia), at ———, on the ——— day of ———, 191— (here state the facts generally as to the work in which employee was engaged when injured), the said adjustment being as follows: (Here state the terms of the adjustment, referring to the appropriate sections and subsections of the act.)

"(Signed) ——— ——— "——— ———,
"*Employee (or dependent of employee).*"

Said agreement shall be executed in triplicate, one of which may be retained by the employer, one by the employee or his dependents, and the other shall be filed with the adjuster, as provided in section 12. Any modification or alteration of said agreement, if made by the parties, shall be in writing and executed and filed in the same manner and with like effect. If the employer shall fail for a period of 10 days after written demand to make any payment provided for in said agreement, the employee or dependent, at his election, may maintain an action in any State or Federal court of competent jurisdiction to enforce such agreement or may treat such agreement as rescinded and proceed to enforce the claim for compensation under the provisions of this act. Save as provided in this section no agreement purporting to settle compensation due under this act shall be valid.

SEC. 9. That it shall be competent for any employer subject to the provisions of this act and his employees to organize and constitute, in such manner as they may determine, a committee or committees for the purpose of settling disputes and awarding compensation under and in accordance with the limitations as to amount and time prescribed in this act; and it shall thereupon be the duty of the employer to file a written notice with the adjuster or adjusters having jurisdiction within the territory for which said committee is constituted, giving the names and post-office addresses of the members of the committee or committees. If the compensation due under this act be not settled by the agreement of the parties, and any such committee exists, the differences between the employer and employee arising under this act shall, upon the request in writing of either party and the written consent of the other filed with the committee, be settled by such committee in accordance with the provisions of this act, and after the filing of such consent the provisions of this act with reference to instituting original proceedings before the adjuster shall not apply. Such committee shall not be bound by technical rules and shall give the parties and their witnesses ample opportunity to be heard. The award made by such committee shall be final, except as provided in section 11, and shall be filed by the committee with the adjuster having jurisdiction within 30 days after the same is made, and the provisions of section 12, so far as applicable, shall apply thereto. The adjuster shall file such award with the clerk of the court having jurisdiction in the same manner and with the same effect as findings made by the adjuster, and said award, except that it shall be final, shall be treated in all respects as such findings. If the committee shall fail to make an award within 90 days after the filing of such consent, the same shall, by the said committee at the request of either party in writing, be immediately referred to the adjuster having jurisdiction thereof, who shall proceed to hear and determine the same as if the claim for compensation were originally before him upon petition and answer.

SEC. 10. That before any agreement or award has been made it shall be the duty of the injured employee, if so requested by the employer, to submit himself at least once, at reasonable times and places, for examination by a duly qualified physician or physicians furnished and paid by the employer, and the employee shall have the right to have a duly qualified physician or physicians, chosen by himself, present at such examination.

SEC. 11. That an agreement for compensation may be modified at any time within two years after the accident by a subsequent agreement. At any time before the expiration of two years from the date of the accident, but not afterwards, and before the expiration of the period for which payment of compensation has been fixed thereby, but not afterwards, any agreement, award, findings, or judgment may be reviewed by the adjuster upon the application of either party after due notice to the other party upon the ground that the incapacity of the injured employee has subsequently ended, increased, or diminished. Upon such review the adjuster may increase, diminish, or discontinue the compensation from the date of the application for review, in accordance with the facts, or make such other order as the justice of the case may require, but such order shall have no retroactive effect. The findings of the adjuster upon such review shall be served on the parties and filed with the clerk of the court having jurisdiction, in like time and manner and subject to like disposition as in the case of original findings: *Provided*, That not more than one review shall be had upon the application of any one party.

SEC. 12. That it shall be the duty of the employer to file, or cause to be filed, every agreement for compensation, or modification thereof, to which he is a party, in the office of the adjuster having jurisdiction, as hereinafter provided, within 60 days after it is made; otherwise it shall be voidable by the employee or dependent. The same shall be received and filed by said adjuster and recorded and indexed. A copy thereof, certified by the adjuster, may be admitted in evidence with like effect as the original; and it shall be the duty of the adjuster to furnish a certified copy at the request of any person in interest: *Provided*, That the employee or dependent who is a party to said agreement may file the same with the same effect as though filed by the employer: *And provided further*, That where there are two or more adjusters having concurrent territorial jurisdiction, such agreement shall be filed with the adjuster senior in date of appointment.

SEC. 13. (1) That the United States district court in each judicial district shall, within 30 days after this act takes effect, appoint a competent person to be known as adjuster of accident compensation, and may, from time to time, whenever the business in any such district in the judgment of the Attorney General of the United States justifies it, appoint additional adjusters. Each of such adjusters shall receive a salary of not less than $1,800 nor more than $3,000 per annum, to be paid by the United States in equal monthly installments in like manner as salaries of district judges are paid. It shall be the duty of the Attorney General of the United States, as soon as practicable, to make inquiry and fix and establish the salary to be paid to each adjuster within the limits aforesaid, the determination by him of the amount to be based upon the extent of the business done or to be done by said adjuster under this act. Each adjuster shall have jurisdiction of all cases arising under this act within the judicial district for which he is appointed: *Provided, however*, That where more than one adjuster is appointed for a judicial district, the court making the appointment may, in its discretion, determine the manner in which the authority of the respective adjusters shall be exercised under this act within the same district or limit the jurisdiction of any adjuster appointed by it to one or more counties or other territorial subdivision within the district, in which case the jurisdiction of such adjuster shall extend to such county or counties, or territorial subdivision only, except as hereinafter provided: *And provided further*, That every appointment of an adjuster shall be certified by the district court making it to the circuit court of appeals having jurisdiction of the district, and said circuit court of appeals may, within 30 days after the receipt of the same, for good cause, disapprove such appointment, in which case it shall become of no effect, and such district court shall make another appointment, but the acts of such adjuster in the meantime shall be valid.

(2) No person shall be appointed as adjuster who, at the time of his appointment, holds any office of profit or emolument under the laws of the United States or of any State other than the office of commissioner of deeds, justice of the peace, or notary public, or who has been in the employment of any railroad as claim agent or attorney within a period of 12 months prior to his appointment, or who is related by marriage or by consanguinity or affinity within the third degree, as determined by the common law, to any judge of the district court of the United States, or judge or justice of an appellate court, having jurisdiction of the district wherein he may be appointed. The adjuster shall be a resident of the territorial district for which he is appointed. He shall hold his office for a term of four years, but may be removed at any time by the court or by the President on the recommendation of the Attorney General of the United States, if his services are no longer required in the public interest or for good cause shown.

Each adjuster before entering upon the duties of his office shall take an oath of office for the faithful and impartial performance of his duties. In case any adjuster shall be removed, or for any reason shall cease to act, he shall transfer all his official records, files, and papers to his successor in office, or, if none, then to the clerk of the district court having jurisdiction, and the court shall have power to enforce this provision by order: *Provided, however,* That nothing herein shall operate to render any adjuster ineligible to act in a like capacity under the law of any State.

(3) It shall be the duty of the said adjuster to keep a record of his proceedings, and he shall have the power to preserve and enforce order in his presence while transacting business; to subpœna witnesses, to administer oaths in any proceeding and in all other cases where it may be necessary in the exercise of his powers and duties; to formulate, issue, amend, and control his processes and orders consistent with law as may be necessary to carry into effect the powers and jurisdiction possessed by him; to examine persons as witnesses, take evidence, require the production of documents, and to do all other things conformable to law which may be necessary to enable him effectively to discharge the duties of his office.

(4) If any person shall, in proceedings before an adjuster, disobey or resist any lawful order or process, or misbehave during a hearing or so near the place thereof as to obstruct the same, neglect to produce after having been ordered to do so any pertinent document, or refuse to appear after having been subpœnaed, or, upon appearing, refuse to take the oath as a witness, or after having taken the oath refuse to be examined according to law, the adjuster shall certify the facts to the district court having jurisdiction, which shall thereupon in a summary manner hear the evidence as to the acts complained of, and if the evidence so warrant, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court: *Provided,* That no person shall be required to attend as a witness before an adjuster at a place outside of the State of his residence and more than 100 miles from such place of residence, or unless his lawful mileage and fee for one day's attendance shall be first paid or tendered to him: *Provided,* That either party may take the testimony to be used before the adjuster, of a witness, either by deposition or interrogatories, according to the rules of practice in force in the United States district in which the case is pending.

(5) It shall be the duty of said adjuster to maintain and keep open during reasonable business hours an office at the place of his residence for the transaction of business under this act, at which office he shall keep his records and papers. He shall, however, hear cases at such other place or places within the limits of his territorial jurisdiction as will be most convenient for the parties and witnesses, including the place where the accident occurred and the residence of the injured or deceased employee. He shall be allowed all necessary traveling expenses in going to and from his place of residence for the purpose of conducting such hearings and his necessary and reasonable expense of subsistence actually incurred while so absent, not exceeding $5 per day. Accounts for all such expenses shall be approved by the district court and transmitted to the Attorney General of the United States and paid as allowed by him. Said accounts shall be rendered quarter yearly, beginning with the 1st day of October next after this law goes into effect. The Attorney General, upon requisition, shall, at the expense of the United States, furnish each adjuster with necessary records, books, blanks, and stationery supplies.

(6) No adjuster shall act in any case in which he is interested, or when he is employed by either party or related to either party by marriage or by consanguinity or affinity within the third degree, as determined by the common law. Whenever it shall be made to appear, by the application of either party, to the satisfaction of the district court having jurisdiction, that the adjuster before whom any case is pending is disqualified, or that he entertains bias or prejudice, so that a fair and impartial hearing of the case can not be had before him, it shall be the duty of the court to order the case transferred for hearing and disposition to another adjuster within the judicial district, or if none, to another adjuster within the State, or if none, then to appoint a competent person to act in the case as adjuster pro tempore. Such adjuster pro tempore shall possess all the powers conferred upon the adjuster by this act and shall proceed in the same manner and with the same effect. His compensation shall be fixed by the court appointing him, and such compensation shall be paid by the United States on the approval of the judge and the allowance of the Attorney General. The parties may agree to transfer any case to another adjuster in the same State, and in case of such agreement or order all papers and a certified copy of any record in the case shall without cost be forthwith transmitted by the adjuster before whom the case is pending to the adjuster agreed upon or designated, who shall, upon receipt of such papers and copy of record, proceed as though the case had been originally brought before him.

(7) Neither an adjuster nor the partner of an adjuster shall appear as attorney for either party in any proceedings under this act.

(8) The adjuster may, in any case upon application of either party or of his own motion, appoint a disinterested and duly qualified physician to make any necessary medical examination of the employee and testify in respect thereto. Said physician shall be allowed a reasonable fee, to be fixed by the adjuster, not exceeding for each examination $10, which shall be included by the adjuster in his account and paid as provided in paragraph 5 of section 13: *Provided, however,* That the adjuster shall in every case receive the testimony of any physician called by either the employer or the employee.

(9) Witness fees and mileage shall be computed at the rate allowed for witnesses in the United States district courts, and fees and mileage for serving the petition or other papers shall be computed at the rate allowed for service of summons from said court in civil suits by the United States marshal. Costs legally incurred may be taxed against either party or apportioned between the parties, in the sound discretion of the adjuster or of the court, as the case may be, and as the justice of the case may require.

(10) The adjuster or adjusters for the District of Columbia shall be appointed by the Supreme Court of the District, and such adjuster or adjusters shall hold the same tenure of office as prescribed for adjusters appointed by the United States district courts, subject to removal by the Supreme Court of the District of Columbia, or by the President on the recommendation of the Attorney General of the United States, for like cause, and shall have the same power and jurisdiction under this act within the limits of the District of Columbia, and shall be governed by all the provisions of this act, so far as the same may be applicable, in the same manner as adjusters appointed by the United States district courts. The findings of the adjuster or adjusters shall be transmitted to the said supreme court, and shall be disposed of by said court in the same manner and under the same rules as are prescribed herein for the disposal of such matters by the United States district courts. The said supreme court and the justices thereof shall have and exercise the same power in all cases arising under this act within the District of Columbia as are conferred by this act upon the United States district courts.

SEC. 14. (1) That in default of agreement between the parties interested or submission to a committee as hereinbefore provided, the employer, employee, or any dependent may, after giving notice of the accident when the same is required, or without giving notice where such notice is not required, and within one year from the date of the injury or death, institute proceedings for the settlement and adjustment of the claim before an adjuster having jurisdiction within the territory where the accident occurred. Such proceedings may be instituted by petition, setting forth in ordinary language the facts constituting the claim and asking that compensation be fixed and awarded in accordance with the provisions of this act. Unless service is accepted by the party defendant a copy of such petition shall be served upon him and return of such service made in the manner provided by law.

(2) Within 10 days after such service the party defendant may answer the petition and in such answer shall include such questions of law and fact as it may be desired to put in issue. As soon as practicable after the answer has been received, the adjuster shall proceed to hear the case and decide the same, his decision both upon questions of fact and law being reviewable in the district court as herein provided. If no answer has been filed within 10 days after the service of the petition, or such other time as may be fixed by the adjuster, the said adjuster shall enter a default and proceed to hear the evidence and determine the case with the same effect as though answer had been made. If no proceedings shall be instituted for the settlement and adjustment of a claim arising under this act within one year as above provided, the same shall be forever barred, unless the adjuster shall find that the failure to institute proceedings within such time was chargeable to the employer or to circumstances clearly beyond the control of the employee or dependent. But under no circumstances shall any claim for compensation be maintainable after the lapse of two years from the date of injury or death, except in cases in this act otherwise provided for: *Provided,* That in any case where the period during which payments are to be made is not made final by agreement, award, findings, or final judgment, such claim shall be maintainable within three months from the date when the last payment was due according to the terms of such agreement, award, findings, or judgment, or, when no such time has been fixed, or where payments are discontinued by the employer as set forth in section 8, from the date of the last actual payment: *Provided,* That where an employee institutes suit for an injury claiming that same did not take place while he was employed in interstate or foreign commerce and fails to recover in such suit, on the ground that he was employed in such commerce, the limitation of the time for his right to proceed under this act shall begin with the termination of such suit, and not with the time when the injury to him occurred.

(3) The adjuster shall allow either party to be represented by counsel, or an agent, who need not be a member of the bar, and after hearing any evidence that may be presented and considering any arguments that may be made he shall promptly make and render his findings in writing, a copy of which shall be served on each of the parties, and shall return such findings, together with the petition and answer, if any, into the clerk's office of the United States district court for the district in which he was appointed, or the clerk's office of the Supreme Court of the District of Columbia, as the case may be. The clerk of the court shall forthwith file the same and make an entry thereof on his docket without charge. At any time within 20 days after receiving a copy of the findings either party may file exceptions with the clerk of the court and serve a copy thereof on the adverse party, stating generally that the findings of the adjuster are excepted to on the ground that they are contrary to the law and evidence, whereupon the case shall be tried and determined in said court, all questions of law and fact being open for consideration de novo. And said court may regulate by rule the practice in such cases in all respects not provided for by statute. The party filing exceptions shall at the same time pay to the clerk of the court the sum of $5, which shall be in lieu of all other clerk's fees and charges, and no other or additional charge for any service rendered by said clerk in said cause except as herein otherwise provided shall be made. Any such amount shall be taxed by the court as costs against the losing party. If no exceptions shall be filed by either party as above provided, the said findings shall become final and have the effect of and, subject to payment of fees as in other cases, be enforced as a judgment of the court, and the clerk shall, without charge, record said findings and index the same as in the case of other judgments: *Provided,* That if the employer shall file exceptions to the findings of the adjuster, and shall not on the trial de novo in the district court reduce the amount awarded by the adjuster to the employee, there shall be added by the court when judgment is entered on the finding of the court or the verdict of the jury on the trial in said district court 25 per cent on the sum awarded to the employee by said court in its findings or by the verdict.

(4) Where exceptions are filed, either party shall have the right to a trial by jury, upon the claim for compensation under this act, as in cases at common law. But a jury trial may be waived by consent of the parties, and the court shall thereupon hear and determine the case without a jury. Where the case is tried by a jury the court may submit special interrogatories, to be answered by the jury in the form of a special verdict. If the evidence produced before the adjuster shall be taken in writing or in shorthand, it may be, in case of appeal from the finding of the adjuster, transcribed and duly authenticated, and filed with the clerk of the United States court; and may be thereafter read in evidence in any future hearing or trial in said cause under the same circumstances and with the same force and effect as a deposition may now be read in suits at law.

(5) Wherever counsel or agent for the employee has stipulated for a fee, the agreement for such fee shall be made in writing and filed with the adjuster or clerk of the court in which the case is pending, and the employee shall not be liable to pay any fee in excess of the amount allowed by the adjuster or the court. In every case it shall be the duty of the adjuster or the court, as the case may be, regardless of any agreement, to fix the compensation, which shall not exceed a fair and reasonable sum for the services actually rendered, which shall not be greater than the sum agreed upon.

(6) Appeals and writs of error may be taken from the district courts to the circuit courts of appeals and to the Supreme Court of the United States as provided in sections 128 and 238 of the Judicial Code, and it shall be competent for the Supreme Court of the United States to require, by certiorari or otherwise, any case to be certified to it for

review and determination as provided in section 251 of the Judicial Code. In cases arising in the District of Columbia appeals may be taken from the Supreme Court of the District to the Court of Appeals of the District as in other cases, and appeals and writs of error may be taken to the Supreme Court of the United States as in other cases and said court may require, by certiorari or otherwise, any case to be certified to it for review and determination as in other cases.

(7) Any petition may be served by the United States marshal for the district where the proceedings are pending, or by any deputy. Any subpœna, process, or order of an adjuster, or any notice or paper requiring service, may be served by such United States marshal or deputy, or by any citizen of the United States over the age of 21 years, being a resident of such district, or by registered mail sent by the adjuster to the person or employer to be served, postage prepaid, and addressed to the principal place of business of such employer or to the place of residence of such person. The affidavit of such citizen, or the return registry receipt signed by the person or employer to be served, shall be prima facie proof of service.

SEC. 15. That while any person entitled to compensation under this act shall be an infant or mentally incompetent, his natural guardian, or guardian, or committee, appointed pursuant to law, may on his behalf perform any duty required or exercise any right conferred by this act with the same force and effect as if such person was legally capable to act in his own behalf. No limitation respecting the time within which any right under this act is to be asserted shall, as against such infant or incompetent person, run while such infant or incompetent person has no guardian or committee: *Provided, however,* That the foregoing shall not apply to cases of infancy where the infant is over the age of 18 years, but such infant shall be treated for all purposes of this act as though of full age.

SEC. 16. That the assignment of any cause of action arising under this act, or of any payments due or to become due under the provisions hereof, shall be void. Every liability and all payments due or to become due under this act shall be exempt from levy or sale for private debt. In case of insolvency every liability for compensation under this act shall constitute a first lien upon all the property of the employer liable therefor paramount to all other claims or liens except for wages and taxes, and such lien shall be enforced by order of the court.

SEC. 17. That nothing in this act shall interfere with any proceeding by the United States to enforce any act of Congress regulating the appliances or conduct of any common carrier, or affect the liability of any such common carrier to a fine or penalty under any such act. Nothing in this act shall be so construed as to affect the power and jurisdiction of the courts, under the established principles of equity, to reform or cancel any agreement or award.

SEC. 18. That where an injury or death for which compensation is payable under this act was caused under circumstances also creating a legal liability for damages on the part of any carrier subject to the provisions of this act other than the employer, the employer shall be subrogated to the right of the employee or dependents to recover against such other carrier, and such employer may bring legal proceedings against such carrier to recover the damages sustained by the injured employee or dependents in an amount not exceeding the aggregate amount of compensation payable to the injured employee or dependents under this act. That where the injury or death for which compensation is payable under this act was caused under circumstances also creating a legal liability for damages on the part of any person other than the employer, such person not being subject to the provisions of this act, legal proceedings may be taken against such other person to recover damages, notwithstanding the payment of or liability to pay compensation under this act; but in such case, if the action against such other person is brought by the injured employee, or in case of his death by his dependents, and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, the employer shall be entitled to deduct from the compensation payable by him the amount actually received by such employee or dependents: *Provided,* That if the injured employee, or in case of his death his dependents, shall agree to receive compensation from the employer, or institute proceedings to recover the same, or accept from the employer any payment on account of such compensation, such employer shall be subrogated to the rights of such employee or dependents to the extent of his liability under the provisions of this act and may maintain an action therefor, but such action by such employer shall be no bar to an action by such employee or his dependents for damages against such other person in excess of the amount of compensation paid or to be paid under this act.

SEC. 19. That no contract, rule, regulation, or device whatsoever, shall operate to relieve the employer in whole or in part from any liability created by this act.

SEC. 20. That for all the purposes of this act the monthly wages of an employee, unless the monthly wage is ascertained by the contract of employment, shall be twenty-six times the established day's pay prevailing in the business of his employer for the class of service for which such employee was receiving pay at the time of the accident or, if payment be by the hour, by the piece, or by the job, shall be twenty-six times the average of one day's earnings in such business and class of service ascertained by taking the aggregate of the earnings for the month next preceding the accident and dividing this aggregate by the number of days on which the employee worked in the month. Calculations of the percentage of wages herein mentioned shall be based on the monthly wages ascertained by the contract of employment or on the amount thereof determined as aforesaid, as the case may be. For the purpose of such calculation, no employee's wages shall be considered to be more than $120 a month or less than $50 a month; except that where in any case the monthly wages of the employee are less than $25 per month payment for the first 24 months of disability shall not exceed the full amount of such monthly wages: *Provided,* That where the employee is engaged in a class of service in which employees habitually and with the sanction of the employer receive for their own use gratuities from the traveling public, the monthly wages of such employee shall not be considered to be less than $50 a month.

All compensation under this act shall be paid monthly unless commuted as hereinafter provided.

SEC. 21. That compensation under this act shall be made in accordance with the following schedule:

(A) Where death results from any injury, except in the cases provided for in section 23, and except in those cases in which, in certain contingencies, a reduced period is hereinafter provided for, the following amounts shall be paid for a period of eight years from the date of the death: *Provided, however,* That this limitation shall not apply to any child under the age of 16 years; but payments shall continue to such child until it shall have attained the age of 16 years.

(1) If the deceased employee leave a widow and no child under the age of 16, and no dependent child over the age of 16, there shall be paid to the widow 40 per cent of the monthly wages of the deceased.

(2) If the deceased employee leave a widow and any child under the age of 16, or any dependent child over the age of 16, there shall be paid to the widow for the benefit of herself and such child or children 50 per cent of the monthly wages of the deceased.

(3) If the deceased employee leave any child under the age of 16, or dependent child over the age of 16, but no widow, there shall be paid, if one such child, 25 per cent of the monthly wages of the deceased to such child, and if more than one such child 10 per cent additional for each of such children, not to exceed a total of 50 per cent of the monthly wages of the deceased divided among the children, share and share alike: *Provided,* That if the number of children entitled to payment be subsequently reduced to less than four, the amount of the payments shall be correspondingly diminished.

(4) In the event of the death or remarriage of a widow receiving payments under subdivision (2) of this clause, the amounts stated in subdivision (3) shall thereafter be paid to the child or children of the deceased employee therein specified for the unexpired part of the period of eight years from the date of the employee's death, but to continue in any event until the youngest child shall have attained the age of 16 years, subject to the provisions of subdivision (9) of this clause (A).

(5) If the deceased employee leave no widow or children entitled to any payment hereunder, but leave a parent or parents, there shall be paid, in case of partial dependency, 15 per cent of the monthly wages of the deceased to such parent or parents, and if either is or both are wholly dependent on the deceased there shall be paid in lieu of the 15 per cent, if only one parent, 25 per cent of the monthly wages of the deceased, or if both parents, 40 per cent of the monthly wages of the deceased, to such parent or parents.

(6) If the deceased leave no widow or child or parent entitled to any payment hereunder, but leave any brother, sister, grandparent, or grandchild wholly dependent upon him for support, there shall be paid to such dependent relative, if but one, 20 per cent of the monthly wages of the deceased, or if more than one, 30 per cent of the monthly wages of the deceased, divided among them share and share alike. If none of such relatives is wholly dependent and the deceased leave any such relative or relatives partially dependent upon him for support, there shall be paid to such dependent relative or relatives 10 per cent of the monthly wages of the deceased, divided among them share and share alike.

(7) The foregoing subdivisions of this clause (A) shall apply only to dependents who at the time of the death of the deceased employee are actual residents of the United States or contiguous countries, except (a) if the nonresident dependent be a widow and there be no resident child or children entitled to compensation under this act, there shall be paid to her a lump sum equal to one year's wages of the deceased employee, as hereinbefore defined and limited, for the benefit of herself and nonresident children, if any; (b) if the nonresident dependent be a child or children under the age of 16 years and there be no widow, resident or nonresident, and no resident children entitled to compensation under this act, there shall be paid to such nonresident child or children a like lump sum to be divided among them share and share alike; it being the intention of the foregoing to exclude from the benefits of this act any such nonresident widow, child, or children, if there be any resident child or children entitled to compensation under this act, and to exclude from the benefits of this act all other resident dependents if there be any nonresident widow, child, or children entitled to take under the provisions of this subdivision.

(8) If the monthly payments for a death hereunder are at the rate of not more than $15 per month, there shall be paid by the employer a contribution of $75 toward the burial expenses: *Provided, however,* That where no compensation for death of an employee caused as defined by sections 1 and 2 of this act is payable hereunder there shall be furnished by the employer a reasonable burial expense not exceeding $150.

(9) If compensation is being paid under this act to any dependent, such compensation, unless otherwise provided for herein, shall cease upon the death or marriage of such dependent, and in case the dependent be a child, shall cease upon such child reaching the age of 16, unless dependent, and then when such child shall cease to be dependent.

(B) Where permanent total disability results from any injury, there shall be paid to the injured employee 50 per cent of the monthly wages of such employee during the remainder of his life. In the following cases it shall, for the purposes of this section, be conclusively presumed that the injury resulted in permanent total disability, to wit: The total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the legs or arms, or an arm and a leg, and an injury resulting in incurable imbecility or insanity.

(C) Where temporary total disability results from any injury there shall be paid 50 per cent of the monthly wages of the injured employee during the continuance of such temporary total disability.

(D) Where permanent partial disability results from any injury—

(1) An amount equal to 50 per cent of his wages shall be paid to the injured employee for the periods stated against such injuries, respectively, as follows: In case of—

The loss by separation of one arm at or above the elbow joint, or the permanent and complete loss of the use of one arm, 72 months.

The loss by separation of one hand at or above the wrist joint, or the permanent and complete loss of the use of one hand, 57 months.

The loss by separation of one leg at or above the knee joint, or the permanent and complete loss of the use of one leg, 66 months.

The loss by separation of one foot at or above the ankle joint, or the permanent and complete loss of the use of one foot, 48 months.

The permanent and complete loss of hearing in both ears, 72 months.

The permanent and complete loss of hearing in one ear, 36 months.

The permanent and complete loss of the sight of one eye, 30 months.

The loss by separation of a thumb, 13 months; a first finger, 9 months; a second finger, 7 months; a third finger, 6 months; a fourth finger, 5 months.

The loss of one phalanx of a thumb or two phalanges of a finger shall be considered equal to the loss of one-half of a thumb or of a finger, and compensation for one-half of the above periods shall be payable.

The loss of more than one phalanx of a thumb and more than two phalanges of a finger shall be considered as the loss on an entire thumb or finger.

The loss by separation of a great toe, 9 months; any other toe, 4 months.

(2) In all other cases of injury resulting in permanent partial disability the compensation shall bear such relation to the periods stated in subdivision 1 of this clause (D) as the disabilities bear to those produced by the injuries named therein, and payments shall be made for proportionate periods not in any case exceeding 72 months.

(E) Where temporary partial disability results from an injury, the employee, if he is unable to secure work, at the same or better wages than he was receiving at the time of the injury, shall receive 50 per cent of his wages during the continuance of such disability; but such payment shall not extend beyond the period fixed for payment for permanent partial disabilities of the same character; and if the employee refuses to work after suitable work is furnished or secured for him by the employer, at the same or better wages than he was receiving at the time of the injury, he shall not be entitled to any compensation for such disability during the continuance of such refusal.

SEC. 22. That should an employee who sustains an injury resulting in permanent total or permanent partial disability die from any cause at any time, or should an employee who sustains an injury resulting in temporary total or temporary partial disability die as a result of such injury after 14 days of disability, the employer shall be liable for an amount to be ascertained as follows:

First. By computing the amount which would have been payable under clause (A) of section 21, if death had immediately resulted from the accident.

Second. By deducting from such amount a sum equal to the payments for the period between the accident and the death, which, if the accident had immediately resulted in death, the employer, by reason of the happening of any of the contingencies mentioned in clause (A) of section 21, would have been relieved from making.

Third. By deducting from the remainder so ascertained the amount of the compensation paid up to the time of death under clause (B), (C), (D), or (E) of section 21.

The amount so ascertained shall be paid to the dependents, if any, of such employee, living at the time of his death, in the same amounts and subject to the same contingencies as if compensation had been payable to them under clause (A) of section 21 by reason of their having been dependent at the time of the accident: *Provided*, That should an employee who sustains an injury resulting in permanent partial disability die from cause other than the injury at any time, the liability of the employer shall not exceed the unpaid balance of the amount which, if the injured employee had lived, would have been paid under the terms of any agreement, award, findings, or judgment, or under clause (D), section 21.

SEC. 23. That if, in an accident, an employee receive an injury resulting in permanent partial disability and in the same accident receive additional injury, which, by itself, entitles him to compensation, or if he be injured in the service of the same employer while entitled to or receiving payments for a previous injury, the amount of the monthly payment to him for such combined injuries shall be computed as for a single injury as provided for and limited by section 20 hereof, but in such case the periods of time prescribed for such combined injuries, severally, shall be added together: *Provided*, That where any of such *periods is* less than three months, the same shall not be added, but shall be disregarded.

If an employee receive an injury which, of itself, would only cause permanent partial disability, but which, combined with a previous injury, does in fact cause permanent total disability, the employer shall be liable as for the permanent total disability only.

SEC. 24. That in case any employee for whose injury or death compensation is payable under this act shall, at the time of the injury, be employed and paid jointly by two or more employers subject to this act, each of such employers shall be jointly and severally liable for the payment of such compensation, but as between each other such employers shall contribute the payment of such compensation in the proportion of their respective wage liability to such employee. If one or more but not all of such employers should be subject to this act, then the liability of such of them as are so subject shall be to pay the entire compensation: *Provided, however*, That nothing in this section shall prevent any arrangement between such employers for a different distribution, as between themselves, of the ultimate burden of such compensation: *And provided further*, That proceedings for the purpose of obtaining an award and payments under an award shall not in any event be delayed because of liability to contribution as between employers.

SEC. 25. That where payment of compensation is made to the widow for the use of herself, or for the use of herself and child or children, her written receipt therefor shall acquit the employer. Where payment is made to any child 18 years of age or over, the written receipt therefor of such child shall acquit the employer. Where payment is due to a child under the age of 18 years, the same shall be made to a duly appointed and qualified guardian of such child under the laws of the State of such child's residence, and the written receipt therefor of such guardian shall acquit the employer.

SEC. 26. That the term "dependent" shall include all persons who are entitled to compensation under the provisions of clause (A), section 21, and of section 23, and, wherever the context requires it, shall be held to include the personal representatives of the deceased and guardians of infants or incompetent persons.

The term "injury," wherever the context requires it, shall be held to include death resulting from injury.

The term "employee" includes an apprentice. It shall include the singular and plural and both sexes. Any reference to an employee who has been injured shall, where the employee is dead, and the context requires it, include a reference to his dependents or personal representatives.

The term "physician or physicians" includes surgeon or surgeons.

The term "child or children" shall include posthumous children and all other children entitled by the law of the State where the accident happens to inherit as children of the deceased employee.

"Disability" under this act shall mean want of capacity or ability by reason of injury to make full wages and full time in the position where working at the time of receiving the injury.

The term "dependent child over the age of 16," wherever it occurs in this act, or any reference to such child, shall be construed to mean a dependent child over the age of 16 years unable to earn a living by reason of mental or physical incapacity, or a female child under the age of 20 years unless sooner married.

Whenever an employee of a common carrier engaged in interstate or foreign commerce by railroad shall sustain personal injury by accident arising out of and in the course of his employment resulting in his disability or death, it shall be presumed prima facie that such employee was at the time of the accident engaged in such commerce.

SEC. 27. That without otherwise affecting the meaning or interpretation thereof the phrase "personal injury by accident arising out of and in the course of his employment"—

(a) Shall not cover an employee except while he is engaged in, on, or about the premises where his services are being performed, which are occupied by or under the control of the employer, or while he is engaged elsewhere in or about his employer's business where his service contracted for or reasonably volunteered or rendered for the protection of his employer's interests requires his presence as a part of such service at the time of the injury and subjects him to dangers incident to that employment.

(b) It shall not include an injury caused by the willful act of another directed against him for reasons personal to such employee and not against him as an employee or because of his employment.

(c) It shall not include a disease or infection except as it shall result from the injury.

SEC. 28. That where in any case payments have continued for not less than six months either party, provided said party is a citizen of the United States, may, upon due notice to the other party, apply to the court having jurisdiction of the territory within which the accident occurred for an order commuting the future payments to a lump sum. The application shall be considered by the court sitting without a jury, and may be granted where it is shown to the satisfaction of the court that the payment of a lump sum in lieu of future monthly payments will be for the best interest of the person or persons receiving or dependent upon such compensation, or that the continuance of monthly payments will, as compared with lump-sum payments, entail undue expense or undue hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States. Where the commutation is ordered the court shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at 4 per cent per annum with annual rests. Upon paying such amount the employer shall be discharged from all further liability on account of the injury or death, and be entitled to a duly executed release, upon filing which, or other due proof of payment, the liability of such employer under any agreement, award, findings, or judgment shall be discharged of record.

SEC. 29. That nothing herein contained shall be construed as doing away with or affecting any common-law or statutory right of action or remedy for personal injury or death happening before this act shall take effect.

SEC. 30. If either the employee or the employer shall file exceptions to the report of the adjuster, as provided in this act, he may on motion in writing have the cause removed from the district court of the United States to any State court of competent jurisdiction, in the county where the cause of action arose or where the employer resides or is doing business at the time of such removal, by filing in such State court, within 30 days from the filing of said exceptions, a certified copy of the report of the adjuster and his exceptions thereto, and thereupon the case shall proceed and trial shall be had in said State court in the same manner as is provided in this act for trial in the district court of the United States: *Provided*, That if the employer removes said cause, such removal shall be to the county where the cause of action arose or where the employer resides. If both the employee and the employer shall file motions for removal as above provided, the motion first filed shall prevail. When a case is removed to a State court it shall not thereafter be removed to a court of the United States. Appeal from and writ of error to such State court shall lie as in other cases. The provisions of this section shall be applicable and become effective in any State whenever and only whenever that State by appropriate legislation shall authorize the proceedings and practice in the courts of that State provided in this act for the trial of such causes in the district court of the United States.

SEC. 31. That it shall be the duty of every employer subject to this act to make reports of accidents, payments, and operations under this act to the Interstate Commerce Commission in such detail and at such times as the said commission may by general regulation require. Such reports shall be compiled and the general results thereof published as soon after they are received as practicable.

SEC. 32. No employee nor dependent, who shall have lost his right to compensation hereunder by reason of the invalidity of this act or any part of it, in case the act or any part of it shall be held to be invalid, shall be deprived of any right of action to which he would otherwise have been entitled if this act had not been passed, and such right in such event is hereby preserved and may be enforced within two years from and after the adjudication of such invalidity.

SEC. 33. That this act shall take effect on the 1st day of July, 1913, and may be cited as the Federal accident compensation act of 1913.

The SPEAKER. Is a second demanded?

Mr. FLOYD of Arkansas. Mr. Speaker, I demand a second.

Mr. BRANTLEY. Mr. Speaker, I ask unanimous consent that a second be considered as ordered.

The SPEAKER. Is there objection?

Mr. HENRY of Texas. Mr. Speaker, I object.

The SPEAKER. The gentleman from Texas objects, and the Chair appoints the gentleman from Georgia [Mr. BRANTLEY] and the gentleman from Arkansas [Mr. FLOYD] to act as tellers.

The House divided, and the tellers reported—ayes 149, noes 61.

So a second was ordered.

The SPEAKER. The gentleman from Georgia is entitled to 20 minutes and the gentleman from Arkansas to 20 minutes.

Mr. RODDENBERY. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. RODDENBERY. Can a vote be had on any particular paragraph of this bill?

The SPEAKER. It can not.

Mr. RODDENBERY. At any time will it be in order to offer an amendment to the bill?

The SPEAKER. It will not be.

Mr. BRANTLEY. Mr. Speaker, I yield five minutes to the gentleman from Illinois [Mr. STERLING]. [Applause.]

Mr. STERLING. Mr. Speaker, a little more than two and a half years ago Congress passed a joint resolution providing for the appointment of a commission to investigate the subject of workmen's compensation. That resolution was approved on the 25th day of June, 1910. Within a very few days after that the

commission was organized and proceeded to its work. It was directed in the resolution to make report to Congress and to recommend such legislation on the subject of workmen's compensation as it deemed best. That commission was engaged for a little more than a year and a half in investigating that subject.

It had numerous hearings. The representatives of the railroad companies on the one side and the representatives of the railway employees on the other side were given every possible opportunity to be heard and express their views on the subject. Experts investigated the subject of workmen's compensation in European countries. The commission gathered, I think, all of the available data in this country on personal injuries on railroads and costs relating thereto, and the amount of compensation actually received by injured men in railroad accidents. A little more than a year ago the bill which was prepared by the commission was introduced in the Senate and in the House. A few weeks later that bill passed the Senate. The Senate bill and the bill introduced in the House was pending before the Judiciary Committee of the House until four weeks ago. The bill that passed the Senate is now before the House with various amendments proposed by the Judiciary Committee of the House. The purpose of the bill is to provide relief for employees injured in interstate commerce in the railroad service of the country.

From the best obtainable data it has been determined that the cost per annum to the railroad companies of the country for personal injuries is $10,085,000, a little less than one-fourth of which has gone into the hands of the injured employees. Out of this vast sum of money which the railroads have paid on account of personal injuries received in accidents the victims have had but two and a half million dollars. Experts have carefully considered the question as to how much it will cost the railroads under this bill, if it becomes a law, to compensate for such personal injuries, and they find that it will increase the liabilities of these companies to the sum of $15,000,000, all of which will go direct to the injured employees or their families. This law will increase the cost to the railroads about 50 per cent, but it will increase the compensation to the injured employees by at least 500 per cent. The prodigious waste that has been going on under the present system of liability is a disgrace to American civilization and to American jurisprudence. Three-fourths of the money actually paid on account of these injuries has gone into the pockets of the attorneys and to the payment of court costs and witness fees, while at the same time more than one-half of those injured were unable to recover at all. Under the plan proposed in this bill all waste is eliminated and all moneys paid by the employer goes to the injured employee. In every case where the employee is injured in the line of duty the victim will receive compensation under this plan except in those where the injury resulted from the willful intention of the employee or where he was under the influence of liquor.

This bill is in harmony with the spirit of the age and enlightened civilization. It lifts the burden of industrial accidents from the shoulders of those least able to carry it and places it where it belongs. Why should the injured man or his family bear all the loss incident to accidents in the operation of these great quasi public enterprises. Railroads are operated for the benefit of society, and society should bear the burden imposed by them.

I trust the House will pass this bill to-night. Not only are the railroad men of the country demanding it but humanity requires it. I trust the great work which has been done by this commission and by the committees of the House and Senate will not fail to-night, and that these great labors will not have been in vain. Whatever opposition there may be to this bill arises from a lack of knowledge of its provisions and its purposes.

It is intended to give prompt and adequate relief to the injured man in the hour of his need and to his widow and children in case of his death. It is in harmony with Christian civilization, and its adoption is imperative if our Government is to keep step with the onward march of progress. These new industrial conditions which have sprung up in the last half century have necessitated this revolution in legislation pertaining to this subject. The old laws should be abrogated, because our civilization has outgrown them. The time has come when we must strip ourselves of laws which, although good in their day, are now wholly inadequate to meet new conditions.

When law has outlived its usefulness it should be repealed and new principles established to meet the needs of mankind. Government should never retard progress, but should always keep step with the advancing hosts of mankind. Let us to-night, in the closing hours of this session, as the Representatives of the people, move forward and join in the forward march of human progress.

The United States is far behind every civilized country in the world in legislation of this kind. All of the European nations and many States of this Union have gone further and given better relief to injured employees than has the Federal Government, but I believe, and I think it is agreed by men well acquainted with the features and merits of this bill, men on both sides of the question, representatives of railway trainmen and representatives of the railroad companies—all agree that this is the most comprehensive and the most generous bill that has ever been proposed in any legislative body in the world, and if it becomes a law it will be the most comprehensive and most generous compensation law that was ever passed. [Applause.]

Mr. BRANTLEY. I will ask the gentleman from Arkansas [Mr. FLOYD] to use some of his time.

Mr. FLOYD of Arkansas. Mr. Speaker, I am not opposed to the principle of compensation, but I am opposed to this bill. I have given it a careful study and I declare to you that it is a railroad bill pure and simple. [Applause.] The distinguished gentleman from Illinois [Mr. STERLING] who has just closed his remarks says that it is the most generous compensation act ever proposed in a legislative body. Yes; for the railroads, but it is the most outrageous, unjust, and damnable law that was ever brought forward in the name of virtue. [Applause.] It is the favorite method of those who seek to procure the enactment of bad legislation to seize upon and champion some popular idea or sentiment and then accomplish their ulterior purpose by indirection. That is what is sought by this legislation. This legislation originated with the claim agents of the great railroad systems of this country as disclosed in the hearings before the Committee on the Judiciary of the House.

Mr. STERLING. Mr. Speaker, will the gentleman yield for a question?

Mr. FLOYD of Arkansas. No; I decline to yield.

The SPEAKER pro tempore. The gentleman declines to yield.

Mr. FLOYD of Arkansas. A greater outrage perhaps than the preparation and presentation of this bill is the manner in which the proponents of this measure seek to pass it through this House [applause] under suspension of the rules with 40 minutes' debate, 20 minutes on a side. I decline to yield to any man who is seeking to enforce such an injustice upon the membership of this House. It comes in here with 94 amendments from the Committee of the Judiciary of the House. I am determined that no man shall vote for this bill without being told of its purposes. What is the purpose of this bill? Let me tell you the chief object sought to be accomplished by it. The Federal employers' liability act of 1908, as amended in 1910, in my humble judgment, is the most comprehensive and most complete and the most favorable law to railroad employees that was ever enacted in this or any other country in the world [applause], and in less than two months after the constitutionality of that law was upheld by the Supreme Court of the United States this bill was introduced into the Congress. And what is its primary object and purpose? It is to repeal the employers' liability act of 1908 and wipe it off the statute books. [Applause.] How many of you gentlemen would dare vote for the naked proposition if a bill were introduced into this Congress to repeal the employers' liability act? That is what you are doing when you vote for this bill, and if you pass it you will repeal it in toto, every line of it, and that wholesome law in behalf of the railroad employees that they have been striving for 25 years to enact into legislation will be wiped out and a new, untried, experimental law will be substituted in its place that will take another 25 years to settle in this country.

Now, we have some economists in this House. There are those of us who stand for economy. This bill proposes to create a system of Federal adjusters. These Federal adjusters are to be made officers of the United States and to be paid salaries from $1,800 to $3,000 a year. How many of them are there? There is to be one in each judicial district of the United States, to be appointed by the judge of that district, and as many more as the judges in their discretion may see fit to appoint. There are 67 judicial districts at present and the cost of maintaining these adjusters and their expenses will be four or five hundred thousand dollars a year.

Mr. ALEXANDER. Will the gentleman yield?

The SPEAKER pro tempore. Will the gentleman from Arkansas [Mr. FLOYD] yield to the gentleman from Missouri?

Mr. FLOYD of Arkansas. I am sorry, but I have not the time to do so.

The SPEAKER pro tempore. The gentleman from Arkansas declines to yield.

Mr. FLOYD of Arkansas. What are these adjusters? Are they judges, do they preside over a court? No. What are

they? They are claim agents for the railroads, to be paid for out of the Federal Treasury. They are claim agents for the railroads with the power of subpœna. You can not differentiate their functions from those of claims agents now employed and paid by the railroads. Oh, you say, these adjusters will be impartial. Every honest claim agent of a railroad who is loyal to his employer is now impartial; he investigates and reports to his company the real facts. What else about these adjusters? You can not get into court without first having a trial before the adjuster. Under the existing law a man can bring his case either in a State or Federal court. Under this new law, which is exceedingly technical, no man has a right to bring an action directly either in State or Federal court. He must bring it first before an adjuster. He must go through the formality of a trial before a Federal adjuster who has no judicial power and yet who acts in the capacity of a judge and performs the pseudo functions of a court. Yet his decision is not worth the paper it is written upon. Either party can except to his findings, and it nullifies the entire proceedings; and either party may then appeal or take his case into the Federal district court. And yet this outrageous law is brought forward in the name of labor. I am sorry to say that many labor leaders have been advocating it. But I want to call your attention to this fact, that no railroad company, no railroad attorney, has entered any protest against the passage of this law. [Applause.]

I understand that a railroad lobby is now in this Capitol working for this bill. There is some undisclosed, some powerful influences behind it. It is not in the interests of labor. I want to read you what Mr. Gompers had to say in response to a question which I propounded to him when he was before the Committee on the Judiciary last June. I read from page 192 of the hearings. Mr. Gompers was before that committee advocating at that time the passage of this law. I will read:

Mr. FLOYD. In that connection I want to ask another question. You have appeared a great many times before this committee, Mr. Gompers, and I want to say that usually I have been in sympathy with the legislation you were seeking. But since I have been a member of this committee in every instance except this one, when you sought legislation in behalf of labor, representatives of capital were here protesting. None are here on behalf of the railroads protesting against this legislation. How do you account for that if it is such a good thing for labor?

And after talking two or three minutes, Mr. Gompers in response to that question made this observation:

I do not know in what position the question of Mr. FLOYD places me—whether I do not know what I am talking about, or whether I am talking for a bill which the railroad companies want. In either case I should regard myself in a very unenviable light.

The most charitable view that can be placed upon the position of Mr. Gompers in regard to this legislation is that he has been misled in regard to it, as many other good people have been.

On January 24, 1913, Mr. Gompers again appeared before the Judiciary Committee and made a further statement concerning the changed attitude of the American Federation of Labor in regard to this bill. I quote from page 467, Serial No. 10, of the hearings before the Committee on the Judiciary, House of Representatives, Sixty-second Congress, on H. R. 20487 (S. 5382):

Mr. GOMPERS. Since my appearance before the committee advocating the passage of this bill there has arisen some difference of opinion among the workmen—or, I should more properly say, among the members of the organizations, the brotherhoods of railway employees—who are primarily concerned and interested in this legislation. In view of that fact, my associates and I in the American Federation of Labor, to which several of these brotherhoods are not affiliated, have felt that if these men are not united on a proposition of this character, the provisions of which affect them much more than they do us who are directly affiliated to our federation, it is scarcely right, scarcely the right thing for us now, to continue to advocate strongly a measure toward which they feel either a sort of indifference or hostility. Now, whether the reasons be good or no, the fact that they are divided among themselves on the question is sufficient to warrant, at least for the time being, our not taking any positive position or to continue our positive affirmative advocacy of the passage of the bill.

I repeat I am not opposed to the principle of compensation embodied in and underlying this proposed legislation. I am opposed to this bill. From a careful study and analysis of its several provisions I am firmly convinced that its enactment into law would be detrimental to the best interest of labor and highly favorable to the railroads. The railroad employees in this country, as already stated, have been striving for years to secure legislation favorable to their interests.

All these years they have been earnestly striving to secure legislation that would abolish and get rid of the old common-law doctrine of fellow servants, assumed risk, and contributory negligence. They first appealed to the legislatures of their respective States, and many State legislatures passed liberal laws in their favor. They finally appealed to Congress, and Congress in 1906 passed the first Federal employers' liability act, which was afterwards held to be unconstitutional. With the decision of the Supreme Court in that case before them, Congress in 1908 again took up the subject and passed another act, known as the Federal employers' liability act of 1908, the validity of which has since been upheld. After the passage of this act the railroad companies and their attorneys no doubt became fully convinced of its constitutionality long before the opinion of the Supreme Court was handed down, and it was during this period that the claim agents of the railroads began the agitation and discussion of the advisability of seeking the passage of compensation laws to supersede and take the place of our present employers' liability laws. It is shown in the hearings that in 1910, if I remember correctly, the claim agents of several great railroad systems met in Chattanooga, Tenn., and discussed the question of Federal compensation. Afterwards a meeting was held in Montreal, Canada, where the matter was again brought up and discussed. A meeting was held subsequently in Chicago, at which the matter was fully discussed, and it was decided that the railroad companies should take some steps looking to the procurement of compensation legislation. A committee of five was appointed, of which Mr. Whiting, of the New York Central Railroad, was chairman. They prepared a draft of a compensation bill, which appears on pages 210 to 216 of the hearings. Afterwards the Federal commission was created and appointed, which reported and brought in the bill under consideration. Mr. Brown, president of the New York Central, was a member of that commission, and Mr. Whiting, as I understand, was in attendance with the commission much of the time they were considering this question, and was freely consulted by them. These are some of the reasons, Mr. Speaker, that impel me to the conclusion that the idea of workmen's compensation legislation as embodied in this bill had its origin and inception with the claim agents of the railroads.

A further objection to this bill is that it not only repeals the Federal employers' liability act but it relieves the railroad companies from the added penalties in that act and in our safety-appliance acts, which provide that railroad companies which fail to comply with the requirements of law by equipping their cars with safety appliances shall have no right to plead the negligence of any employee in an action brought against them for damages in personal-injury cases. This, in my judgment, is the secret and underlying cause of this persistent and insistent demand for this proposed legislation at this time. The object is to repeal the existing settled law, the employers' liability act, and substitute therefor a new and untried law of compensation, and thereby relieve the railroads of millions of dollars on account of their failure to comply with our safety-appliance acts, and leave the rights of railroad employees again unsettled for a long period of years. If we pass this bill, let us not add insult to injury by resorting to the shallow and specious pretense that we are passing it in the interest of labor, but let us do it openly, frankly, and avowedly for the real purpose for which it has been promulgated and brought forth, namely, to relieve the railroad companies from heavy liabilities under our present laws.

This bill is against the interest of labor. I assert—and defy any advocate of the bill to show to the contrary—that there is not an administrative feature in the entire bill that is not more favorable to the railroads than to employees and that is not less favorable to the employees than the provisions of the existing laws.

Under the present law an injured employee may bring his action within two years. Under the terms of this bill as amended by the Judiciary Committee notice of the accident must be given by the employee, or, in case of death, by his dependents, within 90 days, unless, for causes stated in the bill, such time is extended to six months, and within six months in all cases, or the claimant loses his right of action and he is forever barred from recovering compensation under this act. The giving of this notice of the accident is made jurisdictional, and a failure to give it within the period prescribed bars the right of action. After this jurisdictional notice has been given an action must be instituted before the proper adjuster within 12 months from the date of the accident or the claim for compensation is forever barred. Under the bill as originally introduced this jurisdictional notice is required to be given within 30 or 90 days or the claimant loses his right of action, and if notice is given he must institute his action for recovery of compensation before the adjuster within six months or his case is forever barred.

Under our present law an employee or his dependents can bring an action directly in any State or Federal court of competent jurisdiction. Under this bill no employee can bring an action for compensation directly either in a State or Federal court. He must first institute his action before a Federal adjuster appointed by a Federal judge and go through the formality of a trial before this adjuster, who, as I have already shown, is

without judicial power, but who nevertheless acts in the capacity of judge and performs the functions of a court. There is no possible way in which any claimant under the terms of this proposed act can get his case in court except by a trial or hearing before an adjuster. Under our present law State courts have concurrent jurisdiction with Federal courts in personal-injury cases. Under the terms of this bill the Federal courts are given jurisdiction in the first instance when exceptions are filed to the findings of the adjuster, and under the bill as originally introduced had exclusive jurisdiction in all cases. The Committee on the Judiciary undertook by an amendment to give State courts concurrent jurisdiction with the Federal courts by a removal of the cause as provided therein, but the amendment adopted contains a provision that no removal of such cause can be had from a Federal court to a State court until the legislature of the State in which said cause is pending has passed a law authorizing Federal procedure in State courts in the trial of causes arising under this act. In the meantime employees are denied the right to have their cases determined in their local or State courts.

Under our present laws the parties to an action are allowed a trial by jury. Under this bill, as originally introduced, the right of trial by jury was restricted as far as it was possible to do so under Article VII of the Constitution. I am glad to state that the bill was amended by the Judiciary Committee so as to give to both parties the full right of trial by jury. If we pass the bill as amended and send it to conference this amendment may be stricken out and the original provision may be restored to and retained in the bill. This is true as to every other one of the 94 amendments adopted by the Judiciary Committee of the House. This House passed a bill during this Congress allowing jury trials in contempt cases, and if this bill should pass and go to the Senate and be referred to a conference committee, it is my earnest hope that the House conferees will never consent to restore the original provision in the bill which virtually denied the right of trial by jury in personal-injury cases. So much for the administrative features of the bill.

But there are other more serious and fundamental objections to the passage of this bill. The bill is exclusive and compulsory. As already shown, section 3 repeals the employers' liability act and makes this compensation act the sole and exclusive remedy in all cases of accident resulting in injury or death to railroad employees. I have insisted in the committee, and I insist here now, that if this bill is to be enacted into law it should be amended and made optional and should not be an exclusive remedy. At least it should be so made during the experimental stage of the new law. None of us know or can know how it is going to operate when applied in actual practice. I have therefore maintained and now maintain that as careful and conservative legislators we should leave the present employers' liability law in full force and effect.

This proposed law should be made optional or cumulative, an additional and not an exclusive remedy. Without this optional feature—and it is not possible to amend the bill under the pending motion—it is my judgment that the bill should be defeated outright. The proponents and friends of this measure have resisted at every stage of its consideration all attempts to incorporate therein an optional feature, insisting that such provision would destroy the purpose of the bill and would be unjust to the railroads. The answer to such contention is that as drafted now it is unjust to the railroad employees.

In this proposed law liberty of contract is denied to the injured employee and his dependents. However serious the injury, no amount can be legally paid him in excess of the amount allowed in the act, and all contracts made in excess thereof are void. If an employee makes a contract with an attorney to represent him in one of these cases, the adjuster or the court may annul the contract and fix the fee or allowance in his discretion. The railroad companies are left free to pay their attorneys whatever amounts they see fit. The bill seems to be based upon the theory that railroad employees as a class are a lot of incompetents, and that the employer, on account of some superiority, real or fancied, should be made the guardian and protector of the employees. Under the terms of the bill, if an employee should recover judgment against the railroad company, the company is allowed to withhold the amount of the judgment and pay it in installments. The rates of compensation provided in the bill are low, but when an employee recovers judgment it is not to be paid as other judgments are paid. It is expressly provided that the money adjudged against the railroad companies is to be paid to the employees in monthly installments for a period of eight years, and thereafter all compensation ceases. This provision is based upon the idea or principle that if the employer company so manages or mismanages its affairs as to cut off a man's leg or arm or put out his eye, that thereupon it is entitled to become his guardian. Why this provision withholding from the injured employee money adjudged in his favor by the courts of his country? Is it for the benefit of the employee? No; like many other provisions of of the bill it is a forbearance in favor of the railroads. Many of these injured employees in the course of eight years will die, and when one of them dies who has no family or dependents the railroad company will be relieved of the unpaid balance of the judgment. Such provision if enacted into law will result in the grossest injustice to railroad employees—that great army of men engaged in a most useful and honorable field of labor, but one that is hazardous and that costs 10,000 of them their lives each year. I shall not by my voice or vote be a party to any such act of injustice to these unheralded heroes of our great industrial railroad systems. What can a man give in exchange for his life? Yet the life of a railroad man under the terms of this bill is fixed at a value of $4,800. I deny that railroad employees in this country need any guardians. If they are to have guardians, I deny the right of any man to make their employers, the railroad companies, their guardians. I deny that the rich and often profligate owners of railroads, who manipulate stocks and bonds, who summer in Europe, winter in yachts in southern waters, and clip bond coupons for a living, are the proper persons to become the guardians of anybody, much less of the great working classes between whom and the railroads there is a constant clash of interests. The workingman's toil has piled up the millions that these financial magnates and rich railroad dignitaries to-day enjoy. These workingmen are intelligent, trustworthy, vigilant; they are themselves the guardians and protectors of the lives and safety of the entire traveling public; and, in addition, the properties and the earnings of the railroad companies are under their supervision, care, and protection. What would the railroad companies be without this noble band of intelligent and trustworthy workingmen known as railroad employees? By their brawn and brain and with their own hands they have constructed all of our railroads, made every cut and fill, driven every tunnel, built every culvert and bridge, placed every crosstie, laid every rail, erected every depot, built every car, constructed and operated every engine, and run every train in the United States. Yet it is proposed in this bill to constitute a lot of railroad dignitaries and coupon clippers as the guardians of these men. The proposition is an insult to labor. If I believed that any class of these railroad employees needed guardians, I should never give my consent to turn them over to the care and keeping of their employer—that inanimate thing known as a railroad corporation, dominated and controlled by men whose lives are devoted to the manipulation of stocks and bonds and the accumulation of money, whose church is the temple of greed and whose god is gold. May the Lord deliver us from the charity and altruism of such men.

Mr. Speaker, the report made by the Judiciary Committee in favor of the passage of this bill was not unanimous. The gentleman from North Carolina [Mr. WEBB], the gentleman from Missouri [Mr. RUCKER], the gentleman from Tennessee [Mr. HOUSTON], the gentleman from Texas [Mr. BEALL], and myself joined in a report expressing the views of the minority, to which I wish to direct your attention and which is as follows:

VIEWS OF THE MINORITY.

The undersigned submit the following as our views in opposition to the passage of S. 5382 as reported by the committee:

Before submitting our objections to the bill as it now stands we desire to state that it is our judgment that the bill as reported is a great improvement over the bill as it passed the Senate and over H. R. 20487, relating to the same subject matter, which was introduced in the House by Mr. BRANTLEY, of Georgia, and which was also considered by the committee. We therefore cheerfully join with the majority in the recommendation that each of the committee amendments be adopted. We have no criticism to offer to any of said amendments except as to the amendment relating to the jurisdiction of State courts. We think the bill could be improved by adopting a substitute for this amendment or by striking out the last sentence thereof, but if neither of said changes can be secured we favor the adoption of this amendment in its present form. But we can not join with the majority in recommending the passage of the bill as reported without further amendment.

It is our judgment that the bill in its present form, if not designed, will operate primarily in the interest of the railroads and will relieve the railroads from the burden of paying damages in personal-injury cases under our present employers' liability act, the validity of which was upheld by the Supreme Court of the United States at its October term, 1911, in the case of Mondou *v.* New York, New Haven & Hartford Railroad Co. et al. (See U. S. Reports, vol. 223, p. 1.) The bill if enacted into law will not only relieve railroad companies from all liabilities by reason of their own fault or negligence for damages in personal-injury cases, but the theory and purpose of the proposed legislation is to transfer the burden of compensating injured railroad employees or, in case of death, their dependents, resulting from all accidents, from the railroad companies to the general public, the effect of which policy must necessarily result in a general increase in freight and passenger rates to meet the increased burden imposed upon said companies by reason of the passage of this act.

Section 3 repeals the existing employers' liability act and provides that the proposed law shall be compulsory, and shall constitute the sole and exclusive remedy for compensation of railroad employees engaged in interstate commerce for injuries received by accident while so employed. It is our judgment that section 3 should be so amended as to leave in full force and effect our present employers' liability act, with a proviso making it optional with the employee, or with both employer and employee if deemed advisable, to elect at any time before the date of the accident as to whether in case of injury or death compensation shall be claimed under this act.

In our judgment the proposed legislation is revolutionary both in theory and principle and of doubtful constitutional validity, but if deemed and held to be constitutional, it is nevertheless new, untried, and wholly experimental in Federal practice, and may therefore in its actual operations disappoint the expectations of its friends and supporters among the laboring people and result in great detriment to railroad employees, the particular class of persons for whose benefit the passage of this bill is urged. Doubts as to the constitutional validity of the proposed act in the minds of the proponents of the measure are suggested by the fact that an amendment has been incorporated by the committee as section 33 which reserves all rights of employees under existing laws in case this act should be held invalid. This we regard as one of the most salutary provisions in the bill. In view of the excellent and substantial remedies provided for injured employees under our present laws we think it unwise, unsafe, and an act of the grossest injustice to deprive them of such remedies and supersede these laws with this or any other new and wholly experimental law.

In our judgment the administrative features of the proposed act are in the interest of the railroads. In our view of the general proposition the administrative features of the bill are exceedingly unjust, arbitrary, complicated, technical, and cumbersome. Such regulations must always and of necessity result to the detriment of the person who is required to maintain an action under them, which in this case is the railroad employee or his dependents. Under the provisions of this proposed act complainants in personal-injury cases are denied the right to bring an action directly in either Federal or State courts to recover compensation for injuries received in railroad accidents. All proceedings must be first instituted before an adjuster appointed by a Federal district judge. There is no possible way, under the terms of this bill, in which an injured employee can get his case either into a Federal court or a State court without first going before an adjuster, who is without judicial power, but who nevertheless is authorized to go through the formality of a trial, and who in the performance of his duties in conducting such trial or hearing exercises the functions of a court and acts in the capacity of a judge. His findings are binding upon nobody, and the whole proceeding before him is absolutely useless without both parties assent to his decision. Exceptions to his findings by either party nullify all proceedings before him, and the case must be tried de novo in the Federal court, or if removed to the State court, as provided in the bill, must be tried de novo in the State court. Hence, a double trial and double cost to the employee in such cases. Thereafter the case may be taken to the appellate court and to the Supreme Court of the United States.

Section 11 provides for a review of any case tried before the adjuster at the instance of either party at any time within two years from the date of the accident whenever it is alleged in a proper complaint that the injury complained of in the original action has increased or diminished or ceased altogether, and the adjuster thereupon is empowered to review, modify, set aside, or annul any agreement, award, findings, or judgment previously rendered in said cause. Thus it will be observed that this adjuster is authorized and empowered under the provisions of this bill to review, modify, set aside, and annul a decision of the Supreme Court of the United States if the same case should again be brought before him within two years of the date of the accident. To those who believe in the doctrine of res adjudicata and who have been taught that the judgments of the Supreme Court are final unless subsequently reviewed by that same high tribunal this particular provision of the bill is as novel as it is absurd and as absurd as it is novel.

The bill also in effect relieves the railroad companies from the added penalties now enforceable in damage suits against railroad companies for noncompliance with our safety-appliance acts. In the safety-appliance acts passed by Congress failure to comply with the law by furnishing the required equipments, in addition to fines that may be imposed for such failure, there are provisions that forbid the railroad companies in case of such failure to plead the negligence of an employee as a defense in any action brought against such company for damages in personal-injury cases. This provision is nullified by the provisions of this act, for all compensation under this act is fixed, arbitrary, and limited in amount, and it becomes wholly immaterial whether an employee who is injured was, under its provisions, careful or negligent. The same compensations under the terms of this act are paid for like injuries in all cases.

The limitations as to the giving of notice of the injury and as to the time of bringing action or instituting proceedings under the provisions of this bill we regard as arbitrary, unjust, unfair, and unreasonable, and we have found no precedents, either under our State or Federal laws, except where specific liens are involved, in which the period of limitation fixed for bringing an action is so short as that provided in this bill. Within 90 days, unles for reasons stated in the bill the time for giving notice of the accident is extended to six months, and within six months in all cases, the injured employee is required to give notice of the injury received by accident, and in case of death his dependents are required to give such notice to his employer. The giving of this notice is made jurisdictional, and hence upon failure to give the required notice within the said period of 90 days or 6 months, as the case may be, the employee is forever barred from his right to compensation under the terms of this act. This requirement, if enacted into law, will result in barring by limitation the rights of hundreds of employees or their dependents each year on account of the short period of limitation. This provision we regard as unjust and unreasonable from the standpoint of the employees, but will result in incalculable benefit to the railroad companies.

We also object to the passage of this bill because it creates a large number of Federal officers, to be known as adjusters. The bill provides that the judge of the Federal court shall appoint one or more adjusters for each judicial district in the United States. There are at present 67 districts, and there will be at least 67 adjusters and as many more as the district judges in their discretion may see proper to appoint. The duties and mission of these adjusters are to try to settle and adjust disputes and controversies for compensation provided for in this act between the railroad companies and their employees, and yet it is expressly provided that these Federal adjusters shall be officers of the United States and shall receive an annual salary of not less than $1,800 nor more than $3,000, to be fixed by the Attorney General, to settle and determine controversies that are properly within the jurisdiction of our law courts and which could, in most instances, be more readily settled by agreement of the parties or by a trial in the first instance in the courts than under the plan proposed. The decision of the adjuster settles nothing unless both parties are willing to be bound by it. Exceptions filed by either party to his findings nullify the proceedings before the adjuster and the trial proceeds de novo in the court having jurisdiction of said cause.

The bill as originally introduced gave the Federal courts exclusive jurisdiction in all cases arising under this act. An amendment was adopted by the committee, the purpose of which is to give State courts jurisdiction concurrent with Federal courts in cases arising under this act, but it is expressly provided in said amendment that the provision shall not be effective until the legislatures of the respective States shall prescribe that the practice and procedure of the Federal court in the enforcement of the provisions of this act shall be followed by the State courts in the trial of causes which originate under the provisions of this act and are afterwards transferred to State courts for final determination as provided in said bill. This we regard as exceedingly unfortunate and unjust. We believe that the bill should be so remodeled and drafted as to give State courts concurrent jurisdiction in all cases arising under the provisions of the act without requiring any action on the part of State legislatures to give validity to such provision of the act. The amendment referred to does not do so, but imposes upon the railroad employees the necessity of securing legislation in their respective States before they can exercise the right to remove their cases from the Federal court to a State court for a trial and determination. This provision, in our judgment, will operate to the benefit of the railroads by enabling them to have these cases tried in the Federal courts.

The rates of compensation provided for in this bill are so at variance with the amounts that may be recovered under the existing law and in many instances are so small that they are wholly inadequate to the necessities of the injured employees or their dependents that if we pass this bill without incorporating in it an optional provision giving employees the right to elect whether they will seek compensation under this act or under our general employers' liability act, we may expect a general storm of protests and indignation from the rank and file of railroad employees throughout the country against our action.

In conclusion, we submit that our primary and fundamental objection to the passage of this bill, as reported, is that it repeals the Federal employers' liability act and contains no optional feature. If the employers' liability act was not repealed and an optional feature was incorporated in the bill, it is our judgment that the importance of the objections herein made, while not altogether removed, would be greatly minimized.

Respectfully submitted.

J. C. FLOYD.
E. Y. WEBB.
W. W. RUCKER.
W. C. HOUSTON.
JACK BEALL.

I also desire to submit for your consideration Serial No. 8 of the hearings of the Committee on the Judiciary, House of Representatives, Sixty-second Congress, third session, on H. R. 20487 (S. 5382), and will ask that the same be printed as an appendix to my remarks. This serial embodies a detailed statement made by me before the Judiciary Committee of the House in opposition to the passage of this bill, together with numerous letters and protests by railroad employees from my own State and from other sections of the country against the passage of this bill.

APPENDIX.

EMPLOYERS' LIABILITY AND WORKMEN'S COMPENSATION.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., January 20 and 21, 1913.

The committee met at 10.30 o'clock a. m., Hon. HENRY D. CLAYTON (chairman) presiding.

Present: Messrs. WEBB, HOUSTON, FLOYD, THOMAS, GRAHAM, DAVIS, MCGILLICUDDY, BEALL, STERLING, NORRIS, and DODDS.

The CHAIRMAN. The committee will come to order. Mr. FLOYD desires to make a statement.

STATEMENT OF HON. JOHN C. FLOYD, M. C.

Mr. FLOYD. Mr. Chairman, since this bill has been under consideration, I have received from the railroad employees of my State many protests against the passage of the bill in its present form. And I feel it my duty to them to incorporate these protests in the record, and also incidentally to state my views concerning several different propositions embodied in the proposed legislation.

I wish right at the outset to state some fundamental objections that I have to the bill as a whole. The first objection I have to it is that it seeks to eliminate trial by jury in personal-injury suits, and I think it practically does so.

In the first place, the trial is before an adjuster, and in this trial before the adjuster there is no provision for trial by jury whatsoever. The findings of the adjuster are made prima facie correct, and if an appeal from his decision is taken the case goes to the Federal district court. Exceptions must be filed within 20 days after the findings of the adjuster are made as a basis for an appeal. Within five days after these exceptions are filed the opposite party, if he desires a jury trial, must notify the clerk of the court of that fact and pay a $5 jury fee as a prerequisite to having the case tried by a jury. And if he fails to do that he must try his case de novo in the Federal court without a jury.

Mr. STERLING. Not a jury fee, is it?

Mr. FLOYD. A jury fee of $5; yes. If you will examine the bill, you will find it is so provided therein.

Now, I desire to give you an illustration of how that would work in my State. The western district of Arkansas has three divisions of the court, and the district extends over the extreme southwestern part of the State, around the western part of the State, and the northern part of the State. One of the courts is located at Harrison, in the northern part of the State; another at Fort Smith, in the western part of the State; and another at Texarkana, in the extreme southwestern part of the State. No one can tell where that adjuster would

reside. But let us suppose that he resided at Harrison. The railroad communication between Texarkana and Harrison would be 300 or 400 miles, involving numerous delays and transfers. If he should be called to Harrison to try his case before the adjuster and should take the train, the railroad attorney could immediately file his exception after he had take a train for home, and it would be an utter impossibility for that man to get home and ascertain that exceptions had been filed and get his application for appeal and jury fee back there in five days. It would be a physical impossibility for him to do it.

I wish to show you by the record in this case that it was the purpose of those who framed this bill to eliminate jury trials in these cases.

Mr. DAVIS. Your objection there goes to the time allowed for filing exceptions?

Mr. FLOYD. No; my objection goes to any device that will deprive a man of his constitutional right to a trial by jury in this class of cases.

Mr. DAVIS. The particular inconvenience that you are using as an illustration, as you stated, I take it is solely that the time allowed for filing the exceptions is not sufficient. In other words, the difficulty of travel from Texarkana to Harrison?

Mr. FLOYD. No; not wholly. I wish to show you that while this particular provision of the bill is so constructed that it pretends to give him the right of trial by jury, it is done in such a complicated way that it virtually destroys the trial by jury. Now, I wish to show you from the record in this case that it was the intention of the makers of this bill to deprive claimants for damages in personal-injury suits of the right of trial by jury. I read from page 65 of Senate Document No. 338, Sixty-second Congress, second session, as follows:

"The CHAIRMAN. What would you think of our power to provide that a jury trial should be waived—should be deemed to be waived—unless an employee, upon entering employment, has reserved it?

"Mr. FREUND. That is an interesting suggestion. I had not thought of that.

"The CHAIRMAN. We have laws in many States that provide that jury trials shall be waived unless demanded at a certain time. Of course that is after the cause of action has arisen. Now, whether we could go back of that and provide that the jury trial should be deemed waived unless the right to it was reserved by the employee when entering the employment is a matter for consideration.

"Mr. FREUND. I can not say that there is any rule that a jury trial should be waived at any particular stage. Trial by jury is a right purely of the individual. He may waive it.

"Senator CHAMBERLAIN. Do you think it would result in the employee waiving that right as a condition of securing employment? It would work a hardship on the employee if he was required or requested to waive a jury trial.

"Mr. FREUND. That is a matter of consideration by Congress. I do not know whether that would be a constitutional question in itself. I think it would not, perhaps, be quite fair to the employee if he has a right to jury trial that he should be compelled to waive it. I have my doubts about that.

"The CHAIRMAN. My inquiry was wholly tentative.

"Mr. FREUND. I believe that as long as we have a Constitution we ought to observe it. I am not in favor of schemes that try to beat the Constitution in some way because it is inconvenient."

Right in this connection I wish to state that I fully indorse that sentiment expressed by Mr. Freund, and I think that this bill is devised with that very purpose in view in so far as the jury provision is concerned. That is, I think the provision relating to a jury trial is a scheme to try to beat the Constitution because it is inconvenient.

Mr. NORRIS. Of course the object of the bill is to avoid litigation. A jury is one of the incidents to litigation.

Mr. FLOYD. I understand that.

Mr. DAVIS. Let me ask you this question in that connection: Is not the whole theory of workmen's compensation acts to substitute for the very uncertain assessment of the jury a fixed standard of values and compensation? Is not the very purpose of the bill to get away from assessment by juries?

Mr. FLOYD. I think, in so far as this bill is concerned, and the men that prepared it, that was the very purpose in view, to get away from a trial by jury in these personal damage suits.

Mr. DAVIS. Does not that lie at the bottom of all workmen's compensation acts, to a larger or smaller degree?

Mr. FLOYD. I am not prepared to answer that question.

I will now proceed to read further from the statement of Mr. Freund:

"I am quite loyal to the Constitution, but I believe that some time it will have to be changed in some respects.

"Mr. BRANTLEY. What would be the value of the compensation law if we had the jury trial left?"

Now, that is Mr. BRANTLEY, the author of the House bill, asking that question. Let me repeat the question: "What would be the value of the compensation law if we had the jury trial left?" What stronger argument can I make to sustain my contention stated at the outset that the deliberate purpose of the drafters of this bill was to take away from the injured employee his right of trial by jury than to call attention to this question interjected at this point by the author of the House bill?

Mr. Freund proceeds:

"I do not believe it would be used to any extent. If you have a clause relating to attorney's fees—that is why I mentioned the two together—I do not believe the employee would seek delay by a jury trial unless he was spurred on, unless he was urged to do it. I mean that I do not believe there would be any very serious obstacle in the way of the operation of the act.

"Mr. BRANTLEY. You think the compensation fixed by the act would be accepted generally in lieu of trial?

"Mr. FREUND. I think in nine cases out of ten—yes, in ninety-nine cases out of a hundred—there would be no question of a jury trial. I think if the jury trial should be abolished there should be a clause in the act stating that that should be severable, so that the invalidity of that would not invalidate the whole act."

Mr. Freund insists on leaving a provision somewhere in the bill for jury trial, so that if the court should hold that, under Article VII of the Constitution, Congress did not have the right to deny the trial by jury that that saving clause would preserve the constitutionality of the act. And you will remember that during the hearings that I conceded the constitutionality of the act on that very ground, and contended that the provision for a jury trial was all that saved it. But I insist that the bill does not contain any just or fair or reasonable provision for a jury trial; that the sentiments expressed by the proponents of the measure which I have quoted were carried out in the drafting of the bill as far as they felt they could possibly carry them out and preserve the constitutionality of the act.

Now, I will not take the time to read other discussions upon the same subject, but the subject of jury trials is discussed on pages 58, 218, 254, 266, 369, 375, 877, 878, 1011, and 1132 of Senate Document No. 338 already referred to. And the same views are expressed throughout by the various persons who appeared before the commission to discuss that question, all agreeing that it was desirable to eliminate the jury trial if it could be done, and expressing doubts as to whether an act affirmatively eliminating jury trials would be constitutional. It was insisted by some of the proponents of the measure that the jury trial ought to be preserved, not for the purpose of ascertaining the amount of damages under the law, but for the sole purpose of determining whether or not the person claiming damages was an employee of the railroad. And you will notice that where the jury trial is demanded, and where the injured employee has paid his fee as required in the proposed bill, it is left in the discretion of the district court to propound interrogatories, and to submit to the jury the issue to be tried.

Mr. DAVIS. Is not that true of every jury trial under the Federal practice? Has not the court the right to propound to the jury special interrogatories on any question of fact involved in any cause?

Mr. FLOYD. Certainly, they have that right, but in this case in actual practice you would find that that provision could be used for carrying out the purpose in the minds of the makers of the bill to submit the question as to the liability of the railroad company to a jury and not the question of the amount of damages.

Mr. MCGILLICUDDY. You think, Mr. FLOYD, they could eliminate the question of compensation and submit only the question of negligence?

Mr. FLOYD. Undoubtedly they could under this bill as drafted. What would the jury know about it if the district judge should propound an interrogatory, and submit nothing to them except the question of the liability of the company under the circumstances?

Mr. MCGILLICUDDY. I have never understood that under the bill he could do that.

Mr. DAVIS. I think if he did he would certainly have a reversal.

Mr. FLOYD. It is susceptible of such construction. It is within the judge's discretion to propound special interrogatories. He can submit whatever he pleases to the jury, and he can limit the issues. And on the question of compensation I wish to say that under the terms of this bill they have largely eliminated any necessity for a jury as to that, because if the adjuster should perchance allow the man the maximum amount the jury would have no discretion, except to cut him down. They limit the amount he may recover by ironclad rules of law to a fixed amount, and they could not go beyond that.

That is my first fundamental objection to this bill. I do not know what others may think about the jury system. I know it is often criticized. But I do not think that anything was ever invented in the jurisprudence of the world that has done so much for the benefit of humanity, and especially the poorer classes of humanity, as that same much-abused jury system. And I am never by my vote going to aid in the passage of any bill that directly or indirectly destroys the right of trial by jury.

The CHAIRMAN. You do not mean, Brother FLOYD, that the jury system itself is abused. You mean it is maligned.

Mr. FLOYD. I mean maligned, certainly.

To repeat, that is my first fundamental objection to this proposed law, and it would seem to me that this great committee which has during this Congress gone beyond what previous Congresses have done in upholding jury trials and has reported out a bill granting jury trials in contempt cases ought not to pass a bill to deny jury trials in personal-damage cases. And that is the effect of this bill as drafted.

I do not say that it completely eliminates all provisions for jury trials, for it does not, but in practical effect, it destroys the efficacy and the efficiency of jury trials in proceedings provided for under the terms of this bill.

Now, as to the second objection.

Mr. STERLING. Have you said all you are going to say on that question of giving the State courts jurisdiction, Mr. FLOYD?

Mr. FLOYD. No, indeed; I am going to come to that next. If you want to ask me any further questions about the jury provision of this bill I would be glad to answer you.

Mr. GRAHAM. Could your objection which you have just stated be removed by extending the five days to such time as you would consider reasonable?

Mr. FLOYD. Not by that amendment alone, because the adjuster in this case performs the functions of a court and acts in the capacity of a judge, and the original trial is before this adjuster. He has the power to subpœna witnesses, to hear them, and there is no provision in the bill that that testimony taken before that adjuster shall be preserved. But after he has heard orally the testimony of the witnesses that appear before him, and that testimony is locked in his own bosom, it provides that he shall make written findings of facts, that these written findings shall be filed with the court, and they are made prima facie evidence of their correctness. If the witnesses that testified before the adjuster should die between the time that the trial was had before the adjuster and the time of the trial in court, or if any other contingency should happen to prevent the employee from producing the witnesses, and the adjuster had made a wrong finding, had made a finding not substantiated by those facts, his findings would control in the district court, the burden would be upon the employee to overturn those prima facie findings of the adjuster. I do not think that is right. I do not think that is fair. The adjuster might be an unbiased man, he might be an accurate man; but, on the other hand, he might be an inaccurate man, however unbiased, and then he might be very much biased, and a reflection of his views might not give the district court or the jury that is to try the case in the district court any real and true conception of what the evidence in fact disclosed.

Mr. MCGILLICUDDY. Mr. FLOYD, what would you suggest as a preliminary tribunal to try questions of facts, having in mind the principle of compensation, not negligence? If not an adjuster, what would it be, or what should it be?

Mr. FLOYD. If I had any suggestion to make on the subject I would make this suggestion, to preserve the right of trial by jury in any court of original jurisdiction in which the case was brought, with a proviso that by consent of the parties the determination of facts might be submitted to a master or to an adjuster, whatever you choose to call him, and then when they had given their consent to that arrangement, it would be reasonable to bind them by his findings. But I would preserve in its full force the jury trial, and would oppose any scheme devised to deprive either party of trial by jury guaranteed under the Constitution where the amount in controversy is over $20; and then if a convenient method of ascertaining the facts was desired, I would leave it for the parties, by agreement, to say to the court, we are willing, instead of having a jury in this case, that the court may designate an adjuster or a master—call him by whatever

name you please—to hear this testimony and report it back to the court.

Mr. MCGILLICUDDY. As a matter of fact you would never get an agreement of that kind in actual practice. The parties would always want to submit their case to the jury—the plaintiff would.

Mr. FLOYD. If that be true, and I think it is true, ought that fact not to condemn this proposed law at the outset, because that is only another argument that we are doing something that will not meet the approval of the parties most concerned in the result of the litigation, the parties seeking to enforce legal rights in the court.

If you have no further questions on that subject, I wish to proceed to consider another objection that I have to the bill, and that is, that it takes away from the State courts the jurisdiction that they now have in personal injury suits, and gives the sole and exclusive jurisdicton of these cases to the Federal courts. Under the existing Federal liability law, the act of 1908, as amended by the act of 1910, the State courts are given concurrent jurisdiction with the Federal courts in all suits for damages—in personal injury cases against the railroads.

Mr. DAVIS. Let me ask you a question. Have cases under that law been held removable as arising under a law of the United States?

Mr. FLOYD. I am not sure about that.

Mr. DAVIS. My impression is that they would be, but I am not sure about that.

Mr. FLOYD. But that would be immaterial to the substantial merits of the proposition, because in all cases which would not be entitled to removal under the general Federal statutes, the cause would have to be tried in the State courts.

Mr. DAVIS. That point was in my mind. Cases brought under the liability law are of course brought under a statute of the United States, and as such, regardless of the citizenship of the parties, would be removable unless there is something on the face of the law to prevent it. My impression, although it is only an impression, is that cases under that law have been held removable because they involve the construction and application of a law of the United States.

Mr. FLOYD. If you will permit me, Mr. DAVIS, I am of the very strong impression that the contrary principle is announced and declared in the decision affirming the constitutionality of the employers' liability act of 1908 and the amendatory act of 1910. They hold that the act simply confers upon the State courts jurisdiction, and when it does that the Federal statute, being a part of the law of the land, may be enforced by the State courts, and I think on investigation that you will find that on questions of removal that the same law will apply to removals in such cases as will apply in any other class of cases.

Mr. STERLING. That law expressly provides that they can not be removed when they are commenced in State courts.

Mr. DAVIS. It does so provide.

Mr. FLOYD. Its constitutionality has been upheld.

Mr. STERLING. Since that amendment, do you understand it could be removed?

Mr. DAVIS. I am asking for information.

Mr. FLOYD. Mr. STERLING brings to my attention the fact that that law does expressly provide that cases brought in State courts shall not be removed, and the constitutionality of that amendatory act has been upheld by the Supreme Court of the United States.

Mr. STERLING. Did they pass on that in the cases they decided last year?

Mr. FLOYD. Yes, sir; that is my understanding. They passed both upon the law and upon the amendment, and it is in the decision upholding the amendment that I think you will find that very question discussed.

Mr. STERLING. I know they answered every question that was raised by counsel on either side.

Mr. FLOYD. Let us look at this proposition now with that view alone. It certainly would be to the great advantage of injured employees to have an opportunity to adjudicate their cases, whatever the method or whatever the system adopted be, in the local courts of their respective communities. It would save them hundreds of dollars in expense.

Mr. NORRIS. Right on that point I wish to ask you this question: Could not we reach that in this bill by the proper amendment and give the State courts jurisdiction?

Mr. FLOYD. Oh, I think so; and amendments of that purport will be offered. If that was the only defect in it, I think we could reach it easily by an amendment, and I shall vote for such an amendment when it is offered. I do not think that I have an amendment prepared just in that form, because my amendments are drafted along another line, with a view to preserve in its entirety the existing law. But if another member of the committee submits such an amendment, I shall cheerfully vote for it.

I think we are making a serious mistake in attempting to pass this bill. We cut down the amounts that employees may recover under the existing law. We fix an absolute and arbitrary maximum limit of recovery for personal injuries, and yet we provide that they can not take their claims into their local courts, State courts—that they must take them into a Federal court. Well, in sparsely settled communities, where Federal courts have extensive territorial jurisdictions covering half and in some instances the whole State, taking these two propositions together, limiting the amount they can recover and making recovery more expensive and at the same time requiring them to go into foreign jurisdictions, to leave their homes, to appear in a court 100 miles distant, and in the case I have already cited 300 miles away by the nearest public conveyance, to assert their claims against the railroad company, it seems to me the proposition is too unjust.

Mr. NORRIS. If that applied to all the cases it would be very serious, I think myself; but it is at least the theory of the law that if it is enacted those things will very, very seldom occur; that they will not get into any litigation; that they will never have a trial. It will be adjusted in the first instance, as the law provides it shall be.

Mr. FLOYD. In answer to your first suggestion, I wish to observe that the law will apply to every case.

Mr. NORRIS. It will be possible in every case; that is true. It has to be, under the Constitution.

Mr. FLOYD. But the principle of law will apply in every case, and it will deny every man the right to a trial in the State court. He must enter upon his trial in the Federal jurisdiction whether that court be convenient or inconvenient to him.

Mr. DODDS. It would have an influence to make the claimant accept less, perhaps, by reason of the fact that if he resisted he would be put to large expense.

Mr. FLOYD. I think so, and that is the evil of it. While the amounts are small that the employees are entitled to recover, the difficulties of recovery are so great that I think the practical operation of this law would result finally, after the railroad companies had tried a number of cases, in compelling every man injured to accept just that amount which the railroad companies would voluntarily give him and no more. That is what I think would be the final effect of the operation of this law.

Mr. NORRIS. Can you not assume that the adjuster will do what is right if there is such a trial, if it gets that far? Of course, the believers in this law think it will never get that far, that it will be settled without any trial. That is the theory of the law; and if it does not have that effect, the law will be a failure without a doubt. And, then, as you said a while ago, if the adjuster goes that far and gives the employee the maximum amount under the law, then the railroad company would take it up; then the very objections you urge to the adjuster's judgment being practically final would redound to the benefit of the workman rather than the company, because they would have to overcome it when they got into court.

Mr. FLOYD. It would in that particular instance, it is true, but you forget that the trial in the district court is not the end of the litigation. This bill gives the right of appeal from the district court to the circuit court of appeals and to the Supreme Court of the United States.

Mr. NORRIS. Of course, we have to do that to make it constitutional.

Mr. FLOYD. Certainly you do; but instead of it being framed in a way to prevent litigation it is so devised, it seems to me, that the only thing about the bill that would prevent litigation is what I have already suggested, that the difficulties in the way of the injured employee to recover against these tremendous odds that are given to the railroads in the bill would be such that he would be compelled in the last analysis to accept just such compensation as the railroad companies would voluntarily pay him. It is a wrong assumption, in view of the history of railroads in the past, to say that because these amounts are small that the railroad companies would not go to law over them.

A few years ago I had occasion to stop for a few days in a city in a neighboring State. I had some business there, and I was invited by a railroad attorney, with whom I was acquainted, to make his office my headquarters while I was in the city. During the time I was there he called my attention to a brief of several hundred pages and wanted me to look over it. He was very proud of his brief. I examined it, and to my astonishment I discovered that the amount in controversy was $1.75. He had carried it up to the supreme court of the State. I asked him, how is it that you can afford to go to all this expense of preparing this elaborate brief and conducting this case through the various courts and appealing it to the supreme court of the State in order to settle a controversy where only $1.75 is involved. "Why," he said, "it is this way: The railroads employ their attorneys by the year, they employ their stenographers by the year, and while the amount in controversy in this case amounts to nothing, if we win this suit, or if we lose it, it will have cost this litigant so much money to assert his rights that 100,000 claims of a similar character for $1.75 each will never be presented to the railroad company."

Mr. NORRIS. Mr. Floyd, if you will permit me, those of us who believe in workmen's compensation law had in mind that very condition, and it is the object of the law to make such a thing impossible. We desire to avoid litigation. If we are mistaken about it, of course, we are wrong. But we want to avoid it, and we know now that in the present conditions what the railroad companies do, and an employee who undertakes to get into litigation with them realizes, to begin with, that he has got to travel with them as long as there is a court to go to. We want to avoid that.

Mr. FLOYD. I believe that the sincere advocates of this bill have that in mind, but they overlook the fact that in constructing this bill they have nowhere in it put any obstructions against the railroad companies to pursue this litigation to the highest court in the land, but on the contrary it expressly provides that they may.

Mr. NORRIS. Of course, we have to do that. You must concede that we have to do that under the Constitution.

Mr. FLOYD. You have to do that in order to make it constitutional.

Mr. NORRIS. Yes.

Mr. FLOYD. Whenever you do that you fail to accomplish by the legislation the very object you seek to accomplish.

Mr. DAVIS. Have they not in the very opening paragraph of the bill, as I recall it, put the very strongest obstacle in the path of the railroad companies doing that, by imposing on them that absolute liability?

Mr. NORRIS. That is the object of it. That is what we want to do.

Mr. FLOYD. I will have something to say later about that absolute liability. I do not care at this time to go into that, but later on I will be glad to do so. I wish you would call my attention to it again, because I have some views I wish to express on that particular point.

For the present I wish to pursue this particular subject a little further. There is nothing that has occurred in recent years that has varied or caused the railroad companies to vary from their long-established custom to make litigation so difficult that claimants will be afraid to bring suit against them. Within the last three or four years an incident occurred in my own State that illustrates the methods of the average railroad company. The legislature of the State had enacted a law requiring the railroad companies to build bridges or crossings wherever a public road crossed their tracks, the law requiring them either to make overhead bridges or to prepare for crossings on the level of the tracks. In this case a deep cut was made right across the public road. The statutes of the State fixed a penalty of $5 a day for every day that they neglected to put in that overhead crossing, and yet they neglected it. The district attorney had to bring suit against them. He recovered in damages, under the statute, $2,000 for their neglect and failure to comply with that law, and then they paid that $2,000 and built the overhead crossing. Under this law there is nothing to prevent the railroad companies from carrying their litigation to the highest courts. At this point I believe I will mention the different ways in which I think that the shrewd railroad agents or the shrewd railroad attorneys can get advantage of the injured employee under the terms of this bill. There are several devices in this bill whereby settlements may be effected. In the first place, it provides that by mutual agreement in writing these damages may be settled, and this written agreement filed with the adjuster shall be binding upon the parties. That is No. 1. I think that a shrewd, well-posted railroad agent or railroad attorney, meeting a poor, unfortunate injured employee, would, in nine cases out of ten, get the best of that employee on a contract, because he would not make it unless he did get such advantage.

Mr. DAVIS. He can do the same thing under the present law, can he not?

Mr. FLOYD. Yes; he can do the same thing under the present law, but there is not the inducement to do it under the present law that there would be under the new law.

Mr. DAVIS. There would be more, because the risk of recovery is greater, according to your theory.

Mr. FLOYD. I think not, but I will have something to say on that later.

Mr. DODDS. And would not the employee himself have information and believe that he is better protected than he is now under the present law?

Mr. FLOYD. Not in my State. If there is a railroad employee in the whole State of Arkansas that favors this bill, I have failed to hear from him. I have here protest after protest bitterly complaining against its passage, stating that it will absolutely ruin them and their organizations if it is passed. And I have the first single letter to receive from anybody in my State asking me to support this bill.

Device No. 2 provides for a committee. It provides that the injured employee may select one, the employer may select one, and these two may select the third. This committee, composed of three individuals, may hear the evidence and may make an award, and that award, when filed with the adjuster, becomes binding.

Mr. DAVIS. Again, that is true under the present law, isn't it?

Mr. FLOYD. There is opportunity No. 2 for the shrewd railroad agent to get the advantage of the employee.

I do not know, Mr. DAVIS, as to any provision in the existing law for arbitration of that kind. Of course they might arbitrate their controversies under State laws or by mutual agreement.

Mr. DAVIS. Let me ask you this: It is purely a voluntary proceeding under this bill. Of course, if it is a voluntary proceeding under this bill, the parties would have the same voluntary rights in the absence of the bill; and is not that true that in every State of the Union an arbitration of that sort may be consented to in writing, may be entered into, and with the consent of the court?

Mr. FLOYD. Of course, that is true in my State, with the right of appeal. But, to resume my argument, that is opportunity No. 2, in my judgment, under the provision in this bill for the railroad to get advantage in the settlement.

Mr. DAVIS suggests that they might do the same thing under the present law, but under the existing law the amount that a man may recover in these personal-injury suits is not limited. It is left to the discretion of the jury; and the inducement to make settlements under the existing law, if a man has a cause of action, is nothing as compared with his inducement to make settlement under this kind of a law, which absolutely and arbitrarily limits the amount that he may recover at the end of the litigation.

Device No. 3 is the trial before an adjuster.

The third proposition which I wish to consider is that this whole matter of adjustment is turned over to an adjuster appointed by a Federal judge—a district judge—with a provision that the adjuster shall be a competent person who shall not be related to the judge, but with no provision that he shall not be related to the railroads; and a judge could appoint the claim agent of the railroad to be an adjuster under the terms of this bill.

Mr. DAVIS. Do you think he would since the Archbald case?

Mr. FLOYD. I doubt whether he would since the Archbald case; but we ought not to leave it within his power to do such a thing under any circumstances. The only qualification provided for an adjuster in this bill is that he shall be a competent person. He is not required to possess any other qualifications than to be a competent person in the judgment of the judge.

Mr. NORRIS. Mr. FLOYD, I think you are striking a point in the bill that if there is a way under the Constitution to amend it, it ought to be amended. I do not like that, either.

Mr. FLOYD. There are plenty of ways under the Constitution to amend it, if you will permit an interjection.

Mr. NORRIS. Yes; I think so; but under the Constitution that adjuster would have to be appointed either by the judge or by the President or by the head of a department, would he not? He would be an officer of the United States, I presume.

Mr. FLOYD. The bill provides that he shall be an officer of the United States enjoying a salary, but it provides that the judge shall appoint him and the Attorney General shall fix his compensation at not less than $1,800 nor more than $3,000 per annum.

Mr. NORRIS. If we amended—and I should like to have you discuss this; I have thought about it a good deal—I have rather come to the conclusion, under the Constitution, that we would have to provide that if the judge did not appoint him he must be appointed either by the President or by the head of a department. That would be the Attorney General, I presume. Because the Constitution provides that the President shall appoint ambassadors and all officers of the United States, excepting that Congress may provide by law that such appointments may be made by the head of a department or by the court. I have thought of this, and I should like to get your idea on it, that we could provide by law, for instance, that these appointments should be made by the President or by the Attorney General, or even by the judge. The Civil Service Commission, for instance, participates in making those appointments by submitting names to the officials for them to select from. That could not make it binding under the Constitution, because the appointment, to be legal, must be made by one of those three officials. But if we pass that kind of a law they would never go outside of the list that the commission submitted. But we could devise some other methods of suggesting names to the official who did have the appointing power, and the effect would be that no official would go outside of that list. That is the basis of our present civil-service law in many cases.

Mr. FLOYD. Do you think that would give you better men than the judge would select?

Mr. NORRIS. I am inclined to think so. I have a prejudice against the judges of the Federal courts appointing these adjusters. I think that is a weak point of the bill.

Mr. FLOYD. I think so, too; but I have not gone carefully into the proposition you are discussing as to providing a better means of selecting the adjusters in case we agree to that kind of a provision. I have already suggested that, in my judgment, there should not be a permanent adjuster; that the court in which the case originated should have the authority, by consent of the parties, to waive the jury and submit the findings of facts to the adjuster.

Mr. NORRIS. Of course that would still leave the appointment of the adjuster in the hands of the Federal judge.

Mr. FLOYD. That would leave his appointment in the hands of the Federal judge, but by consent of the parties litigant in every instance at the time the case was up for consideration. There would be this difference; he would not be a permanent officer.

I have another serious objection to that provision of the bill providing for adjusters, in that it provides for at least one, and there may be more, in every judicial district in the United States; and, if I remember correctly, there are 67 of them.

Mr. NORRIS. Yes.

Mr. FLOYD. And when you go to figure on the cost of paying these adjusters, with their compensation fixed between $1,800 and $3,000, we are incorporating into the law a very great item of expense to do work which may be done better in the courts which are already maintained and must still be maintained at the public expense at a very high cost.

Mr. NORRIS. That is true; it would be expensive. But what we want to do—I think we are all agreed on that—we want an adjuster who is competent and unbiased.

Mr. FLOYD. Absolutely; we could not afford to stand for any other principle——

Mr. NORRIS. No.

Mr. FLOYD (continuing). Than to have an absolutely impartial adjuster, if we adopt the system of having adjusters at all.

Mr. NORRIS. But if we could avoid it we would have to have some machinery. If there is any other system to get rid of these adjusters, I would be glad to consider it, but it seems to me there must be something if we take that out of the law to put in its place, or our law would fall of its own machinery. It would not be workable.

Mr. GRAHAM. The salary proposed is not too big, I am certain. The adjuster would be kept busy in his own judicial district.

Mr. NORRIS. That is more or less of a guess, as I take it. Nobody knows now. The theory of the law is that most of these cases will be settled as a matter of form without any litigation and without any trouble; that they will never even get to the adjuster. If it should turn out that they would all go to the adjuster, I would not favor the law. We only put the adjuster in, as I understand it, and that method of settlement, to avoid the constitutional limitations that we have. But the theory is that this machinery will not be in continual use, that the difficulties will be settled as they come along without any trouble, without going into court, without getting into any litigation of any kind. If that theory does not work out, then the law, of course, will fail. But we are met with the constitutional provisions about every man having a right of a jury trial, and so on, and in the appointment of the adjuster we are met with the other constitutional provision limiting the officials who can make this appointment. So we have got to provide this machinery. But the theory of the law is that it shall be so circumscribed, and the recoveries made so definite and certain that the machinery will not be used.

Mr. FLOYD. You mean, Mr. Norris, that the theory of the advocates of the law is that?

Mr. NORRIS. Yes.

Mr. FLOYD. That the machinery will not be used?

Mr. NORRIS. Yes.

Mr. FLOYD. If you will pardon me for expressing my own opinion, there is the fatal mistake that they are making. There is nothing in this proposed law, in my judgment, that will cause the railroad companies to change their former policies in regard to litigating cases of this character.

Mr. NORRIS. Do you not think that, as Mr. DAVIS mentioned awhile ago, that the provision of the law that fixes these recoveries at a definite sum will be beneficial?

Mr. FLOYD. I desire to answer that a little later on in discussing another branch of the case. I have some decided views on that question. I will answer now that I do not think that this bill, if enacted into law, would have the least effect in that regard. Some one interjected some provisions into this bill that controvert the very theory that no doubt every sincere friend of the bill has in regard to it, namely, that it will lessen litigation and tend to produce speedy settlements. If that is the purpose of the bill, and if the men who framed the bill had that alone in view, I want to ask why they put in section 11, by which, after an employee has gone before the adjuster, has gone before the district court, has gone before the circuit court of appeals, and has appealed his case to the Supreme Court, and it has been affirmed, allows this Federal adjuster to review the case, and gives the employer the right to summons him to appear before the adjuster at any time within two years from the date of the accident to ascertain whether or not his injuries have increased or diminished or ceased altogether.

Mr. DAVIS. Will you let me make a suggestion there?

Mr. FLOYD. Yes.

Mr. DAVIS. I think the reason that the clause went into the bill is because the bill clearly divides them into two classes, permanent and temporary. Where the injury is permanent the finding of the adjuster is final, and where it is recognized as being temporary and the purpose is to compensate for a temporary injury, there must be some machinery to determine when that temporary injury has ceased.

Mr. FLOYD. True enough; but let me go on with my argument in regard to this provision and see whether or not it is calculated to prevent litigation.

There is no question that a new proceeding may be instituted under section 11 at any time within two years after the injury has occurred, and there is no limitation in section 11 to any particular kinds of injury. It may be, in fact, that it would be practically limited to that particular class of cases referred to, but that does not matter. It is still true as to that particular class, and it is that particular class of injuries which will be the source of the most litigation.

A railroad company, like anybody else, when they have a clear, unquestioned case against them, will usually surrender, but if there are any complications, any element of doubt, then they never surrender until they have carried their case to the highest court. What would be the effect of that provision? The practical effect of the provision in section 11 is that the employer, within two years from date of the injury, may summons the injured employee to appear as often as he sees fit before the adjuster for rehearing to ascertain whether or not his injuries have increased or diminished or ceased altogether, and the penalty for his refusal to appear is that his compensation at once ceases. If he does not appear to answer the summons his monthly allowance ceases.

Mr. MCGILLICUDDY. Does not that section give the injured employee that same right if his injuries have increased?

Mr. FLOYD. Oh, yes.

Mr. NORRIS. I can imagine that there might be some cases where the decision perhaps would be that the injured employee was entitled to a certain amount, and it might develop, even after that was adjudicated, that this injury had increased so as to result in more serious injury, and he ought to have the opportunity to have that matter taken up, had he not?

Mr. FLOYD. Your whole fundamental theory of the proposed law is that you are going to wipe out all the distinctions and give them all equal damages for like injuries, whether injured by their own negligence or otherwise.

Mr. NORRIS. That is the theory; but there are a lot of injuries that we know sometimes get better or that sometimes get worse—that no

human mind can foresee in advance—and we ought to make some provision for that. If a man recovers entirely from the injury, then his compensation ought to cease.

Mr. FLOYD. I am not controverting that proposition. My criticisms are to this bill and its construction. I wish to pursue that argument further to show what the result of this section 11 will be in connection with other provisions of the bill. Suppose a railroad employee is injured. He goes before the adjuster and gets a satisfactory allowance under this bill—that is, as satisfactory as it can be under the low rates of compensation allowed. His case is taken to the district court and is tried there de novo. The employee recovers judgment, and it is satisfactory to him. He gets the maximum. It is then appealed to the circuit court of appeals and subsequently to the Supreme Court of the United States, and it is finally adjudicated in his favor in the Supreme Court before the end of two years. Yet that does not end the litigation. The adjuster, at the instance of the railroad company, under the terms of this bill, can summon him again for trial, review the case, modify, set aside, or annul a decision of the Supreme Court of the United States. There is no escaping from that conclusion.

Mr. NORRIS. That would only be in cases where, subsequent to the first adjudication, there had been a change, either better or worse, in the condition of the man who was injured.

Mr. FLOYD. He could be cited for that reason whether there had been any change or not.

Mr. DAVIS. You must assume that in any law; and does not your assumption involve corrupt action on the part of the adjuster?

Mr. FLOYD. No; I am not assuming corruption upon the part of the adjuster.

Mr. DAVIS. You are assuming that the adjuster would do that without any adequate cause.

Mr. FLOYD. I am not assuming that on the part of the adjuster. He might have adequate cause; but here is the great Judiciary Committee of the House considering a bill under the provisions of which, if it should become a law, it would be possible for a Federal adjuster to annul and set aside the decision of the Supreme Court of the United States in a personal-injury case where the employee had been compelled by the railroad company to fight his case up to the Supreme Court.

Mr. NORRIS. Would you want to eliminate section 11?

Mr. FLOYD. Absolutely; yes. There should be an end of litigation somewhere.

Mr. NORRIS. It might be possible to eliminate; but if you do, it would work the other way—that employee who only received in the first adjudication a small amount, that his injury would increase away beyond the expectations of any authority that examined him.

Mr. FLOYD. Yes.

Mr. NORRIS. And he would have the right to go in and get additional compensation?

Mr. FLOYD. But in arguing this question I am answering the suggestion that this bill is going to prevent litigation. It is going to multiply litigation. It does not involve the proposition suggested by Mr. DAVIS that I am claiming that this adjuster would be corrupt at all. It gives the railroad people, if their case should be finally adjudicated within one year, or the employee, either, another whole year to start that whole procedure over again, and it does not limit either party to one such citation. They may make as many other citations as they please within the time specified.

Mr. GRAHAM. Is it not really a new proceeding? If they reach a different conclusion from the one first reached they would not reverse the Supreme Court. They would act on a different state of facts?

Mr. FLOYD. It is a new proceding, but it is an answer to the contention that the law is so fixed that it will avoid litigation. It makes possible not only the one new proceeding but makes possible a half a dozen or more new proceedings. It controverts the contention that the bill will prevent litigation.

Mr. GRAHAM. Is not that true about every lawsuit—every legal remedy? We have an adjudication between parties to-day on an existing statement of facts. Now, between the same parties there might arise to-morrow, growing out of the same general subject matter, new proceedings based on a changed state of facts.

Mr. FLOYD. I do not know of any provision in the existing law that enables a railroad company that has been finally adjudged to pay damages in a personal-injury suit to hve a rehearing of the whole matter before any other court or tribunal. If that is in the law it is something entirely new to me, and I am opposed to putting any such provision in the law. That is my objection to this provision of the bill.

Mr. NORRIS. If there was any probability that a case like you cite coming up a second time——

Mr. FLOYD. That is an extreme case, but it shows the possibilities for litigation under this bill.

Mr. NORRIS. But it would just as often result to the detriment of the employee as it would to the railroad company.

Mr. DAVIS. My suggestion is this: You and I might have litigation to-day about a piece of real estate in which I am adjudged the lawful owner, and the Supreme Court confirmed that decree. As soon as the court does that I go and buy an outstanding title. I may go and litigate with you again on that. That is not overruling the decree of the Supreme Court as between ourselves, but is a new adjudication on a new state of facts.

Mr. FLOYD. This suggestion was made, and it is tenable, under the proposed law, for the sole purpose of answering the suggestion made by Judge NORRIS that the friends of this bill stood for it because they believed it would lessen litigation, keep down and prevent litigation. And I suggested the successive steps that might be taken in one of these cases as showing the possibilities, and, I grant you, the extreme possibilities of litigation under the framework of this proposed bill.

Mr. GRAHAM. But Judge Norris answers that, Judge Floyd, by saying that a great majority of the cases probably would not reach the adjuster at all. But even if some of them reached him twice there would still be a diminution of the cases.

Mr. FLOYD. I wish to mention that in connection with another suggestion later on. I wish to answer that very point, and I would be glad if you would call my attention to that when I come to the discussion of that branch of the subject.

Mr. BEALL. Let me see if I understand your interpretation of section 11. Suppose this matter has been referred to the adjuster and he has rendered his decision, and it then goes to the court. The finding of the adjuster is approved by the court, and it is then appealed to the circuit court of appeals. Say, that it is affirmed there, and then goes to the Supreme Court of the United States. Suppose it is affirmed there, and that decision handed down within the two years after the original findings, a railroad company can file an application with the adjuster for a new hearing. He is granted no discretion; he is compelled to do it?

Mr. FLOYD. Absolutely; the employee must appear or lose his compensation from the date of his refusal to do so. His pay ceases when he refuses to submit to a rehearing or reexamination of his case.

Mr. BEALL. Suppose upon that new hearing the adjuster adheres to his original decision. Has the railroad company the right then to go from that adjuster on this new application into the court again?

Mr. FLOYD. Undoubtedly, and take that case again to the circuit court of appeals and to the Supreme Court after the decision in the first or original case involving the same injury had been duly affirmed.

Mr. BEALL. If the trial court reaffirms the decision of the adjuster, they can then appeal it anew to the circuit court of appeals, and from there to the Supreme Court of the United States?

Mr. FLOYD. I think so. That is the way I construe it. And to show you that section 11 provides that he may do that very thing, I read:

"At any time before the expiration of two years from the date of the accident, but not afterwards, and before the expiration of the period for which payment of compensation has been fixed thereby, but not afterwards, any agreement, award, findings, or judgment may be from time to time reviewed by the adjuster upon the application of either party after due notice to the other party upon the ground that the incapacity of the injured employee has subsequently ended, increased, or diminished."

Judgment refers to the judgment of the district court, the judgment of the circuit court of appeals, and judgment of the Supreme Court of the United States.

Mr. GRAHAM. Suppose a case—that there is a railroad wreck and an employee is injured; that he receives a traumatic injury on the head. He claims an epilepsy results from that injury, and that case is tried before the adjuster. The proof seems to establish the presence of epilepsy, a dreadful disease, entitling him to very big damages, and he gets the big damages. But after receiving them it turns out that it did not result in epilepsy; that he got more than he was entitled to. Then, what injustice would be done by a review or the rehearing of that case on the new state of facts? And, reverse that. Suppose that he was injured, and that after the adjustment was had the injuries resulted in enlargement of the bony matter of the skull, a consequent pressure upon the brain, and epilepsy. He received no compensation for that injury. Why should he not be able to reopen it and present the new state of facts and get compensation commensurate with the injury?

Mr. FLOYD. I think, Judge Graham, you are confusing this proposed law with existing law. No man can recover very large damages under this proposed law, and this bill proposes to compensate injured employees regardless of their fault or negligence. The man who is grossly negligent when injured, unless he is intending to destroy his own life or the life of another or is drunk, can recover under this bill the same amount of damages that the most careful employee of the railroad can recover for a like injury incurred without fault.

Mr. GRAHAM. Yes; but there is a minimum and a maximum.

Mr. FLOYD. There is a maximum; that is true.

Mr. GRAHAM. He may have been allowed the minimum when he should have been allowed the maximum.

Mr. FLOYD. But the theory I have of the proposition is that by putting in a provision to protect an extreme case you will subject the employee to litigation in hundreds of cases in which there is no merit whatsoever, instituted for the sole purpose of compelling railroad employees generally, in the last analysis, to take what the railroad companies are willing to pay them in settlement for these damage suits.

Mr. GRAHAM. I was addressing my objection more particularly to the increase in litigation, and that does not offer any insuperable objection to me if the additional litigation is in the interest of justice.

Mr. FLOYD. But that last case mentioned is an extreme case. I mentioned it to show you the limitations and the effect of the law.

Mr. NORRIS. But all cases under section 11 are extreme cases.

Mr. DAVIS. Let me ask you there, as a practical matter—of course it must be a mere matter of opinion with all of us, because it is purely experimental—do you believe that under section 11 there will be as many instances of a reopening of the case and a readjustment and readjudication as there are now under the present practice of appeals, reversal of new trials and reappeals, rereversals, and additional new trials?

That goes to the question of diminution of litigation.

Mr. FLOYD. I am answering the argument of the friends of this bill. I am not committed to this bill on that theory or any other. I am answering the contention of the friends of this bill that their object is to prevent litigation. I am trying to show that it will not eliminate, but multiply, litigation.

Mr. DAVIS. I am suggesting that under this bill there will be less litigation.

Mr. FLOYD. Before I am through I am going to largely concede that premise—I may just as well do it here—I admit that the machinery under this bill is so complicated that in many cases employees will surrender their rights and compromise rather than go to law for the small amounts allowed. There are two trials before you can get the case disposed of in the district court. You must have a trial before the adjuster; there is no escape from it. The notice is made jurisdictional. The case must be taken before the adjuster first, and for that trial the employee must summons his witnesses. He must get them there. They are heard orally by the adjuster. What they say is locked up in his memory. He makes his findings in writing and they are made prima facie evidence, and if the case is appealed to the district court he has to have another trial de novo. He has to get all of these witnesses back before the district court. He has to retry his case. There you have multiplied litigation. There are two trials under this proposed new law where you have but one under the existing law. You bring your suit at present directly in the State court or Federal court. You have it tried, and then you go to the court of appeals.

Mr. DAVIS. Will you let me restate that proposition? You have a possibility of two suits, under the existing law you are bound to have one.

Mr. FLOYD. You are bound to have one under the new law.

Mr. DAVIS. Not necessarily.

Mr. NORRIS. Oh, no.

Mr. FLOYD. Unless you compromise. Under the present law you are not bound to have one suit. Hundreds of cases are compromised under the existing law.

Mr. NORRIS. There would be very few cases, I think, Mr. FLOYD, that there would be a controversy in. If a man has his arm cut off the law specifically states what compensation he shall get. In the

majority of cases there would be no litigation whatever. If that is not true, then the law is a failure. I admit that.

Mr. FLOYD. That is an assumption, and in a measure it is true and in a measure it is not true, because you can raise many other questions in one of these personal-injury cases.

Mr. NORRIS. Oh, yes.

Mr. FLOYD. You can raise the question as to whether he is an employee at all, or as to whether or not he was entitled under the terms of the law to be compensated.

Mr. DAVIS. That would be a very unusual case, though.

Mr. FLOYD. Even in those cases where the amount is fixed there has to be an adjustment. He has to have his witnesses. He has to go before the adjuster and produce his testimony.

Mr. DAVIS. And you can see yourself how much simpler that proceeding would be than the ordinary jury trial.

Mr. NORRIS. In the first place, he would not need a lawyer.

Mr. GRAHAM. It was the experience of those who addressed the committee that where it had been in operation it did have the effect of reducing greatly the number of cases that went to the adjuster.

Mr. FLOYD. I have studied very carefully other compensation laws, and I am frank to say that I read all the reports that the committee cited, and the laws in foreign countries, and I have not been able to find just this kind of a law in any of the books.

Mr. DAVIS. Does not that argue that this is the best law that has been devised up to the present time?

Mr. FLOYD. It may be a basis for that argument——

Mr. NORRIS. Of course, the authorities are necessarily limited.

Mr. FLOYD. They ought to cite authorities on the point. This is a brand-new proposition.

Mr. NORRIS. That is true.

Mr. FLOYD. We are promulgating an entirely new scheme of legislation, and that is why I am protesting against this bill being reported out in its present form. We have worked for years on legislation for railroad employees along well-established lines, and finally evolved what I think, from the railroad employees' standpoint, the finest system of laws that were ever devised—the Federal liability laws of the United States, namely, the act of 1908 and the amendatory act of 1910.

That brings me to a further objection, and, I will add, the most serious objection to this bill.

Mr. GRAHAM. There is one objection you urged to which I should like to call your attention. Taking your own district as an illustration, you gave three points at which your court is held.

Mr. FLOYD. Yes.

Mr. GRAHAM. And you assumed that the adjuster would live near one of those points, perhaps the extreme northern one. Why could not he go to the other two points, as the court does? That is, instead of bringing the litigant and witnesses to him, why could he not go to that point where the Federal court was held nearest the litigants?

Mr. FLOYD. It might be that he could. It might be that he would, but there is no provision in the law that requires it.

Mr. NORRIS. He would not necessarily have to go to a place where court was held. He could go where the witnesses were, regardless of where court was held?

Mr. DAVIS. The Senate amendment provides that he shall go to the most convenient place.

Mr. FLOYD. It may be that some of these criticisms that I am making of the bill will be obviated by amendments made in the Senate bill. It is the House bill that I have particularly studied, and I am very glad to welcome any amendment whereby it is bettered, I am sure.

I desire now to state my principal objection, my fundamental objection, to this bill, and that is the provision that makes it the sole and exclusive remedy for injured railroad employees. I think if we pass this bill in its present form we ought to pass it for the avowed purpose of relieving the railroad companies from excessive or heavy damages that they are liable to under existing laws, and not under any pretense that we are doing something for the benefit of the laboring people, because I do not believe we are.

Mr. NORRIS. Has it not been the universal testimony here of all those who appeared—I remember particularly Mr. LEWIS, a Member of the House of Representatives, who has given a great deal of study to questions of this kind. He gave it as his opinion that if this bill were passed it would largely increase—and he gave the figures; I do not remember them now——

Mr. FLOYD. Yes; and I have those figures in mind.

Mr. NORRIS (continuing). The amount of money that the railroad companies would pay and that their employees would receive.

Mr. FLOYD. I remember that, and I have some notations here in regard to that very proposition.

Mr. NORRIS. Of course, on that point it must necessarily follow that his figures were only an estimate, and no one can give anything but an estimate, because we have never had a law like this.

Mr. FLOYD. I desire to discuss in this connection that very proposition.

Mr. NORRIS. Do you remember what his figures were?

Mr. FLOYD. I do not remember Mr. Lewis's figures.

Mr. DAVIS. Mr. Brantly gave it as about $16,000,000. Mr. Lewis said he thought it would not stop short of $50,000,000.

Mr. FLOYD. The commission's report, as I remember it, is $15,000,000. I have figured on that basis.

Mr. NORRIS. I was under the impression that Mr. Lewis gave it as his opinion that it would be $20,000,000.

Mr. FLOYD. The most reliable statistics on the subject show that under previous laws, and including such time as the present law has been in force, the amount recovered against railroad companies in damage suits is about $10,000,000 a year.

It is claimed by the friends of this measure that such recoveries would be increased to $15,000,000 a year under the terms of this bill. Assuming that that is correct, that the aggregate amounts of these judgments under this proposed compensation act, if enacted into law, will amount to $15,000,000, then what do we find? Under the existing law these judgments are due at the termination of the litigation and are payable in cash. Under this bill the larger amount recovered is distributed in partial payments, and the actual amount, assuming that $15,000,000 is a correct amount, that the railroads will pay the first year will be $1,875,000.

Mr. NORRIS. That is, the actual amount of increase, you mean?

Mr. FLOYD. No; the actual amount paid. The sum mentioned is one-eighth of $15,000,000, which is the actual amount paid. The railroad companies reserve the remainder of that $15,000,000 under their own control and for their use. Figuring the interest on money due the railroad employees that the railroad companies are holding and controlling at 5 per cent per annum, this interest would reduce the actual amount of cash that they would have to pay the next year. In other words, they would have to pay out of their proceeds $1,218,750 the second year, and the residue of the annual payment, $1,875,000, would be made up by the interest that they had received from the money that was due the railroad employees.

Mr. DAVIS. $1,875,000 to be added to the second year payment?

Mr. FLOYD. I anticipated that question. It would not affect the result one particle, because under the existing law recoveries amount to $10,000,000 a year, and each year would stand absolutely alone. And the third year they can come in for another $10,000,000 and the fourth year for another $10,000,000, and each fund would be a segregated fund that would go to the employees.

Mr. NORRIS. Mr. Floyd, it seems to me that while those figures might work for the first year, they would not afterwards, as you have given them.

Mr. FLOYD. Let me go right on with these figures. You catch my point?

Mr. NORRIS. I think so.

Mr. FLOYD. For the third year it would be $1,279,688, supplemented by the interest on the remainder, which would bring it up to $1,875,000; the fourth year, $1,343,672; the fifth year, $1,410,856; the sixth year, $1,481,399; the seventh year, $1,555,469; the eighth year, $1,643,262; a total of $11,808,094 which the railroad companies would have paid of their own money. The remainder paid would be money derived from interest on amounts withheld from the railroad employees.

Mr. NORRIS. Mr. Floyd, that is in eight years, is it not?

Mr. FLOYD. That is in eight years. That is the limit of time in which it is distributed.

Mr. NORRIS. But the second year in which your figures would be in operation there would be another eight-year period commence?

Mr. DODDS. Each year would have to stand upon its own footing.

Mr. FLOYD. Each year would have to stand upon its own footing.

Mr. NORRIS. You do not mean to say that if this bill were enacted into law that they would only pay $11,000,000 in eight years?

Mr. FLOYD. No; they would pay $15,000,000 in the eight years.

Mr. NORRIS. Yes.

Mr. FLOYD. But I mean to say that the difference between the $15,000,000 and the $11,808,094 would be derived from interest at 5 per cent on money withheld from employees which under existing law they would have received the first year.

Mr. DODDS. It would show the difference between the present worth of what they would pay and what they would actually pay.

Mr. NORRIS. Exactly; but you know you have taken one eight-year period. After your eight-year period had operated one year another eight-year period would begin, etc., and so on all the way through.

Mr. FLOYD. Certainly; but that does not affect this result.

Under the existing law they would have been paid $10,000,000 in the first year. These same employees, had they recovered in that year the larger amount under this bill, would be paid the $15,000,000 distributed over eight years.

Mr. NORRIS. I understand that; but you do not mean to say that if this law were in effect they would only pay each year the several amounts that you have given there?

Mr. FLOYD. No; I mean to say that in the eight years they would pay the full $15,000,000, but I mean to say that the difference between $15,000,000 and $11,808,094 would be made up of accumulated interest on money withheld from employees. The railroads would pay each year $1,875,000, but I mean to say that amount would be reduced each year by interest that the railroad companies would collect or derive from money withheld.

Mr. NORRIS. I think that is correct, but you do not mean to say that if this law were in effect they would only pay something over $1,000,000 a year?

Mr. FLOYD. No; that is not my point at all. They will pay in the course of eight years the full $15,000,000.

Mr. NORRIS. Yes.

Mr. FLOYD. That is, the railroad employees will receive it. But I claim that nearly $4,000,000 of it will be derived from interest on the money that the railroad people were withholding from them.

Mr. NORRIS. Then under your analysis they would pay something more—$11,000,000 a year instead of $10,000,000 that they pay now—would they not?

Mr. FLOYD. They would pay actually of their own money, ignoring this question of interest, $11,808,094.

Mr. NORRIS. What I mean is, that that would be the total sum of those figures you have given, $11,000,000, and something over?

Mr. FLOYD. That would be the total.

Mr. DODDS. That would be the present worth of what they would be required to pay. That is, they would be required to pay $15,000,000 instead of $10,000,000?

Mr. FLOYD. That is it. That would be the present worth of what they were required to pay.

There is another point about it. I contend that it is not going to cost the railroads this increased amount of money. They will recoup from interest on the money of employees nearly $4,000,000 of such increase. But the entire body of those injured employees are not going to survive for the period of eight years. Many of them are going to die from the result of their injuries and other causes, and whenever one of them dies his compensation ceases, and the railroad company will be saved an indeterminable sum in that way.

Mr. NORRIS. Here is another point I think we ought to consider, Mr. Floyd. You have not given credit there for any hospital expenses, and such items as that that they have to pay under this law, have you?

Mr. FLOYD. No, sir.

Mr. NORRIS. It is not counted in this?

Mr. FLOYD. No; I have not given attention to that. I have tried to analyze this one naked proposition, assuming the estimate, $15,000,000, to be correct.

Mr. DAVIS. I think the answer to that is this: You start with the premise that the estimate given the committee of $15,000,000 is entirely correct.

Mr. FLOYD. I am not assuming that it is correct at all.

Mr. DAVIS. You must, in making that comparison.

Mr. FLOYD. Yes; for purposes of calculation.

Mr. DAVIS. Everybody admits that it is purely a matter of opinion. There is no actuarial basis on which that can be fixed. If it should transpire that the railroad companies are not paying out under this law what they should pay, then there will happen what, in my judgment, will sooner or later happen anyway, perhaps before the law has been in force any great length of time, and that is an increase in the rates under the schedule. My answer to your proposition would be—and I am not entirely satisfied myself that the rates given in that schedule are correct—that as long as there are some statistics on which to base it it must in all fairness be kept down to a reasonable minimum until the statistics are present to show what it is.

Mr. FLOYD. In reply to that, I would suggest that that is merely an assumption, and, in my opinion, under these schedules, as provided in this bill, the railroad employees will not and can not by any possibility recover nearly so much as the $10,000,000 a year which they recover now, because under existing law practically all defenses are cut off except those provided for in this bill.

Mr. DAVIS. What do you think will happen when they make that appear to a committee of Congress?

Mr. NORRIS. They would increase the compensation.

Mr. FLOYD. Sure they would increase the compensation. I am in favor of that. If I support his bill at all, I am in favor of increasing the maximum compensation on every item. The Senate just the other day allowed a girl $8,000 for losing her scalp, and $4,800 is the premium put upon a life by this bill.

The most serious objection I have to this bill is that it is not optional, but is made the exclusive remedy and repeals all existing liability laws on the subject. I desire to argue that question quite at length, and I want to show from the records of some of these organizations that their representatives, who have been appearing before us regarding this legislation and urging its passage, have not reflected what I understand to be the wishes of the rank and file of laboring people on that question.

Mr. GRAHAM. You contend that it should be optional?

Mr. FLOYD. Optional; yes. I am opposed to disturbing the Federal liability law of 1908 as amended by the supplemental act of 1910. I want to give my reasons for taking this position. You will recall that during the course of the hearings, when Mr. BRANTLEY was before the committee, that I stated to Mr. BRANTLEY that if he would strike out section 3 and leave it optional with the employee to seek compensation under this act or under our liability laws that all my objections to the passage of this bill would cease; that I would never say another word against it.

Mr. NORRIS. Of course. I think this is true on that point, Mr. FLOYD, that if we do make it optional, then the reason for increasing the compensation named in the bill has disappeared, practically, has it not?

Mr. FLOYD. I did not catch that question, Mr. NORRIS.

Mr. NORRIS. I say if we do make this optional, then the reason that many of us think exists now for increasing the compensation named in the bill would disappear at once, because the class of employees who would sue under the law would be that class to whom negligence could not be attributed, I take it, and those who would come under the law would be those who could not recover if the law did not exist. And it is conceded that if we can make a distinction between those two classes the man who is not negligent ought to get more than the man who is.

Mr. FLOYD. If it is made optional, there would be no occasion for changing the rates of compensation fixed in the bill.

Mr. DAVIS. I desire to ask Mr. FLOYD what he is going to contend in discussing the question as to the time when the electional remedy should be made, whether before or after the occurrence of the injury?

Mr. FLOYD. I would say after the occurrence of the injury; and I have some amendments prepared which make the provision in section 3 optional, and provide that when the party desires to seek compensation under this bill, and takes the initial step for compensation under the bill, he thereby waives his right under the liability laws, and that the filing of a suit under the liability laws shall be deemed a waiver of his right to claim compensation under this act. He should be required to put himself in one class or the other when he commences an action to recover damages for the injury incurred.

Mr. DAVIS. I understand the New Jersey system to be that 60 days at least before the occurrence of the injury he must elect the status.

Mr. FLOYD. Before I conclude for to-day I wish to put in the record a matter for you to study and consider. The representatives of organized labor have been here. The leaders have been here asking us to pass this legislation. In my State railroad employees were forbidden to make any comments on this legislation until the day the bill passed the Senate. The day the bill passed the Senate the lodges in my State, the locals, were notified that they might then say what they pleased about the compensation bill, and protest after protest, which I will not take time to read, but which I will put in the record, I have here, and the protests are universal in so far as the people of my State and the railroad employees of my State are concerned.

Here is what purports to be, and I presume it is, genuine Circular of Instructions No. A-22, Grand Lodge, Brotherhood of Railroad Trainmen, office of president, Cleveland, Ohio, June 19, 1911. Here is the legislative committee's report on workmen's compensation. It is as follows:

"We recommend that the convention go on record as favoring the adoption of strong liability laws in every State, Province, and Territory, eliminating the common-law doctrine of fellow servant, assumed risk, and contributory negligence. We also favor the principle of workmen's compensation, but, realizing the narrow limits of our national and State constitutions, we urge all persons having to do with legislation to concentrate their efforts in behalf of an employers' liability law, believing as we do that such a law will prove a solid foundation upon which to build up a system of workmen's compensation laws.

"Moved by Baker (186) and Waid (420) that the report of the committee be adopted. It was discussed by Feick (158), President Lee, Overhiser (416), Reese (438), McKinley (206), and President Lee. Motion to adopt report of the committee carried."

Whence comes the demand to repeal all existing liability laws? It certainly does not come from an organization which reflects the sentiments embodied in that legislative report and adopted by the Brotherhood of Railroad Trainmen.

I believe, if it is the pleasure of the committee, that I will postpone expressing my views on other points until our next meeting.

Thereupon the committee adjourned.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Tuesday, January 21, 1913.

The committee this day met at 10.30 o'clock a. m., Mr. EDWIN Y. WEBB (acting chairman) presiding.

STATEMENT OF HON. JOHN C. FLOYD, OF ARKANSAS.

The CHAIRMAN. Gentlemen, if the committee will come to order we will proceed with Mr. FLOYD'S continued argument against the compensation bill.

Mr. FLOYD. Mr. Chairman, there is only one other general proposition pertaining to this bill that I desire to discuss. I stated the proposition at the conclusion of my remarks on yesterday. My chief and principal objection to this bill, which is fundamental, is to that provision which repeals all employer's liability laws on the subject—Federal and State—and makes this proposed law afford the sole and exclusive remedy for railroad employees in damage suits in personal-injury cases.

The CHAIRMAN. That is embodied in section 3.

Mr. STERLING. In interstate commerce.

Mr. FLOYD. Yes; in interstate commerce; thank you.

Mr. STERLING. It does not affect State laws.

Mr. FLOYD. I think it does affect State laws in a way, because under the present laws we have a right to bring suit in the State courts.

Mr. STERLING. Yes; in interstate commerce; and it does affect State laws in regard to that.

Mr. FLOYD. I am not sure about that. It declares on its face that it shall be the sole and exclusive remedy in these personal-injury cases.

Mr. NORRIS. But isn't it true that Congress has no jurisdiction as to intrastate law?

Mr. FLOYD. The Supreme Court has so held in passing on the liability act of 1906, which was held unconstitutional; but we are dealing with a legislative proposition now, and, while the Supreme Court has so held, Congress, by the wording of the bill referred to, had undertaken to do that very thing.

Mr. NORRIS. In that bill you have made reference to.

Mr. FLOYD. But that is immaterial for the purpose of my argument. My objection to this bill is on the ground—a fact which is not disputed by anyone—that it seeks to repeal all of our existing Federal employers' liability laws in their entirety. It wipes out Federal employers' liability laws in toto and affords to railroad employees under the provisions of this new law their sole and exclusive remedy for compensation or damages for personal injuries received while engaged in interstate commerce.

Mr. NORRIS. I think that is right.

Mr. FLOYD. That much is absolutely conceded by everybody. Now, that I object to. I think it would be a serious mistake on our part to destroy the substantial remedies which railroad employees now enjoy and substitute therefor a new, untried, and experimental law like the one now proposed. It goes further, and indirectly repeals every safety-appliance act that the Congress of the United States has heretofore passed. It does not expressly repeal safety-appliance acts, but it in effect relieves the railroad companies from the penalties imposed in damage suits in case they fail to comply with the requirements of such acts.

Mr. GRAHAM. Make that clear, Judge.

Mr. FLOYD. Yes. The penalty imposed in the safety-appliance acts of Congress upon the railroad companies for their failure to comply with the requirements of these acts is that they are subjected to and made liable for damages in all cases, regardless of the fault of the employee—just as it is proposed they shall be subjected to and made liable for damages in cases under this bill, regardless of the fault or negligence of the employee. What is the effect? When we pass this bill, when we provide that injured employees shall receive a like sum for like injuries, regardless of their negligence or fault, what reason is there for railroad companies to go to great expense in order to meet the several requirements imposed on them by Congress in these safety-appliance acts?

Mr. STERLING. Penalties will exist just the same.

Mr. FLOYD. Yes; but what will it amount to? The real penalty imposed in such acts is that the railroad companies which fail to comply with the safety-appliance acts shall have no defense against an employee who is injured in their service. Express provisions in these statutes take away from noncomplying companies all their defenses when actions are brought against them in personal-injury cases.

Mr. NORRIS. Isn't there any other penalty in that connection? Can we compel them to comply?

Mr. STERLING. That is not in the safety-appliance act; it is in the employers' liability bill.

Mr. FLOYD. Isn't it in the safety-appliance act? I think it is. I don't know of any graver penalty; do you?

Mr. STERLING. There is no failure to comply with the law.

Mr. FLOYD. What is the penalty?

Mr. STERLING. I don't know what it is.

Mr. FLOYD. It is that all defenses are taken away from the railroad companies, and they can't plead the negligence or other fault of the employee when actions are brought against them for damages for personal injuries.

Mr. STERLING. Is that in the safety-appliance act or in the liability act or law?

Mr. FLOYD. I so understand it; such provision is in our safety-appliance acts and in the employers' liability act also.

Mr. NORRIS. That would be necessary there; but do you mean to say, if we passed this bill, for instance, the law that provides there shall be air on the trains can be disregarded?

Mr. FLOYD. It can be disregarded entirely, and no additional penalty would be imposed upon the railroad company by reason of that failure, because, if a man is injured under this new law he will get the same compensation whether he is negligent or otherwise.

Mr. NORRIS. But does the law provide for its enforcement, so far as the liability is concerned?

Mr. FLOYD. I am not sure as to that; I don't deny that proposition; but I am speaking of this penalty that is imposed in addition to any fine that may be imposed upon them, and this additional penalty, if the law is complied with, will cost the railroad companies millions of dollars in excess of any fines that will be imposed on them for failure to comply with those laws; because it is this additional penalty which I am dealing with that takes away from the railroad company any defense whatsoever, and leaves the railroad employee injured by reason of their failure to comply with these safety-appliance acts in the precise position in which you are proposing to put all railroad employees under this bill. I think this raises a question we should seriously consider. If I am in error I shall be glad to be corrected. I have the safety-appliance acts before me, and that is the way I construe them in regard to liability in damage suits as to the additional penalty. The fact that a fine may be imposed also in no way affects the soundness of my position.

Mr. STERLING. Your proposition, Mr. Floyd, amounts to this: They could not plead negligence, as they can now, where the injury results from the failure to comply with the safety-appliance acts.

Mr. FLOYD. Yes. It amounts to that proposition; it simply deprives them of their ordinary defenses in personal-injury suits.

Mr. STERLING. They can't plead negligence now.

Mr. FLOYD. It amounts to this, that the railroad company is deprived of any defense if it fails to comply with the safety-appliance acts and an employee is injured by reason of that failure.

Mr. STERLING. Practically no defense.

Mr. FLOYD. Practically no defense. Hence there would be no difference to the railroad companies so far as damage suits are concerned whether they complied with such laws or whether they did not if we pass this compensation act.

Mr. NORRIS. As far as damage for injury to an employee is concerned that is right.

Mr. HIGGINS. Have you the safety-appliance act here, Mr. Floyd?

Mr. FLOYD. Yes; there it is. That is all I desire to say on that particular proposition.

Now, it is insisted that we ought not to eliminate section 3—we ought not to make this proposed law optional; and it has been insisted before our committee by various advocates of the measure that we ought to follow the precedent found in the laws of European countries and be guided by the enlightened judgment of the Old World in this compensation legislation. Now, most of the laws pertaining to this subject in continental Europe are insurance propositions—compulsory insurance laws in which the employee is compelled to contribute from his earnings a certain stipulated amount from time to time, which goes into the insurance fund out of which he is paid in case of injury or accident; so the advocates of this measure can find no precedent in those insurance laws for this particular bill and the particular provisions that are embodied in this bill.

So let us consider the compensation acts proper that have been adopted in other countries and see how they compare with this proposed law. I had some difficulty—I don't know whether you gentlemen did or not—in finding in the report the compensation laws of other countries, because in the citation found in the report of the commission there is an error in part. The citation gives the Twenty-fourth Annual Report of the Commissioner of Labor, 1910, as including those laws. The error is in "1910." It should be "1909." In the Twenty-fourth Annual Report of the Commissioner of Labor of 1909 foreign insurance and compensation laws are printed in full.

Mr. STERLING. Mr. FLOYD, don't you think this would develop a complete insurance policy among the railroads of the country? It would have this advantage, that the employees would not be obliged to contribute to that. The railroads would undoubtedly indemnify themselves by insurance just as soon as this goes into effect.

Mr. FLOYD. That might be; I am not prepared to answer that question or controvert it. But I want to compare this proposed law with compensation laws in other countries and see where we must look for any precedent for it. I will not take time to read them in full, but I want to submit extracts from a number of those laws.

I submit an extract from the Alberta workman's compensation act, 1908, and I will read in this connection the optional clause only, and print the whole section:

"(b) When the injury was caused by the personal negligence or willful act of the employer or of some person for whose act or default the employer is responsible, nothing in this act shall affect any civil liability of the employer; but in that case the workman may, at his option, either claim compensation under this act or take proceedings independently of this act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this act, and shall not be liable to any proceedings independently of this act except in case of such personal negligence or willful act aforesaid."

Now, there you have an optional clause such that, if substituted for section 3 of this bill, would preserve intact our present employers' liability laws and would meet with my hearty approval. I do not think the remedy ought to be cumulative; I do not think the employee ought to have the right to seek compensation under an act such as is proposed here and at the same time have the right, as an additional cumulative remedy, to go into court under our liability laws and get redress there also.

Mr. HIGGINS. Would you be willing, Mr. Floyd, to let the employee make his option at the time of his employment?

Mr. FLOYD. I would not, under any circumstances. I think he ought to be given the right to exercise his option after the action accrues, and in an amendment I have prepared to section 3 it is provided that when he files his petition for compensation under this act, he waives his right to claim damages under the employers' liability act, and when he files a suit under the employers' liability act, he waives his right to compensation under this act.

Mr. NORRIS. Judge, I want to ask you a question about the Alberta law that you have just read. That is just a little different from what most of the people want who claim, like you do, that a man ought to have his option. I will say I agree with you if he has an option, he ought to have a right to exercise it after the injury. But you will notice that Alberta act provides that this right to sue the company only exists where the company is negligent or some employee is negligent for whose acts the company is liable. Now, if the employee would, we will say, decide to pursue the remedy provided in that exception in that law you have read, and it should be determined at the end of the suit that the company was not negligent; then he would fail, wouldn't he?

Mr. FLOYD. Certainly.

Mr. NORRIS. Now, in that case he would not have any remedy whatever, would he? He would be cut out entirely.

Mr. FLOYD. He would, and I don't think it would be unjust. If you give an employee two remedies and he selects the wrong one he must abide the consequences. I know of no way to guarantee rights and at the same time obviate the possibility of errors.

Mr. NORRIS. There might be a case now where the company is liable, and he might think they were negligent and commence his action on that theory, and the evidence might develop conclusively that they were not negligent; then the employee would be cut off from compensation.

Mr. FLOYD. I will not take issue with you as to that. It might easily happen.

Mr. NORRIS. It would be dangerous it seems to me.

Mr. FLOYD. And in some of these optional clauses in foreign acts a provision is made, as you suggest, that if the employee fails in his action under liability laws, he may seek his remedy under the compensation act; that is, if he fails under the first, he may seek his remedy under the other, notwithstanding. But I am not inclined to that view. I do not believe an employee ought to be permitted to have cumulative remedies in such cases.

Mr. GRAHAM. But the policy you have laid down would be a departure from the theory underlying this bill—a theory of public policy—that the man should get something. In that case he would get nothing.

Mr. FLOYD. The injured employee is given the right to get something under the law. But you can't frame a law that will protect the injured man, or any other claimant, in all his rights under all circumstances and in every contingency. He may have a claim under the compensation act and may neglect to put in his claim and he would get nothing although he had a just cause. It would be difficult, indeed, if not impossible, to frame any law that would guarantee any man all his rights and at the same time protect him against loss in unforeseen contingencies that may arise.

Mr. WEBB. It seems to me the Alberta law would induce more employees to take compensation under the compensation bill. If there were any doubt of the right of the injured employee to recover on the ground of negligence of the railroad company or employer, he would not take any chances; he would seek his remedy under the compensation act.

Mr. HIGGINS. Under the common law are not the rights of the employee preserved?

Mr. FLOYD. I assume so.

Mr. GRAHAM. If he seeks his remedy at law he would have to assume all the common-law provisions. If he resorted to the common law he has to take it as he finds it.

Mr. THOMAS. Referring to your statement, I would like to call attention to the further penalty provided of $100 a day in addition to the penalties you have stated.

Mr. STERLING. That is for our record.

Mr. FLOYD. Put that statement in the record. I had not looked up the matter of fines, having investigated specially the penalty imposed in damage suits.

Now, I submit, without reading it in full, the Alberta workman's compensation act, section 3:

"Alberta.

"[Workman's compensation act, 1908.]

"LIABILITY OF EMPLOYERS TO WORKMEN FOR INJURIES.

"SEC. 3. If in any employment to which this act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this act.

"(2) *Provided*, That—

"(a) The employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed.

"(b) When the injury was caused by the personal negligence or willful act of the employer or of some person for whose act or default the employer is responsible, nothing in this act shall affect any civil liability of the employer; but in that case the workman may, at his option, either claim compensation under this act or take proceedings independently of this act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this act, and shall not be liable to any proceedings independently of this act, except in case of such personal negligence or willful act as aforesaid.

"(c) If it is proved that the injury to a workman is attributable to the serious and willful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or permanent disablement, be disallowed.

"(3) If any question arises in any proceedings under this act as to the liability to pay compensation under this act, including any question as to whether the employment is one to which this act applies, or as to whether the person injured is a workman to whom this act applies, or as to the amount or duration of compensation under this act the question, if not settled by agreement, shall, subject to the provisions of the first schedule to this act, be settled by arbitration, in accordance with the second schedule to this act.

"(4) If within the time hereinafter in this act limited for taking proceedings an action is brought to recover damages independently of this act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this act. In any proceeding under this subsection when the court assesses the compensation, it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this act." (Report of Commissioner of Labor, 1909, pp. 2436–2437.)

Mr. FLOYD. I also submit, without reading it, an extract from the British Columbia workmen's compensation act, 1902, containing the same optional provision found in the Alberta law:

"British Columbia.

"[Workmen's compensation act, 1902.]

"1. This act may be cited as the 'Workmen's compensation act, 1902.'

"2. (1) If in any employment to which this act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this act:

"(2) *Provided*, That—

"(a) The employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed;

"(b) When the injury was caused by the personal negligence or willful act of the employer or of some person for whose act or default the employer is responsible, nothing in this act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this act or take the same proceedings as were open to him before the commencement of this act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this act, and shall not be liable to any proceedings independently of this act except in case of such personal negligence or willful act as aforesaid;

"(c) If it is proved that the injury to a workman is attributable solely to the serious and willful misconduct or serious neglect of that workman, any compensation claimed in respect of that injury shall be disallowed.

"(3) If any question arises in any proceedings under this act as to the liability to pay compensation under this act (including any question as to whether the employment is one to which this act applies) or as to the amount or duration of compensation under this act, the question, if not settled by agreement, shall, subject to the provisions of the first schedule to this act, be settled by arbitration in accordance with the second schedule to this act.

"(4) If, within the time hereinafter in this act limited for taking proceedings, an action is brought to recover damages independently of this act for injury caused by any accident and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing this action instead of proceeding under this act. In any proceeding under this subsection when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this act.

"(5) Nothing in this act shall affect any proceedings for a fine under the enactments relating to mines and other industries or the application of any such fine, but if any such fine or any part thereof has been applied for the benefit of the person injured the amount so applied shall be taken into account in estimating the compensation under this act. (60 and 61 Vict. (Imp.) 1897, c. 37, s. 1.)

"3. (1) Proceedings for the recovery under this act of compensation for an injury shall not be maintained unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or in case of death, within six months from time of death: *Provided always*, That the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defense by the want, defect, or inaccuracy or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause." (Report of the Commissioner of Labor, 1909, pp. 2467–2468.)

Mr. FLOYD. I now submit an extract from the laws of the Cape of Good Hope workman's compensation act, 1905, section 22, making that statute optional:

"*Cape of Good Hope.*

"[Workman's compensation act, 1905.]

"SEC. 22. If any workman become permanently totally incapacitated for work by reason of a personal injury, for which an employer or principal is liable to pay compensation under the provisions of this act, such workman shall, subject to the provisions of sections 29, 30, and 31 of this act, and in addition to the provisional order, have a right of action in the magistrate's court of the district in which he received such injury, against the employer or principal for the recovery of a sum not exceeding three years' wages at the rate of wages drawn by such workman at the time of the injury, less any wages received under any provisional order as hereinbefore mentioned, provided such sum shall not exceed £600 [$2,919.90] in all. Regard shall be had in fixing such amount to the workman's necessities." (Report of the Commissioner of Labor, 1909, p. 2476.)

Mr. FLOYD. Now, I submit an extract from the laws of Denmark, of January 7, 1898, workman's insurance, article 12. The act is optional in regard to this insurance provision:

"*Denmark.*

"[Law of Jan. 7, 1898, workman's insurance.]

"ART. 12. If a workman or his survivors have claimed or received money payments in accordance with the provisions of the present law, he or they shall have thereby waived the right to make at the same time or subsequently a claim against the employer or others under the other existing laws concerning legal claims for damages. If, on the other hand, an injured workman or the survivors of a deceased workman have made a claim against the employer or others under these general laws, above mentioned, he or they may not, at that time, appeal to the present law or call for a decision from the council, nor subsequently, unless the council, after becoming acquainted with the details of the case and after receiving a petition, shall give its consent." (Report of Commissioner of Labor, pp. 2479–2480.)

Now, I submit an extract from the laws of France, act of July, 1907——

Mr. HIGGINS. Mr. FLOYD, under the Denmark statute the employee has to contribute.

Mr. FLOYD. Yes; but it is not compulsory; it is optional with him whether he so contributes or not, but if he does not he receives no benefit under that statute.

Mr. HIGGINS. But he is subject to the liability law whatever it is.

Mr. GRAHAM. And it practically takes the place of our voluntary associations.

Mr. FLOYD. I submit an extract from the act of July, 1907, France, voluntary affiliation with legislation regarding industrial accidents. The act leaves it to the voluntary act of the employee whether or not he will participate under the provisions of this law:

"*France.*

"[Act of July, 1907, voluntary affiliation with legislation regarding industrial accidents.]

"ART. 2. The legislation regarding industrial accidents becomes thereafter applicable in full force to all of his workmen, employees, and domestic servants who shall have declared in the pass book (carnet), mentioned in the preceding article, their voluntary affiliation plainly signed and dated by themselves.

"If the workman, employee, or domestic servant does not know how to or can not sign, his declaration of voluntary affiliation shall be received by the mayor, who shall mention the same in the pass book. The same applies to the affiliation of minors and married women, without necessity for them to obtain the consent for this purpose of the father, guardian, or husband." (Report of the Commissioner of Labor, 1909, pp. 2507–2508.)

Mr. FLOYD. I submit an extract from the laws of Great Britain, workmen's compensation act of 1906. This contains the same optional provision in the identical language of the Alberta law, Alberta being a Province of Great Britain.

"*Great Britain.*

"[Workmen's compensation act of 1906.]

"An act to consolidate and amend the law with respect to compensation to workmen for injuries suffered in the course of their employment [21st December, 1906].

"*Be it enacted by * * * Parliament assembled, and by the authority of the same, as follows:*

"1. (1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this act.

"(2) Provided that—

"(a) The employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed.

"(b) When the injury was caused by the personal negligence or willful act of the employer or of some person for whose act or default the employer is responsible, nothing in this act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this act or take proceedings independently of this act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this act, and shall not be liable to any proceedings independently of this act, except in case of such personal negligence or willful act as aforesaid.

"(c) If it is proved that the injury to a workman is attributable to the serious and willful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed." (Report of the Commissioner of Labor, 1909, p. 2553.)

Mr. GRAHAM. Which was earlier, the British law or the Alberta law?

Mr. FLOYD. The notation on the extracts submitted will show when each was adopted. I don't have in mind now which was the earlier statute, but the date of each act is noted on the papers delivered to the stenographer. I submit an extract from the law of the Netherlands relating to legal insurance of workingmen.

Mr. STERLING. That does not apply to railroads, Mr. FLOYD, does it?

Mr. FLOYD. It applies to railroads and also to other industrial corporations, as I understand.

Mr. STERLING. All employees of labor, practically.

Mr. FLOYD. I think a general distinction between those foreign laws and our laws is that they include a great many industries in addition to railroads—practically all of the industrial corporations and concerns of the country.

Mr. STERLING. That applies to all the insurance acts of other countries?

Mr. GRAHAM. There is not any reason there for confining it to railroads as there is here.

"*The Netherlands.*

"[Law of Jan. 2, 1901, relating to legal insurance of workingmen.]

"AS TO THE EFFECT OF THE INSURANCE UPON THE CIVIL LAW.

"ART. 87. The civil liability of the employer for pecuniary damages sustained by an insured workman in the course of his employment ceases under reservation of the provisions of the next paragraph and of article 88, as well as with the further reservation that the liability extends to damages done to the property of the person injured by the accident.

"Should an insured person whose daily earnings exceed 4 florins [$1.61] meet with an accident while at work, the liability of the employer remains; the court, however, in estimating the compensation, must take into consideration what has already been awarded to the plaintiff by reason of this law.

"ART. 88. The civil liability of the employer arising out of articles 1406 and 1407 of the Civil Code is not removed if the insured person has met with an accident and the head or director of the establishment is duly convicted for a violation of any of the provisions in titles 7, 19, 20, and 21 of book 2 of the Penal Code.

"If the head or director of the establishment is convicted by default by a judge on account of any of the violations referred to in the preceding paragraph, the civil liability mentioned in articles 1406 and 1407 of the Civil Code shall not be invoked before six months of the date of such judgment by default, unless the head or director of the establishment has filed an appeal before such time.

"ART. 89. The Royal Insurance Bank acquires the right to the amount which the insured person or his surviving relatives may derive from articles 1406 and 1407 of the Civil Code.

"Every settlement with regard to these rights which the insured person or any of his surviving relatives makes without the intervention of the board of directors of the Royal Insurance Bank shall be null and void." (Report of the Commissioner of Labor, 1909, p. 2656.)

Mr. FLOYD. Now I submit an extract from the laws of South Australia, workmen's compensation act of 1900. Paragraph 6 makes it optional.

"*South Australia.*

"[Workmen's compensation act, 1900.]

"1. This act may be cited as 'The workmen's compensation act of 1900.'

"2. In this act—

"'Dependents' means the wife, husband, parent, grandparent, child, grandchild, and stepchild of a workman wholly or in part dependent upon his earnings at the time of his death.

"'Employer' includes any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer.

"'Engineering work' means any work of construction or alteration or repair of a railroad, harbor, dock, canal, sewer, or tunnel, telegraph, telephone, or electric power, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used.

"'Factory' means any manufactory, workshop, workroom, or premises wherein or whereon manual labor is exercised for the purpose of gain in or incidental to the making, altering, or repairing any article by way of trade or for purpose of gain for sale, and includes any ship or boat in port, dock, wharf, quay, or warehouse, so far as relates to machinery and plant in the process of loading or unloading therefrom or thereto, and every laundry worked by steam, water, or other mechanical power.

"'Injury' means personal injury or loss of life by accident arising out of and in course of employment or injury to health or loss of life arising out of or consequent upon any employment declared by proclamation to be dangerous to health or dangerous to life or limb: *Provided*, That no such proclamation shall issue except on addresses of both Houses of Parliament.

"'Proclamation' means proclamation by the governor in the Government Gazette.

"'Workman' includes every person who is engaged in an employment to which this act applies, whether by way of manual labor or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing, and includes seaman and the personal representative and the dependents of a deceased workman.

"3. This act applies only to injuries to workmen employed by employers—

"(i) On or in or about a railway, waterwork, tramway, electric-lighting work, factory, mine, quarry, or engineering or building work.

"(ii) On or in or about any employment declared by proclamation to be dangerous or injurious to health or dangerous to life or limb: *Provided*, That no such proclamation shall issue except pursuant to addresses of both Houses of Parliament.

"4. When personal injury arising out of and in the course of his employment is caused to a workman his employer shall be liable to pay compensation, except in the following cases:

"(a) When the injury is attributable to the serious and willful misconduct of the workman injured, and to no other cause; or

"(b) When the workman is not disabled for at least one week from earning full wages at the work in which he was employed.

"5. The compensation for which an employer shall be liable pursuant to the preceding section shall be subject to the scale and conditions in the first schedule.

"6. (1) Where personal injury is caused to a workman by the personal negligence or willful act of his employer, or of some person for whose act or default such employer is responsible, such workman may, at his option, either claim compensation under this act or take proceedings to recover compensation independently of this act.

"(2) No employer shall be liable to pay compensation both under this act and independently of this act. (Report of Commissioner of Labor, 1909, p. 2699.)

Mr. FLOYD. I submit an extract from the law of Sweden, the law of July 5, 1901, relating to compensation for injury resulting from industrial accidents.

Mr. HIGGINS. Do these extracts just relate to the optional feature?

Mr. FLOYD. Some of them do, and some of them embody the entire section in which the optional feature appears. But I cite the particular page in the commissioner's report in which you can find the full body of each of the acts referred to.

Mr. STERLING. Are you citing those countries where it is not optional—in these extracts?

Mr. FLOYD. No, sir; I am citing those where the law is optional and am not citing all of the insurance laws. I will make a statement in regard to other acts not cited at the conclusion.

Mr. GRAHAM. Are you citing the State laws in the United States?

Mr. FLOYD. No, sir; I have not gone into that.

Mr. HOUSTON. Do you state how many different countries have the optional feature and how many have not?

Mr. FLOYD. I could not state it offhand, but I think I have here in these different papers extracts from the laws of practically all foreign countries where the optional provision appears in the law; I am not sure as to that, however.

Mr. STERLING. Mr. Floyd, have you read the New York decision declaring the compensation law unconstitutional?

Mr. FLOYD. No, sir; I have not read it.

"Sweden.

"[Law of July 5, 1901, relating to compensation for injury resulting from industrial accidents.]

"ART. 9. If any person has the right to compensation in accordance with this law, he shall not thereby be barred from entering a claim against the employer or other person for indemnity which might be due to him in accordance with the common law or special law: *Provided, however*, That the employer may deduct from such indemnity the amount of the compensation to which he is liable under this law.

"If a person other than the employer is liable for indemnity, the employer may, after duly suing the person who is liable, receive such indemnity, instead of the person to whom it is due, provided he pays a corresponding compensation in accordance with this law." (Report of the Commissioner of Labor, 1909, p. 2709.)

Mr. FLOYD. Now, I submit an extract from the laws of Switzerland, Federal law, June 25, 1881, article 6, liability laws. Article 2 and article 8 make this law optional.

"Switzerland.

[The Swiss laws here reproduced are not, accurately speaking, compensation laws, but are liability laws of a very inclusive and stringent type, and are published as showing probably the nearest approach to the force and value of a compensation act that can be attained under the form of liability laws.]

[Federal law June 25, 1881, art. 6, liability laws.]

"The court shall determine, after consideration of all the circumstances, the amount of the damages, which, however, in the most serious cases (arts. 1 and 3) shall not exceed six times the annual earnings of the employee or workman, and shall in no case exceed the sum of 6,000 francs [$1,158].

"The court is not restricted to this maximum when the injury or death was caused by any act of the employer which would render him liable to a criminal prosecution.

"The costs of medical treatment, maintenance, and burial are not to be included in the above maximum."

[Federal law of Mar. 28, 1905, relating to the civil liability of railways, steamboats, and the postal service. (Recueil Officiel des Lois et Ordonnances XXI, p. 351.)]

"ARTICLE 1. Every railway shall be liable for damage resulting from the loss of life or injuries sustained by a person in the course of the construction or operation of its lines, or while engaged in accessory work involving railroad risks, unless it is able to prove that the accident was due to superior force [act of God], to the fault of a third party, or to that of the injured person himself.

"No one shall be regarded as a third party within the meaning of the present article who is an officer or employee of the road, engaged either in transportation or in the construction of its lines.

"ART. 2. In case of death, damages paid shall cover expenses, including those of burial. If death does not occur immediately, they shall include the expense of treatment and compensation for loss from disability. When, through the death of the injured person, other persons are deprived of their means of support they shall be likewise compensated for such loss.

"ART. 3. Personal injuries shall entitle the injured person to reimbursement for expenses and to damages for total or partial disability. If the injured person has been mutilated or disfigured in such a way as to interfere with his employment, the judge may also allow him a compensation for such injury.

"ART. 4. When the injured person realized exceptionally high returns from his labor the judge, taking all the circumstances into consideration, may reduce the compensation in such manner as seems just.

"ART. 5. If the accident is in part due to the fault of the injured person, the judge, taking all the circumstances into consideration, may reduce the compensation proportionately.

"ART. 6. There shall be no ground for compensation if the connection with the railway of the person killed or injured was the result of his own criminal act or act of bad faith.

"ART. 7. If the connection with the railway of the person killed or injured arose from his having knowingly violated any police regulation, the judge may reduce the compensation or even absolve the road from all liability.

"ART. 8. In case of negligence of the railway or of the persons named in paragraph 2 or article 1, the judge, considering the particular circumstances, especially when fraud or gross negligence has been shown, may allow to the injured party, or in case of death to his family, an equitable sum, independent of reparation for actual damages.

"ART. 9. The compensation may be allowed in a capital sum, or as a pension, or in a capital sum combined with a pension. The judge may determine freely the method of payment without being bound by the opinions of the parties. He shall take, whenever necessary, proper measures to insure the payment of the pension." (Report of Commissioner of Labor 1909, p. 2716.)

Mr. FLOYD. I submit an extract from the law of the Transvaal workmen's compensation act. I failed to get the date of that. Section 4 embodies an optional feature.

"Transvaal.

"[Workmen's compensation act.]

"PROVISIONAL ORDER TO RECOVER PERIODICAL PAYMENTS OF COMPENSATION.

"SEC. 3. Save as in section 2 is provided, if personal injury is caused by any accident to a workman necessitating his absence from work for a longer period than one week, the employer and every principal shall be liable to pay to such workman compensation as in section 7 is provided.

"SEC. 4. (1) Any such workman who is desirous of obtaining compensation under this act shall give or cause to be given notice of such injury, at his option, either to his employer or to any principal. Such notice shall be given within 14 days of the injury, and if not given within such period no compensation shall be payable under this act to a workman unless he shall have obtained from the magistrate of the district in which he received the injury a certificate that the time for giving notice should, having regard to all the circumstances, have been extended. If he shall have obtained such certificate and give notice to the employer or such principal within a period of one week after the receipt of such certificate, the notice of injury shall be deemed to have been given within the time required by this subsection.

"(2) The employer or the principal to whom notice has been given may, on receiving such notice, require the workman to submit himself for examination by a medical practitioner named by the employer or such principal.

"(3) If the employer or such principal shall not, within one week after transmission to him of such notice, agree with the workman for payment of compensation for the injury, the workman may transmit to the clerk of the court of resident magistrate for the district in which such injury was received notice in writing of such injury and of the name of the employer or such principal, and with such notice shall transmit a certificate by a medical practitioner to the effect that, in his opinion, the injury necessitates or has necessitated the workman's absence from work for a longer period than one week. Such clerk shall cause such information and certificate to be at once laid before the magistrate of the said district." (Report of the Commissioner of Labor, 1909, p. 2719.)

Mr. FLOYD. Now, in regard to those countries where the law is compulsory, and where it is not an insurance plan but a compensation plan, I am not able to give you full details as to just what foreign countries have such compulsory laws. I think that that is the case in Germany, but there is a very marked distinction between Germany and the other countries referred to.

Mr. GRAHAM. But is compulsory in Germany.

Mr. FLOYD. It is compulsory in Germany; but there is an economic condition in that country which does not exist in this country or in the other countries referred to. The Government owns the principal part of the railroads in Germany; they have Government ownership of railroads there, and where your claim is against a sovereign you have no recourse except by some compulsory or arbitrary law, because a citizen does not have the right in any country, to my knowledge, to sue the sovereign on a matter of personal damages.

Now, I desire to submit certain protests received from railroad employees of my State against the passage of this bill. I will not ask to read them. I will simply call attention to the different letters in such a way as to identify them and will have them printed in full in the record. First, I submit a letter from Mr. W. W. Dunn, secretary of the Order of Railway Conductors, dated Little Rock, Ark., May 12, 1912, protesting against this legislation, and in connection with it I desire to submit and have printed my letter in reply, in which I call attention to certain minor objections to this bill which I have not discussed before the committee.

Mr. GRAHAM. Do you know the attitude of the organization he represents is the same now as it was when that was written?

Mr. FLOYD. It is the same, only stronger against it.

ORDER OF RAILWAY CONDUCTORS,
Little Rock, Ark., May 12, 1912.

Hon. J. C. FLOYD,
Congressman, Washington, D. C.

DEAR SIR: As representative of approximately 1,000 conductors in the State of Arkansas, wish to register an emphatic objection to the so-called employers' liability and workmen's compensation act. The bill, framed as at present, is the worst piece of legislation to railroad through

Congress that the men have ever had to fight. It has not one redeeming feature; it is all bad.

After years of struggle we succeeded in getting rid of the fellow servants' assumption of risk and contributory-negligence laws in the employers' liability law passed in 1908, and now the railways are trying to wipe out all those years of earnest effort in this damnable compensation act.

It is not necessary for me to go into the bill with you gentlemen, for no doubt you are more familiar with it than I am; but, for example: I lose a leg on my run to-night; adjusters award me $30 a month; company gives me service at $50 per month; six months, I die; payments stop; my family gets nothing. If I refuse service because I can do better through relatives, influence, or sympathy, payments stop. If I take service at $85 per month somewhere else, that cuts off $15 of my payments. So the system of the bill is all wrong. For the sake of crippled railroad men, their wives and orphans, and justice, defeat or delay this infamous measure.

Yours, truly,

[SEAL.] W. W. DUNN, *Secretary.*

HOUSE OF REPRESENTATIVES,
Washington, D. C., May 16, 1912.

Mr. W. W. DUNN,
Secretary Order of Railway Conductors, Little Rock, Ark.

DEAR SIR: I am in receipt of your favor of May 12 protesting against the passage of the so-called employers' liability and workman's compensation bill. As a member of the Judiciary Committee of the House, I have carefully considered this bill and am utterly opposed to it in its present form. I have heretofore been doing and propose to continue to do all I can to prevent favorable action on same by the committee or in the House. I fully concur with you in the several objections you urge to the bill and could add many more. I regard it as a bill in the interest of the railroads and against the interest of employees. I have served in the State legislature and have served a number of terms in Congress, and I regard this as one of the worst legislative propositions that I ever saw brought forward in the name of virtue.

Section 3 repeals every law now on the statute books in favor of workingmen, whether common law, State or Federal law, and provides that the sole and exclusive remedy for injured railroad employees shall be under the provisions of the proposed act.

The employers' liability act passed by Congress in 1908, the validity of which was upheld by the United States Supreme Court only about two months ago, is to be repealed by the passage of this act.

Every administrative feature of the proposed law is in favor of the railroad companies. All trials must be before a Federal court or before an adjuster appointed by the judge of a Federal court. The right to go into a State court and try your case is denied. The right of trial by jury is denied in the first instance, as there is no provision for a jury trial before the adjusters, who to all intents and purposes act in the capacity of judges and perform the functions of courts in adjudicating claims. The only way in which you can secure a trial by jury under the terms of the law is to except to the findings of the adjuster and take your case to the court, where you may demand a jury, and then the case is tried de novo. Hence, a double trial and therefore double costs to protect your rights. The findings of the adjuster are made prima facie correct, and the burden of proof is placed upon the employee. Even then the law limits the amount you may recover to the arbitrary and low rates fixed in the bill. So the jury has no discretion except to cut you down and give you less than the law fixes as the maximum rate of compensation for the particular injury—they can not give you more.

The bill denies to employees freedom of contract. The bill provides that an injured employee may employ counsel, but that the counsel need not be a member of the bar. It provides that any contract made for attorney or counsel fees must be filed with the adjuster, but further provides that the adjuster or the court shall have power to arbitrarily fix the attorney's fee in all cases. This is true even where you have a written contract with the attorney and have filed it with the adjuster.

This power to fix attorney's fees, given to the adjuster and the court, may be abused to the detriment of the laborer in two ways. The adjuster or court can fix the fees so high that no employee, out of the meager allowance under the terms of the bill, can afford to pay them, or can fix them so low that no good or reputable lawyer could afford to take the cases. I will simply say I regard the proposed bill as one of the most unjust, unfair, and outrageous legislative propositions ever presented to Congress, and will further state that you can rest assured that it will have my determined opposition at every stage of its progress, both before the Judiciary Committee and in the House. It is urged here by the advocates of the measure that laboring men and labor organizations all over the country favor it. Such representations are calculated to secure many votes from those who know little about the bill and who are made to believe that employees generally favor the legislation. But I have studied it and know it to be a vicious, bad bill for employees. I am opposed to it, no matter who favors it. I am unwilling to see crippled and maimed employees of our railroads and the near and dependent relatives of those who are killed have the substantial remedies guaranteed to them under the existing law taken away from them and for them to be made destitute and penniless even by their own consent. In its every feature it is a railroad bill, pure and simple, and it ought not to pass.

You are at liberty to use this letter in any way you see fit.

Yours, truly,

J. C. FLOYD.

Mr. FLOYD. Now, I submit a letter from A. N. De Mers, chairman of legislative board, Brotherhood of Locomotive Firemen and Engineers, dated Little Rock, Ark., May 15, 1912, protesting against the passage of this bill in its present form:

LITTLE ROCK, ARK., *May 15, 1912.*

Hon. J. C. FLOYD,
Congressman, Washington, D. C.

DEAR SIR: It affords me pleasure to write you on behalf of the engineers and firemen, members of our organization, numbering about 2,000, protesting against Senate bill No. 5382, now pending before the House, and known as the exclusive liability and workmen's compensation act.

The title of this act sounds good to hear it spoken, but when you read through this bill you can read between its lines—"mighty trusts." In connection with our protest I desire to say that the laboring people have not the slightest degree of knowledge as to the merits of this bill, they do not know that it repeals all other "liability laws." The few who have had a chance to learn the requirements of this bill are at a loss to believe that Congress would pass this measure without knowing the principles contained therein. The labor leaders who are now advocating this measure are "false prophets," not representing the wishes of the laboring people, but the interest of the "mighty trusts" for personal gain. In repealing the good laws now on the statute books, which stand as a monument to your great work, you would write the darkest page in the history of this country.

I ask you, in the name of our people, to give them a chance to learn what they are to pay for this supposed great compensation law. I ask you not to consider the pleas of the supposed representatives of the working people who are in Washington fighting for this measure, claiming that the laborers want it. I tell you now, and you can show them this letter, they are the hirelings of the mighty trusts, working not for the people but for the undoing of the people; they are lower than the serpent who lays as though dead only to jump and strike you a death blow.

I have not the ability to argue the demerits of this measure as I would like to, yet the position of the men I represent is clear; they don't want this measure; they ask you as their Representative to use your every effort to kill this proposed law; protect the weak, the rich will protect themselves; they have in the past; this you know better than I.

In closing I again ask that you do all in your power to prevent the passage of this bill at this time. If it is good now it will be good later; the working people would rather wait and have a chance to learn something about a matter that is of so much concern to them. Thanking you for your assistance and wishing you every success, I am,

Very truly, yours,

A. N. DE MERS,
Chairman Legislative Board,
Brotherhood of Locomotive Firemen and Engineers.

Mr. FLOYD. Now, I submit a letter from Mr. W. D. Jackson, secretary of the Brotherhood of Railroad Trainmen, Lodge No. 49, dated Little Rock, Ark., May 22, 1912, protesting against the passage of this bill:

LITTLE ROCK, ARK., *May 22, 1912.*

Hon. J. C. FLOYD,
Washington, D. C.

DEAR SIR: In answer to yours concerning the compensation bill will say that the railroad employees of this State appreciate your position on this bill very much, and we urge you to do all within your power to defeat this bill or amend it so it will not repeal our present laws we are now enjoying. If this bill is such a good one for the employees, why not leave the matter elective, so we can get our relief in our State laws if we so desire? I think that the "backers" of this bill know that if the law is made elective and does not repeal our present laws that this law will die of "nonuse."

The by-laws of our organization prohibit us from opposing legislation unless permission is secured from our president, and this permission was withheld from us until the day the bill passed the Senate, giving us no show to enter our protests to our various Senators. The rank and file of the railroad employees of the United States have not the slightest idea of the contents of this bill, and as an illustration as to how well they are informed I will give you one as follows: I was in Pine Bluff last Saturday night and was called into a meeting of the car men's union, and they asked me about this bill, and I asked them the question of how many present had ever seen the bill, and, to my surprise, of the 235 men in the hall not one of them had ever seen the bill. This will give you some idea of how well informed the rank and file of those who will be affected are informed of its contents.

Thanking you for past favors, I beg to remain,

Yours, very respectfully,

W. D. JACKSON,
Secretary Brotherhood of Railroad Trainmen, Lodge No. 49.

Mr. FLOYD. I now submit a letter from Mr. Frank Pace, an attorney, of Little Rock, Ark., dated May 24, 1912, together with an analysis of the bill from his viewpoint. There are certain personal references in that analysis and criticism of the bill which I will omit from the printed record.

Mr. GRAHAM. Just draw your pencil through them.

Mr. FLOYD. I have done so.

MAY 24, 1912.

Hon. J. C. FLOYD,
Member of House of Representatives, Washington, D. C.

DEAR MR. FLOYD: I have been carefully considering the workingmen's compensation act that is at present before Congress, and have carefully gone into it in detail for the purpose of determining what its effect would be upon the workingmen were it to become a law, and I have reached the conclusion that it is about the worst piece of legislation, from the workingmen's standpoint, that has ever been presented to Congress.

The railroads are back of this bill, without a doubt, and are urging its passage, because in it they find an advantage more far-reaching than has ever been accorded to them since legislation upon this subject began. Everybody is in favor of a compensation act that would be fair both to the railroads and to the workingmen, and a compensation act that is fair to the workingmen would be adopted by them in preference to the existing laws. The railroads have taken up the sentiment for a compensation act, fixed up this bill to suit themselves, and named it a compensation act, and are trying to put it through Congress before its true meaning and intent and effect can be known. The railroad men in Arkansas, within the past month, have in a measure become aware of the character of this bill, and I can truthfully state that there is not 5 per cent of the railroad workingmen in this State who favor its passage, and any man who supports that measure from our State will forfeit the vote of the entire organization. In fact, they are more unanimous upon this subject than upon any subject that has ever been presented to them since I have been in Little Rock. This but reflects what the workingmen of the entire United States will do when the provisions of this bill are known to them. Up to the present time the measure has been so quietly, rapidly, and silently put before Congress that the real men who are interested have learned but little about it. The workingmen here feel and expressly declare that there is a combination between the railroads and some of their leaders in Washington who have proven false to their trust to push this bill through without giving it that publicity it ought to have and acquainting those who are vitally interested in it with what there is in it. The engineers recently assembled in national convention indorsed it; but this was done through the effort of a few leaders and without a proper understanding of the measure by those who were in convention assembled, but this will be the last convention that will ever indorse it. This summer all of the conventions of the various trainmen's orders will meet, and the matter will be thoroughly thrashed out if the bill does not pass Congress before that time, and you will find the sentiment so strong against it that if the bill is not passed until fall it will never be heard of again.

We have been representing the railroad men of Arkansas since I came to Little Rock, not only in personal-injury suits, but in much of the

other business that they have, and naturally they come to us for a discussion and an interpretation of this act; and our opposition to it does not arise from the fact that it may interfere with our practice, because if it were a fair act we would make no opposition to it, and then the argument that has been advanced in Congress that lawyers get one-half of all that is paid to injured employees by the railroad companies is so unreasonable and untrue that it should have no weight with anyone. I made an investigation of that matter, so far as it obtains in our State, and the record for the last year shows that more than 90 per cent of the claims that were paid by the railroads to injured employees was paid without the intervention of a lawyer. Lawyers rarely ever get any cases except those where the railroad company denies all liability, and in cases of that kind, when a lawyer conducts it through all the courts of the State and collects the money, he has earned whatever he charged, even if it be more than one-half of the amount recovered. The effect of recent litigation has been to make the railroad companies pay more liberally the injured employee in 90 per cent of the cases that are settled without the assistance of an attorney.

The Arkansas trainmen would not object to the bill if it were amended, striking out that portion of it making the act exclusive and leave them to pursue their remedy under the law as it now exists, or under the new act, if they prefer it, but under no condition do they want it passed making that their exclusive remedy. They want the matter passed until fall, so that they may have an opportunity to investigate the bill and be heard upon it before it is finally acted upon in Congress. I know that you are a member of the Judiciary Committee, and I want you to write me fully about the present status of the bill, and how your committee feels toward it; whether you think they will pass upon the bill favorably or report it unfavorably, and whether committee action upon the matter can be delayed until it will be impossible for the bill to be taken up at this term by the House. Kindly write me fully about the matter and I will appreciate it very much.

I inclose you a copy of a criticism of the bill, in a condensed way, that I prepared at the request of some of the organizations here. The Arkansas trainmen, as soon as they can get their committee together, will send a representative to Washington to oppose the measure. He will possibly be there in 10 or 15 days, and I hope that the committee will not act upon the matter until he can reach there.

Yours, very truly,

FRANK PACE.

Any inaccuracies in the criticism inclosed will be due to the fact that it was hurriedly prepared, much of it being reproduced from speech of Hon. HOKE SMITH.

PACE.

THE RAILROAD TRAINMEN OF ARKANSAS ARE BITTERLY OPPOSED TO THE WORKMAN'S COMPENSATION ACT.

This act, which has recently passed the upper branch of Congress, and is now pending before the House, is stirring the railroad trainmen of Arkansas like no other measure that has ever been presented to Congress. It is only within the past three weeks that this bill has received their attention and consideration, and as they become more familiar with it and learn more of its details the more apparent it becomes to them that it is a railroad bill, pure and simple, dressed up in a workingman's clothes, for the purpose of deceiving the railroad employees as to its true purpose and intent. The railroad men of Arkansas have learned enough about it within this short space of time to know that they do not want the bill passed and are going to exert every effort within their power to defeat it. All railroad men are in favor of a fair compensation bill, drafted upon lines that will be fair both to the railroad and to the employee, but to name the present bill a compensation bill is a misnomer and the whole bill belies the title.

The suspicions of the railroad trainmen were aroused in the first place by the fact that the railroad company was not opposing the bill; in other words, it is evident that the railroads throughout the United States are perfectly satisfied with the bill, and when one reads the provisions of the bill, it causes no surprise when the statement is made that the railroads do not oppose the bill, because the bill is so drafted that the railroads are the only ones whose interests are cared for, and this is done at the expense of fairness and justice and right toward their employees. In fact, every railroad in the United States is back of the bill, with all their power and money, trying to secure its speedy passage before the railroad men, whose material rights are affected, can have secured information about the contents of the bill; in other words, the railroads are trying to railroad this measure through Congress, because they know that if the trainmen of the United States are made to realize the true meaning of this bill, its purposes and its object, before its passage in Congress, that there will be such a protest throughout the entire United States against its passage that its defeat will be assured.

This bill was introduced by Senator SUTHERLAND, of Utah * * *. The bill was introduced in the Senate on the 20th day of February of the present year and reported by the Judiciary Committee on April 3, and passed the Senate on the 6th day of May, and it is now up to the House, where speedy action is at the present time being urged. It has taken more than six years by the successive acts of Congress passed upon by the Supreme Court of the United States before the railroad employees received the place in the protection of their rights that they now occupy. This bill is exclusive; it wipes out all of this legislation that it has taken six years of constant effort upon the part of the railroad employees to secure. Why should there be so much haste about its passage; why not give the employees an opportunity to be heard upon this measure that is of so much vital importance to them and that undoes and wipes out that for which they have worked for a period of six long years? As a result of their efforts during the past six years the railroad company in a suit for personal injuries can no longer set up the defense that the injury was caused by the negligence of a fellow servant, neither can they any longer set up the defense of contributory negligence, neither can they any longer wipe out a claim upon the defense that the risk was assumed. The only defense that they can make now when an employee is injured is that the injury was an accident for which no one is responsible, or that the injury was due solely to the negligence of the injured employee. It is only within the past two months that the full breadth and extent of these acts of Congress were determined by the Supreme Court of the United States, and under the law as it now exists the railroad men are satisfied and can get adequate compensation for injuries that they may receive, and now when they have just come into their own and are about to receive the benefit of this law they are met with this new act proposed in Congress, and are told that it is being passed for their benefit and that it is better for them that the law as it now exists, * * * and when they saw it passed through the Senate, silently, quietly, and rapidly, like a thief in the nighttime, they have begun an investigation, and that investigation has revealed to them the most iniquitous measure that they have ever been called upon to meet.

In the very outset this bill declares itself to be exclusive of all legislation upon the subject. The railroad men would not object to the bill if it was passed in addition to the laws that now exist and would not strike out present legislation, because that would leave them the remedies they now enjoy and give them this new relief, if they saw fit to adopt it. If this measure is to be passed for the benefit of the employee, and will, as the railroad representatives in Congress claim, inure to his benefit and give him speedier and more complete relief than he can secure under present laws, why should it be necessary to declare in this bill that it shall be exclusive by its terms and strike down all other legislation upon the subject, because if it is better for the railroad employees than the legislation that now exists the railroad employees would adopt it in the future in securing relief when injured, and the laws that they enjoy at the present time would die of nonuse, but those who are pushing the bill through know that if this bill were passed with its present provisions no railroad employee would ever avail himself of it, but would pursue his remedy under the present laws, and this law would die of nonuse.

The workmen's compensation act is a sugar-coated pill, it is something that it pretends not to be, and it is time for the railway trainmen of the United States to tear the mask off of it and look it squarely in the face and see it as it is. Under the present law the injured employee can enforce his rights in the court of his own selection, in the State courts or in the Federal courts of the United States, and he can try his case in any county in the State through which the railroad runs, and also he can have a right to a trial by jury. Under the present bill his cause is first heard, not before a jury, but before an arbiter appointed by the Federal court. There will be possibly two arbiters in Arkansas, one at Little Rock and one at Fort Smith, and all of the witnesses that the employee desires to be used in this investigation he must pay the expense of bringing for miles before this arbiter at an appointed hearing. He must submit to an examination by a physician appointed by the arbiter, and then, if the arbiter believes that he is injured, he classifies him and determines according to the provisions of this bill the amount of pay he shall receive for his injury.

If the employee is not satisfied, he then has a right of appeal to the Federal district court, and there has the right of a pretended trial before a jury, because, by the terms of the act, the finding of the arbiter is to be taken as prima facie true, and the burden is upon the employee to show that the arbiter's findings are not correct. Thus it requires the expense of two trials, neither one of which gives to the employee a fair hearing under the law, before a judgment can be obtained. From the judgment of this court either party may appeal it to the higher courts for a final determination of the case, making more litigation than under the provisions of the present law.

But the worst provision of the bill comes in the pretended compensation. Where a man is killed outright, his widow, where there are no children under the age of 16, gets 40 per cent of the wages, to be paid monthly for the period of eight years. If she dies or remarries all compensation stops and the railroads are discharged from the payment of any further sum on account of his death. For the purposes of this act, the wages of any man shall be no more than $100 a month. If the deceased employee is receiving as much as $250 per month, his wages are counted at $100 for the purposes of this act. If he is receiving less than $100, his widow only receives 40 per cent of the wages that was being paid him. If there are children—4, 6, 8, or 10, it makes no difference how many—under the age of 16, the widow and children together receive only 50 per cent of the wages of the deceased employee for the period of eight years. An employee might be killed who was earning $200 a month, leaving a widow and six children under the age of 16 years, and the full compensation they would receive would be $4,800, to be strung out in monthly payments over the period of eight years.

The bill provides that this may be compromised and settled for a lump sum, of which the railroad company would take advantage, and the widow and children would settle for possibly from $2,400 to $3,600, which would mean that they would take nothing for loss of companionship, loss of moral training and guidance by the children, and no compensation for the death of the father and husband, except possibly the salary he would have received had he lived for a year and one-half. Under the terms of the bill provision is made for the payment of stipulated damages for injuries that are definite and fixed and can be determined, like the loss of a leg, the loss of an eye, or the loss of an arm. Reference to one of these will be sufficient to show the inadequacy of the provisions of the bill. These are denominated permanent partial injuries. The bill provides that the loss by separation of one leg, at or above the knee joint, one-half of the salary earned by the employee shall be paid him monthly for the period of 66 months. To the engineer making $2,400 a year, under the provisions of this bill, for cutting his leg off above the knee he would get $3,300, to be paid at the rate of $50 a month. To the trainman making $50 a month it would pay $1,650, at the rate of $25 a month. If the loss of the leg should be below the knee, the engineer would get $2,400, to be paid $50 a month, or $1,200 to the employee making $50 a month. Take an engineer 45 years old; he is master of his business; he is too old to learn another occupation; you cut off his leg just below the knee; his business is gone; his occupation is gone; you give him $2,400, to be paid $50 a month. This would leave him without a job; he can not even get the $2,400 in one sum with which to start into some little business; but if he wants a lump sum, he must compromise with the railroad company and take whatever he can get. Thus you have him with a family on his hands; a complete settlement with the railroad company for $2,400, what he could earn in one year; nothing paid him for the pain and suffering, nothing for the deformity, nothing for depriving him of his only means of earning a livelihood, because he can not hope to continue in the railroad service in that condition, and all of this is settled in full with the railroad company for the sum of $2,400.

Take a young apprentice, 20 years old, making $50 a month. He loses his leg below the knee; he gets $1,200, to be paid him monthly at the rate of $25 a month. No consideration is taken of his wrecked future prospects or the pain and suffering that he endures, but monthly he receives this measly stipend until he has received $1,200; but if he desires to get it in a lump sum, so that he may establish himself in some kind of business, he must take whatever the railroad will give him, possibly $600 or $800 for the loss of a leg. The illustrations serve to show the inadequate and unjust provisions of this bill toward the injured employee, but the further we proceed the worse the bill becomes. Under the provisions of this bill, if an injured employee is offered work by the railroad company, or goes to work elsewhere, and gets 90 per cent of the wages he was receiving at the time he was injured, the railroad company is relieved from paying him any further damages and all pay stops. If the railroad company offers him work, and he declines to take it, that will pay him 90 per cent of his former

wages, then all pay stops and the railroad is discharged from paying him anything further. If he works and receives less than 90 per cent of the wages he was receiving at the time he was injured, the railroad company is required to pay him only the difference between what he makes and what 90 per cent of his wages would be. Thus, if he is able to labor at all and does labor, what he earns is practically deducted from the amount the railroad is required to pay him, and they are relieved from paying him any compensation at all. In other words, although a man is injured, if he has the nerve and courage to get out and work in his unfortunate condition, the result of his labor inures to the benefit of the railroad company, and they are thus relieved from the responsibility of paying him for an injury that they placed upon him.

The great bulk of injuries are those injuries where the extent of the injury can not be definitely ascertained and determined. Sprained backs, fractured limbs, internal injuries—in all of these cases the extent of the injury is left to the adjuster, and the amount of compensation that the injured party is to receive is left to his discretion after he has determined the character and extent of the injury and the injured employee begins to receive the monthly pay. At any time in the future the matter may be called up for trial anew before the adjuster, and the whole hearing gone over again; thus, the injured employee is always under a strain of uncertainty and doubt, never knowing the amount he is to receive, dependent entirely upon the whim and caprice of the adjuster and the number of examinations that the railroads see fit to ask for before the adjuster; thus a man disabled and sick and without money can be continuously subjected to repeated examinations and adjustment of his pay, and if he wants his interests protected he must appear at each examination, pay the expenses of the witnesses that he desires to use, and in this manner, sick in body and exhausted in purse, these repeated examinations will drive him to an abandonment of the entire case and the yielding up of any future payments. To realize the unjustness of this bill, you have only to read it, and to study it will make any trainman rise up and denounce its provisions.

In addition to the above, I can not refrain from calling the attention of the public to one provision of the bill, and that is, that if a railroad employee is killed and leaves no widow, but leaves children over the age of 16 years and not yet of full age, those children do not receive any compensation at all on account of the death of their father unless they are mentally or physically deformed, so that they can not make a living. And if there is no widow and but one child left, who is under the age of 16 years, that child only receives 25 per cent of the monthly wages of the parent until the child arrives at the age of 16 years, and this payment is discontinued when the child arrives at the age of 16 years. For instance, if a father should be killed who was earning $2,400 a year and had a girl 12 years old, she would receive only $25 a month until she reached her sixteenth year, or $1,200 for the loss of her parent, and that paid to her in monthly installments of $25 a month, turning her loose upon the world at the age of 16 years without a dollar in the world and without a protector to provide for her.

Mr. FLOYD. Now I submit a letter from C. J. Rollins, dated Jacksonville, Fla., July 5, 1912, protesting against the passage of the bill.

Mr. GRAHAM. Pardon me, Mr. FLOYD, do those communications protest in a general way, or do they ask for changes in it and are then for its passage with the changes?

Mr. FLOYD. They protest in a general way, and they particularly protest against its passage in its present form—they bitterly oppose section 3, which repeals the employers' liability act. I don't know that any of them go to the extent of saying that they would oppose the bill in any form, but their protest is against the injustice, as they claim, of taking away their rights under the existing law and substituting as their exclusive remedy this new compensation act with its arbitrary and low rates of compensation.

JACKSONVILLE FLA., *July 5, 1912.*

Representative FLOYD,
Washington, D. C.

DEAR SIR: I am writing you in defense of the employers' liability act of 1908, which is far superior to the workingmen's compensation act being discussed by the Congress of the United States.

I was injured by the Atlantic Coast Line Railroad Co. in June, 1910. I recovered $6,500 under the employers' liability act. If I had been under the compensation act that is now being discussed by the National Congress I could have only recovered $912 for the two years; and for the two years under the employers' liability act I recovered $3,900 clear of attorney's fees and costs of court, making a difference of $2,988 in favor of the employers' liability act.

This workmen's compensation act is in no sense in favor of the workingman; it is clearly in favor of the railroad company. The railroad companies have tried to railroad this bill through under disguise of it being a law for the working class of people, as they are being hit so hard by the working class under the present employers' liability act.

If the Coast Line Roalroad was polled on the third division you would find that there would be at least 90 per cent in opposition to the compensation act. The only working class of people I find in favor of the compensation act are those who are ignorant of the meaning of this compensation act. This compensation act says railroad men in some cases are not capable of handling large amounts to their advantage if recovered under the employers' liability act, and that paying them by the month under the compensation act would be of more value to them.

I do not think the more intelligent class of railroad men should be made responsible for a few ignorant ones.

I hope you will do all in your power to oppose the compensation act and uphold the employers' liability act.

Yours, very truly,

C. J. ROLLINS,
P. O. Box 1366, Sanford, Fla.

Mr. FLOYD. Now I submit a letter dated Pine Bluff, Ark., May 18, 1912, written by W. L. Meek, J. F. Smith, and J. A. Moore, committee on resolutions, Brotherhood Railway Carmen of America:

PINE BLUFF, ARK., *May 18, 1912.*

Hon. JOE T. ROBINSON,
House of Representatives, Washington, D. C.

We, the members of Cotton Belt Lodge No. 7, Brotherhood of Railway Carmen of America, in regular session, passed the following resolution, for which we earnestly beg your support:

Be it resolved, That inasmuch as the workmen's compensation Senate bill, which is No. 5782, not being in harmony with our demands, and being, we consider, a detriment to railway organizations, we cast a unanimous vote, with 75 per cent of our members being present at said meeting, against the passage of said bill. We have a membership of 255.

Respectfully submitted.

W. L. MEEK,
J. F. SMITH,
J. A. MOORE,
Committee on Resolution.

Mr. FLOYD. Now, I submit a letter, dated Argenta, Ark., July 14, 1912, signed by the secretary of the Brotherhood of Railroad Trainmen, Lodge No. 449:

ARGENTA, ARK., *July 14, 1912.*

Hon. H. M. JACOWAY, Hon. H. B. CLAYTON, Hon. J. C. FLOYD,
Washington, D. C.

GENTLEMEN: The following resolution was adopted at a meeting held by Argenta Lodge, No. 449, at 2 p. m. this date:

Resolved, That this lodge instruct the secretary to communicate with Congressmen JACOWAY, CLAYTON, and FLOYD, requesting them to use their best efforts to induce the Judiciary Committee to recommend that the employers' liability and workmen's compensation act be not reported out of the committee at this session of Congress; and should the committee report on this act, that they recommend that the act do not pass: Be it further

Resolved, That this lodge extend them thanks in behalf of the members of this lodge for their past interest shown in this matter.

Awaiting the opportunity to return the favor, I remain,

Very truly, yours,

_____,
Secretary Brotherhood of Railroad Trainmen, No. 449.

Mr. FLOYD. I now submit a letter, dated Argenta, Ark., May 18, 1912, signed by W. E. Pearsall, legislative committeeman, Brotherhood of Railroad Trainmen, Lodge No. 449:

ARGENTA, ARK., *May 18, 1912.*

Much has been said and written recently with reference to this bill, which passed the Senate a few days ago, resulting in 64 votes for and 15 against. Those who have written and discussed this bill through the press most prominently are persons that its provisions will probably never affect; but the rank and file that will be directly affected, should it become a law, has not as yet been heard from individually, the reasons being that a large majority do not fully understand the real purport of the bill, as between the present liability laws, and have not familiarized themselves as regards the many technicalities embodied in it with reference to the methods of adjustments for personal disability or death, as they have had only a limited time to consider it, and I, being one of the rank and file, do not hesitate to frankly express my views. I note the act is silent as to adjustments of temporary disability, except that it is specific in deducting the first 14 days of such injuries, and also specific in the maximum rate of $100 per month, with 50 per cent deductible in the adjustments of permanent-disability claims, and it is very natural to presume that the railway claim agents will immediately establish this basis in making settlements with employees for temporary disability, owing to the fact that this principle is recognized in the bill as being an equitable basis for disability of all classes.

After carefully studying the provisions of this act, and its terms being such a radical departure from American principles and also the old common English law, wherein it seeks to deprive the employees of common carriers engaged in interstate traffic of the privileges guaranteed them by the Federal Constitution, also State constitution, with equal rights with other classes of citizens of having a trial by jury of their peers in both civil and criminal cases, as was instituted by our forefathers, this being the basic principle of the American Government, why should we depart from it at this age?

The real purpose of the words "exclusive remedy" contained in the act were embodied in this bill for the express purpose of depriving the railway men from exercising their rights as other classes of citizens should they desire to avail themselves of such privileges, which is even accorded live-stock shippers, should their cattle or live stock be injured or killed while in transit, to recover losses.

Is it possible the American workmen are to be retrograded by class legislation and the owner of dumb brutes would have more extensive remedies for their loss than would the employees? Why not make it optional for adjustments to be made for death or disability under provisions of this act or under liability laws? In my opinion, the compensation act has the wrong phraseology for its title. It would be more in keeping with its drastic, despotic principles to substitute as its title "Sutherland-Taft live-stock compensation bill," as Senator SUTHERLAND, of Utah, being the godfather of the bill, who sat as the high priest at the hearings of the commission that conceived the philanthropic principles upon which it was founded, and President Taft having the distinguished honor of transmitting this bill by special message to Congress, with a few more frills attached, recommending its speedy passage, in order that the railway men of the United States might be immediately relieved of their burden of constitutional rights which are guaranteed in the Declaration of Independence.

Let us review a few provisions of this bill.

First. It debars an injured employee or the heirs of a deceased employee from recourse through the courts, provided they have not been proffered reasonable compensation for death or injury, yet they do have the privilege of having a Federal juror pass upon the decisions rendered by the autocratic "adjuster," who is appointed to such position by a Federal district judge, and this adjuster will grant them the privilege of employing counsel to assist in reviewing the case and his decision as rendered; and to him is granted the exclusive authority to name the fee that such attorney may receive for his services, and if he so desires he could make such small fees as to force plaintiffs to employ a "quack lawyer," who would be incompetent to handle such cases and combat with the best legal talent which can be obtained by the defendant.

Second. The maximum allowance for compensation is restricted to a specific amount, which, in my opinion, is not liberal enough for death and permanent-disability cases, as compared with the average settlements as have been made in the past few years, more especially so in States where the "fellow-servant" doctrine has been eliminated and liberal liability laws have been enacted. Almost every brakeman, switchman, and locomotive fireman employed on railroads in the western and southwestern zones who has regular employment will learn the maximum allowance for death in approximately four years, and the majority of conductors employed regularly can earn the amount in approximately three years, and the majority of the engineers regularly

employed can earn the amount in approximately two years and six months.

The argument as set forth by those who champion the bill set up one of the reasons for the adoption of the exclusive compensation was on account of the excessive fees being enacted by lawyers from litigants. I am free to admit that such may be the case in many instances, but before accepting this argument, investigation will develop that the plaintiff in many instances of litigation is brought about by the fact that liberal settlements were not offered. If so, this condition of affairs would not exist. Extreme remedies in either direction will never correct evils which may exist. This bill, surrounded by so many technicalities, which seeks to take advantage of the poor, unfortunate man who may be in poor financial circumstances to defend his case and prove his disabilities to the satisfaction of the adjuster; and I rather believe there will be just as many attorneys employed in cases of disability and death under the provisions of the "compensation act" as have been in the past under liability statutes, for this bill does not provide for automatic compensation by any means.

Another bad feature of the bill is that it provides the same compensation for death or disability for the employee who did not exercise due care and was negligent in causing his death or disability as the one that did exercise due care and through no fault of his own caused his death or disability. Where is the argument to sustain such position? Show me where the equity comes in, in any phase of it, and I will eat the paper on which the bill is written.

To any railroad man that is undecided as regards the merits or demerits of this bill I would respectfully refer him to report of the commission and the hearings held before the commission that drafted the bill, and after you have read this report and hearings and carefully analyzed them and the full provisions of the bill, and compare it with the liability laws that we now have, should you then decide it is what the railway men need, in lieu of our present liability laws, I will have nothing more to say on the subject, as you would be an object of sympathy rather than that of criticism.

I have carefully read the report of the commission, which contains every word that was uttered both for and against the bill, and I was very favorably impressed with the arguments presented in opposition to this bill by President J. S. Carter, of the Brotherhood of Locomotive Firemen and Enginemen. He offered statistics as evidence and the result of his investigation of two months' duration in England and Switzerland in the year 1909. He especially investigated this subject. I note he made special reference to the workmen's compensation act which was passed in Switzerland, and when the workmen of that country discovered the many objectionable features in the bill they repudiated that act by placing the referendum on it, and I only wish we had the same privilege in the United States should this bill become a law, as I feel quite sure it would be a very popular law shortly after a trial has been given it.

I think the railroad men of the United States owe Mr. Carter a debt of gratitude for the able manner and the forcible arguments he presented to the commission in opposition to this bill. The members of the Brotherhood of Locomotive Firemen and Enginemen should immediately start a subscription and present Mr. Carter one of the best silver services that can be purchased in this country, for he deserves great credit for his efforts in their behalf.

The railroad men in general owe a debt of gratitude to Senators HOKE SMITH of Georgia, SMITH of Arizona, REED of Missouri, STONE of Missouri, CULBERSON of Texas, DAVIS of Arkansas, GORE of Oklahoma, ASHURST, BRYAN, HITCHCOCK, KERN, LEA, MARTINE, MYERS, POINDEXTER, and SHIVELY for their noble efforts to defeat such despotic legislation.

Should this bill become a law, I am of the opinion it will be attacked upon constitutional rights, and any unbiased judiciary would so construe the act, in my opinion, which I trust will be its final destiny.

W. E. PEARSALL,
Legislative Committeeman Brotherhood of Railroad Trainmen, Lodge No. 449.

Mr. FLOYD. I submit a letter from Little Rock, Ark., dated July 13, 1912, by W. D. Jackson, chairman State legislative board of the Brotherhood of Railroad Trainmen, together with certain resolutions adopted by the Brotherhood of Railroad Trainmen in opposition to this legislation.

LITTLE ROCK, ARK., *July 13, 1912.*

HON. J. C. FLOYD,
House of Representatives, Washington, D. C.

DEAR SIR: Inclosed you will find resolutions adopted by our State legislative board while in session and also a copy of resolution adopted at a meeting of the railroad employees of Little Rock and Argenta, which was largely attended by organized and unorganized employees, and will say that there was not a man present but what was bitterly opposed to this bill.

I desire to thank you for your kindness and prompt attention given our communications; and if any time we can be of any service to you, we stand subject to your commands.

I hope to be in Washington at an early date to appear before the committee against this bill.

Yours, very respectfully,

W. D. JACKSON,
Chairman State Legislative Board.

At a joint meeting of the railway employees held at O. R. C. Hall, corner Markham and Chester Streets, Little Rock, Ark., July 10, 1912, called for the purpose of discussing the merits and demerits of the employers' liability and workmen's compensation act now pending in Congress, the following resolution was unanimously adopted:

COMMITTEE ROOM, *July 10, 1912.*

We, your resolution committee, appointed at a call meeting of the railway employees to discuss the employers' liability and workmen's compensation act now pending in Congress, do hereby respectfully submit the following resolution for your consideration:

Whereas an open meeting of the railway employees called to discuss the merits and demerits of the so-called employers' liability and workmen's compensation act now pending in Congress; and

Whereas the sentiment here to-night of the railway employees assembled has been unanimously in opposition to the proposed measure by all the crafts represented here at said meeting: Therefore be it

Resolved, That we express ourselves as being bitterly opposed to said bill and condemn it in severest terms as being vicious and unjust legislation in its present form to our crippled and maimed brothers, their widows and orphans; and be it further

Resolved, That we as organized labor and individuals do hereby pledge ourselves to do our utmost to defeat or postpone this infamous bill until all who will be affected thereby shall have an opportunity to fully understand its contents; and be it further

Resolved, That a copy of these resolutions be spread upon the minutes of this meeting and a copy be sent to the press and a copy to each of our Representatives in Congress from the various districts and also to local lodges of railway employees in this vicinity who will be affected thereby.

Respectfully submitted.

W. W. DUNN.
W. E. PEARSALL.
H. W. HUNTER.
M. P. MCDERMOTT.
W. D. JACKSON,
Chairman of Meeting.
GEO. F. HILL, *Secretary.*

LITTLE ROCK, ARK., *July 11, 1912.*

To the legislative board of the Brotherhood of Railroad Trainmen assembled:

We, your undersigned committee, appointed to draft resolutions protesting against the passage of the pending employees' compensation bill in Congress, beg leave to report as follows:

Be it resolved, That the legislative board of the Brotherhood of Railroad Trainmen, of the State of Arkansas, in meeting assembled, bitterly protest against the passage of the employees' compensation act pending in Congress and repudiate it in its entirety. Therefore be it further

Resolved, That we urgently request that each lodge under the jurisdiction of the State legislative board immediately pass resolutions condemning said bill and communicate with their respective Congressmen requesting them to use their best endeavors to defeat said bill in the House of Representatives of Congress. Be it further

Resolved, That all members in the State use their undivided and collective efforts to their best advantage to do whatever they consistently can to assist in defeating this bill.

Whereas we believe that the time for decided action is very limited and that the far-reaching scope of this said bill is so important to organized labor that nothing should be left undone to immediately take steps to defeat the passage of same: Therefore be it further

Resolved, That we believe that it is essential that we send a representative to Washington, D. C., at once to appear before the Judiciary Committee of the House of Representatives of Congress to protest against the passage of this bill.

W. E. PEARSALL.
G. F. HILL.

Mr. FLOYD. I submit a letter dated Little Rock, Ark., July 16, 1912, from W. D. Jackson, State chairman legislative board of Arkansas for the Brotherhood of Railroad Trainmen; and also an additional letter from the same party, dated Little Rock, Ark., July 15, 1912, on the same subject:

LITTLE ROCK, ARK., *July 16, 1912.*

HON. J. C. FLOYD,
Congressman, Washington, D. C.

DEAR SIR: Inclosed find letter which I think will cover the matter thoroughly.

It gives our cause for not being able to get away, as you will note. The president of the trainmen knows we are bitterly opposed to this bill, and he is doing all within his power to keep us away from Washington; but if he don't look out we will be there regardless of his opposition to us going. The truth of this matter is we have been very unnecessarily delayed in convening our board, for the grand lodge officers knew we were going to put up a fight against this bill.

Why the presidents of the various organizations are so red-hot for this bill is more than we can understand, for God knows it is not a good law for the men they represent; and it seems to us that our president is blocking us all he possibly can to keep us from being heard on the measure.

Your suggestion that it is best not to agitate a meeting of the committee to consider the bill is a good one, for we think it best to let it peacefully sleep in the hands of the committee; and let us hope that it gently rests there until the adjournment of Congress.

If they get to talking on the bill any more, wire me, and I will leave at once for there.

To say that the railroad employees of Arkansas appreciate your loyalty to use in protecting our interests as our Congressman is placing it very mildly, and hope to some day be able to repay you in our humble way.

It certainly is good luck for us that you are on that committee, and we well realize what a fight you have put up for us on this bill.

Yours, very respectfully,

W. D. JACKSON,
State Chairman Legislative Board of Arkansas for the Brotherhood of Railroad Trainmen.

LITTLE ROCK, ARK., *July 15, 1912.*

HON. J. C. FLOYD,
Congressman, Washington, D. C.

DEAR SIR: Our legislative board has just adjourned its regular biennial session, at which the compensation bill pending in Congress was very thoroughly discussed, and, in fact, we spent more time carefully considering this measure than we did on all the rest of our local legislation.

We gave the measure very careful consideration in every respect, and the entire board to a man was bitterly opposed to this measure, and we wired our president if we could send a representative to Washington to appear before the Judiciary Committee on this bill and pay the expenses out of our general fund, and he wired us back that we could not; so, you see, we were blocked again on our fight. So the board then agreed to take up a subscription among the membership of the State to defray the expenses, and that is being done now.

The State chairman of the Brotherhood of Locomotive Firemen and Enginemen has given me written authority to represent that organization, as he is unable to go in person, and I will kindly ask you on behalf of the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen of Arkansas to arrange with the committee to give me an opportunity to be heard in opposition against the bill.

I would have been in Washington some time ago, but, as we have been unable to get our board together sooner, and then being delayed on account of the financial end of it and having to take up collection

over the State makes it very hard on us, but nevertheless we are making preparation to appear before the committee. The only fear we have is that the bill will be out of the committee before we can get our subscription taken up.

Anything you can do for us will certainly be highly appreciated by the railroad employees of Arkansas.

Yours, very respectfully,

W. D. JACKSON,
State Chairman Legislative Board of the Brotherhood of Railroad Trainmen.

Mr. FLOYD. I now submit a communication dated August 9, 1912, addressed to myself and the members of the Judiciary Committee, from Mr. W. D. Jackson, chairman of the legislative board of Brotherhood of Railroad Trainmen, in which he gives his views at length in regard to the bill, and also attaches certain petitions, letters, and protests from other workingmen in opposition to this legislation.

WASHINGTON, D. C., *August 9, 1912.*

Hon. J. C. FLOYD AND MEMBERS OF THE JUDICIARY COMMITTEE,
Washington, D. C.

GENTLEMEN: I am State chairman of the legislative board of the Brotherhood of Railroad Trainmen of Arkansas and vice general chairman of the general board of adjustment of the Missouri Pacific System, and I also have a letter which authorizes me to represent the Brotherhood of Locomotive Firemen and Enginemen from that State, signed by A. N. De Mers, chairman legislative board for Arkansas, which reads as follows:

"LITTLE ROCK, ARK., *July 15, 1912.*

"To all Members of the House of Representatives in Congress,
"Washington, D. C.

"SIRS: This will introduce to you Mr. W. D. Jackson, legislative board chairman for the State of Arkansas, representing the Brotherhood of Railway Trainmen.

"Being unable to go to Washington at this time I desire to ask you to kindly extend to Mr. W. D. Jackson any hearing that you would extend to me as the representative of the Brotherhood of Locomotive Firemen and Engineers, representing 2,000 members in Arkansas and 80,000 in the United States. I may add that we are opposed to any law which will be compulsory upon the men. We are opposed to the repeal of existing laws. Thanking you very kindly for any courtesy extended to Mr. Jackson, and the hope that you will grant his reasonable demands on behalf of the people who daily protect the lives and property of the people of this country.

"I am, very respectfully, yours,

"A. N. DE MERS,
"Chairman Legislative Board
"Brotherhood of Locomotive Firemen and Engineers."

The railroad employees of Arkansas are bitterly opposed to the compensation bill, first, that it is an exclusive remedy and takes away from us our rights of trial by jury within our State courts.

Under section 4 we would not be able to receive any benefits for injuries for the first 14 days, and in case an employee was injured and off 14 days and returned to work and was hurt on the first day of his service and off 14 more days you can readily see that he would be out of service, caused by some defective equipment of the railroads, and through no cause of his he would be unable to receive one cent for his time lost. That is a great injustice to the rank and file of the railroad employees.

In section 5 you only allow a maximum amount of $200 for the hospital service, and will say that in numberless cases this amount is a very small mite compared to the attention needed in such cases as partially and totally disabled, in which there are operations to be performed and long confinement in hospitals. You can readily see how soon $200 would be consumed in cases of this kind. It would certainly work a great injustice upon the injured employee.

In section 7 you will find that it will work a great injustice in a number of cases where you compel the employee to give notice of his injury within 30 days, in writing, of his accident. There are a great number of cases where this would be an impossibilty, for the injured employee's dependents are quite often in a foreign city and are unaware of his injury, and in case of death, unless they informed the railroad company in writing of his death or accident, they would absolutely receive no compensation, or in extreme cases you allow them 90 days. I will cite you about a case in which a Mr. Reilly, who had a sister in Wyoming, was killed in Arkansas, and we were 14 months locating his sister. In this case, under this bill, the sister would not have gotten a dollar.

Section 10: The employer can subject the injured employee to numberless examinations, and by doing so keeps the employee continually before the adjuster or courts, and will work a great hardship both physically and financially upon him, and if he refuses to submit himself to examination his right to compensation then stops. This will be an untold hardship upon numberless injured employees.

In section 13 you place upon the injured employees untold hardships, whereby you compel them to pay cash in advance for all witnesses they may desire, and also, if they desire a jury, they have to pay cash in advance for that, and if the railroad companies so desire, the bill is so drawn that it will keep the injured employee continually in the courts and making expenditures of money, which nine times out of ten they will give up all hope and abandon the case on account of lack of funds to properly protect their rights.

In section 14, paragraph 4, it is provided that in a trial by jury or by court the findings of the adjuster shall be received as prima facie evidence of the facts, and also it provides that the court may submit to the jury special interrogatories if it so desires, and I consider this very dangerous and unfair.

Paragraph 5 provides that the adjuster shall fix the amount provided to be paid the attorney, and for what reason that was put in I am unable to say, but we are afraid that the amount made by the adjusters of the various districts would be so small that it would not enable the injured employee to employ competent and able legal advice; and as you well know, gentlemen, the railroad companies have always got the best legal talent that money can buy, and you can readily see, if the employee is hampered by not being able to get the best service, that a great injustice will be done him.

As for compensation for the injured employees, as it has been agreed by all of those who are in favor of the bill, the compensation is entirely too small, and I will not discuss that feature of it further, as we are all agreed upon that one particular point.

In section 9, paragraph E provides that if an employee is partially disabled and the company secures for the party employment and if the employee refuses to take the work, his compensation ceases. Under that particular part of the bill, in case of a railroad strike the company would say to the injured employee, "You go down into our shops and go to work, or go out and guard our property," and if the employee refused to do this, he would lose all right to any compensation he might have because of any injury.

Section 24 says that where an employee is permanently partially disabled and through another accident he becomes totally disabled the employer would only be liable for the partial disability. Now, in that case you could force a partially disabled employee to either go to work or else his compensation ceased, and in case that he did go to work, and was hurt in the discharge of his duty through no fault of his own, you relieve the company of any further liability. You can readily see that this is very unfair and unjust to the employee.

The railroad men of the South and Southwest can not at this time see any just cause or reason why this bill should be rushed through Congress without giving the rank and file an opportunity to be heard and give them time to set out the merits of this bill. I believe I would be safe in saying that not 10 per cent of the railroad employees of the United States ever heard of this bill. There are very few who have read it; as you know, gentlemen, the railroad employees of this country are busy men, and to read this bill it would take some time, and to understand it you have to read it over several times. As an illustration as to how well the employees of the railroads are informed upon this bill I will cite you to the following:

About a month ago I was in Pine Bluff, Ark., and was called into a meeting of the car men's union, of which there were 235 members, and they asked me to explain to them what I knew about the compensation bill. The first question I asked was, "How many men present know anything about this bill; those of you who do, please stand up," and, to my surprise, out of the 235 present there was not a man in the audience who knew anything about the bill.

This will give you a fair illustration of about how well the rank and file are informed on the bill. I notice that Mr. Gompers, who represents many thousands of railroad employees, and the American Federation of Labor are for this bill. I want to say that Mr. Gompers represents the International Brotherhood of Boiler Makers and Iron Ship Builders of the world, and at their national convention held in Little Rock last June they passed a very strong resolution, addressed to the Speaker of the House and Members of Congress, against this compensation bill. The resolution was passed by their convention unanimously. They are very bitter against the bill.

The railroad employees of some of the organizations, and mine especially, have not had a fair chance to express to the Members of Congress their opposition to this bill, because the president of their organization will not permit them to do so. The constitution of the Brotherhood of Railroad Trainmen is very drastic on the members who oppose legislation that has been approved by our national board, and should we do so our membership and protection will be taken away from us.

Our president, W. G. Lee, has been appealed to repeatedly for permission to oppose this bill, but he refused to give his consent until about the day the bill passed the Senate, and then he consented to the members of the brotherhood to oppose this bill if they so desired.

We have not had a fair chance to express to Congress our views on this subject, because the rank and file has not had time to consider the bill and take the matter up with you. The president denies to us the privilege which he assumes himself. He and Mr. Wills, the national legislative representative, are great boosters for this bill, and send out numberless circulars and letters urging you to request Members of Congress to support this bill, but when the membership attempted to circulate letters among themselves they are threatened by expulsion and are made to withdraw their letters. For example, I herewith present you with a copy of each of the two letters from Cleburne, Tex.:

C. O. WHEELER LODGE, NO. 409,
BROTHERHOOD OF RAILROAD TRAINMEN,
Cleburne, Tex., May 21, 1912.

To the Senators and Congressmen assembled, Washington, D. C.

DEAR SIRS: Upon receipt of President W. G. Lee's circular letter dated May 13, revoking the power of the president of Brotherhood of Railroad Trainmen to expel members for taking action on legislation relating to the employer's compulsory compensation act, we beg of you to defeat or delay final passage of such bill until the membership can have an opportunity to find out what is in it. Example first: If I should be killed, having three dependent children and wife, who would get 10 per cent each or 30 per cent and 40 per cent of $100, $470 per month, should my wife and two children die or be killed, my surviving heir would not receive their heritage, the company would retain that. Again, there is a maximum limit but no minimum limit. There certainly was not a friend of labor on that commission. The liability act is far better than can possibly be obtained from this, and if you will give us time you will now hear from the rank and file of our order. With many thanks for your efforts to defeat or delay this bill, I am, fraternally,

J. M. YOUNG,
Secretary 409, Brotherhood of Railroad Trainmen.

Brothers, the above is as nothing compared to the fact that should I become crippled by loss of one foot or hand and there should be a strike in any department of the company's service, they will say, sir, you can perform even partially these duties. I have to accept 90 per cent of my former wages and scab on those strikers or forfeit my compensation. Brother, in the name of God wake up and help to remove this mountain of an iceberg looming up before our *Titanic*—the organized labor of train and yard and engine service in the United States—and help to protect the little ones dependent on us for support and protection. There is something peculiarly strange that no one in authority has been able to see this before the bill had passed the Senate, and now before it passes the House of Congress we implore you to prevail upon your Senators and Congressmen to use all their influence against this bill, as the General Managers' Association will have accomplished more in this one bill to bring us on our knees than we have accomplished in all our 29 years of committee and legislative efforts combined. Trusting that all trainmen will give this the consideration we believe it merits,

We are, sincerely,

J. M. YOUNG,
Secretary C. O. Wheeler Lodge, No. 409,
Brotherhood of Railroad Trainmen.

C. O. WHEELER LODGE, NO. 409,
BROTHERHOOD OF RAILROAD TRAINMEN,
Cleburne, Tex., June 6, 1912.

To the officers and members of all lodges Brotherhood of Railroad Trainmen.

DEAR SIRS AND BROTHERS: Under date of May 21 we sent out letters to all lodges in the United States relative to the legislation on the employers' compulsory compensation act.

Under the authority of the following, over the signature of President Lee, dated May 18, 1912, we thought we could use our discretion in the matter, taking that circular as authority for such action, which reads:

"In compliance with this demand that the law be not passed, or at least be postponed for a time, it has been decided that so far as the proposed compensation law is concerned the last sentence of general rule 23, page 77, will not apply. This sentence reads: 'Any member of the brotherhood using his influence to defeat any action taken by a national legislative representative, or any action regularly taken by legislative representatives in meeting assembled, or of legislative boards under their proper authorities, shall, upon conviction thereof, be expelled, and the charter of any lodge using its influence in like manner may be suspended or revoked by the president.' We never dreamed that we would not be permitted to mention to our brothers that which we could mention to our representatives at Washington.

"And if, through our ignorance of same, we have caused any member or lodge to act not in accord with the best interest of the order, the members, or their families, we certainly regret it, and we therefore take this opportunity to ask your forgiveness for same and to consider this an official recall of same, as we are authorized to do by President W. G. Lee, under date of May 28, 1912, for violation of section 154, page 128, of the constitution.

"Fraternally, yours,

"J. M. YOUNG, *Secretary.*"

You will note by the above, gentlemen, what little show we have to inform one another on the bill when our president and our laws prevent us doing so. I am confident that if this bill was put to a referendum vote of the railway employees of the United States it would lose by 10 to 1, for as soon as an employee reads the bill he becomes bitterly opposed to its passage.

Our convention went on record as follows:

"We recommend that the convention go on record as favoring the adoption of strong liability laws in every State, province, and Territory, eliminating the common-law doctrine of fellow servant, assumed risk, and contributory negligence. We also favor the principle of workmen's compensation, but realizing the narrow limits of our national and State constitutions, we urge all persons having to do with legislation to concentrate their efforts in behalf of an employers' liability law, believing, as we do, that such a law will prove a solid foundation upon which to build up a system of workmen's compensation laws." (Legislative committee's report.)

Some of the grand lodge officers claim that the above is an indorsement of this compensation bill, but I am unable to see wherein they can construe the above as an indorsement of this bill. At a meeting of the legislative board of our organization in Little Rock, held last July, the following resolution was adopted unanimously by our board:

"We, the undersigned committee appointed to draft resolutions protesting against the pending employees' compensation bill, beg leave to report as follows:

"Be it resolved, That this, the legislative board of the Brotherhood of Railroad Trainmen of the State of Arkansas, in meeting assembled, bitterly protest the passage of the pending employees' compensation act and repudiate it in its entirety.

"Therefore, we urgently request that each lodge under the jurisdiction of said State legislative board immediately pass resolutions condemning said bill and communicate with their respective Congressmen, requesting them to use their best endeavors to defeat said bill in the House of Representatives of Congress; be it further

"Resolved, That all members in the State use their undivided and collective efforts to their best advantage to do whatever they consistently can to assist in defeating this bill.

"Whereas we believe that the time for decided action is very limited, and that the far-reaching scope of this said bill is so important to organized labor that nothing should be left undone to take immediate steps to defeat the passage of same: Therefore, be it further

"Resolved, That we believe that it is essential that we send a representative to Washington, D. C., at once to appear before the Judiciary Committee of the House of Representatives of Congress to protest against the passage of this bill.

"W. E. PEARSALL,
"G. F. HILL,
"Committee."

At the session of our board I was instructed to wire President Lee, of our organization, if our legislative board had authority to send a man to Washington to appear before the Judiciary Committee on the compensation bill and pay for same out of the general fund, and he wired us back that we could only act on State legislation; and then the board passed a resolution that a subscription be taken up for the purpose of sending a representative to Washington, D. C. We have been blocked one way or another ever since this bill has been pending, and it is through no fault of ours that you have not heard stronger protests long before now. During the session of our board in Little Rock there was a notice put in the paper to all railroad employees, both organized and unorganized, that there would be a general meeting for the purpose of considering the compensation bill, and everybody was invited to attend. The meeting was largely attended, and the discussion of this bill was had from 8 o'clock until 11.30, and every man bitterly opposed it. When our legislative board was in session we did not act hastily upon the compensation bill, for we put in more time considering this bill in every phase and feature than we did on all of the rest of our matters combined; and if I understand it correctly, the adjuster has the power to reverse the decision of the Supreme Court of the United States.

While en route here to Washington, D. C., I met the general committee of the Missouri, Kansas & Texas Railroad at St. Louis, and they are representatives of several States. They are bitterly opposed to the passage of this bill. They discussed the bill thoroughly and are very anxious that the bill be amended so that it will not repeal any of our laws we may have on our statute books.

Gentlemen, in justice to the railroad employees of the United States, I appeal to you to amend this bill so that it will not repeal our laws. If the law is so much better than the one we now have, and you are inclined to be the friend of the railroad employees, why not leave the bill so that it will be cumulative, and leave it so that the employee can resort to whichever remedy he desires. I think you will make no mistake, if you desire to do the railroad employees a friendly turn, if you will amend it so that it will be elective.

Respectfully,

W. D. JACKSON,
Chairman Legislative Board of the B. of R. T.

ORDER OF RAILWAY CONDUCTORS,
Little Rock, Ark., June 10, 1912.

Hon. J. C. FLOYD, *Washington, D. C.*

DEAR SIR: I have the honor to hand you herewith petitions from railway employees in Arkansas protesting against the passage of the employees' compensation act now before Congress. I have been directed by Little Rock Division, No. 131, Order of Railway Conductors, to request you and the other members of the Arkansas delegation in Congress to use your utmost power in an effort to defeat the measure.

I will thank you to let me hear from you in regard to the matter, and will say that other petitions will follow. Thanking you in advance for any favors shown in the matter, I am,

Truly, yours,

J. S. BARKMAN, *Secretary.*

PROTESTS AGAINST COMPENSATION BILL—RAILROAD MAN SUBMITS ARGUMENTS AGAINST MEASURE RECENTLY PASSED BY UNITED STATES SENATE.

To the Editor of the Gazette:

About two weeks ago there appeared in your paper an editorial relative to "The workman's conference act," just passed by the United States Senate and which bill is now in the hands of the Judiciary Committee of the House.

While we feel your interpretation of this bill was honest and sincere as you saw it, the article was most misleading to the public and a vast number of employees who do not take the time to go into these matters as they should. I am writing this letter hoping you will give it the same publicity you did your article, so that the erroneous impression may be in a manner corrected.

The proposed law not only vitally affects railway employees, of which there are 2,000,000 in the United States, but vitally affects every American citizen, in that one of its first provisions is for an "adjuster," an appointee of the United States Supreme Court, who is practically a dictator, and is the beginning of (or a step in the direction of) the centralization of governmental administration. It denies the right of trial by jury. It denies the right of employment of counsel by the injured party, except as approved by the "adjuster," who also has the power to fix the compensation of the counsel, which may be so low as to exclude the services of a reputable lawyer or so high that no employee, out of the meager allowance under the terms of the bill, can afford to pay them.

If the bill is so just for the employee, why is it being railroaded through Congress as it is?

The bill absolutely says no man's earning capacity is greater than $1,200 per year, and then cuts this in half as the maximum amount of damages to be recovered for permanent total disability or death, and that to be in monthly payments of not more than $50 per month and at the discretion of the "adjuster."

If a man is killed and leaves a daughter 14 years old, she is allowed $25 per month for two years, or $600 for his death, for her clothing, food, and education, and then is turned out on the world penniless.

I wish employees and the public would interest themselves sufficiently in this bill to get a copy of the CONGRESSIONAL RECORD of May 4, 1912, and read the speech made in the United States Senate by the Hon. HOKE SMITH, of Georgia.

I have letters before me written to the secretary of the State legislative board of the Order of Railway Conductors from the Hon. BEN CRAVENS, R. B. MACON, W. A. OLDFIELD, JEFF DAVIS, J. C. FLOYD, and others, condemning this bill as now framed in no uncertain terms.

Here are some of the objections:

It will compel every railroad man to increase his cost of living by purchasing additional insurance.

It displaces the employers' liability act.

It does not provide adequate compensation in the case of injury or death.

It takes out litigation from the State courts and puts it in the hands of one man.

The framers of this bill evidently hold human life and limb cheaply.

It is entirely in the favor of the railroads, and bears no provision in the employee's favor.

Section 3 repeals every law now on the statute books in favor of workingmen, whether common law, State, or Federal law, and provides that the sole and exclusive remedy for injured railway employees shall be under the provision of the proposed act.

The employers' liability act passed by Congress in 1908, the validity of which was upheld by the United States Supreme Court only three months ago, is to be repealed by the passage of this bill.

Why take away from us that for which we have labored and fought so many years, and which has just been declared constitutional by the United States Supreme Court, which will place the negligent employee on the same plane with the careful and considerate worker?

The ability and value to the body politic and society of every man are not the same; for example:

John Smith and Tom Jones attend the same medical school at the same time and graduate together.

Tom Jones by application and perseverance advances in the profession and becomes an eminent surgeon, becoming practically a necessity to humanity. While Jones burns midnight oil, Smith burns the candle at both ends, and is soon relegated to the rear, where he in justice belongs.

Then both are killed in a railway accident. One human life is as valuable as another in the eye of the Maker, but regarded by commercialism the same award will not be made in a monetary value.

What right has any lawmaking body to classify and discriminate between railroad men and men in any other profession? If a man lost his left hand, under the provisions of this bill he would be due $50 per month for 57 months. Should he lose a foot, there would be due him the same amount for 48 months, but if he accepted from the railway company a position as train auditor at $90 they would never have to pay him a dollar for his injury, and when the 48 months expired the company would be at liberty to discharge him, having paid him $90 a month for his work and nothing for his injury. If he refuses to accept the position offered him, he gets nothing.

An effort has been made to show this plan originated with railroad employees. True, but these employees were claim agents for the railroads. This work has been done secretly, and the only knowledge that the railroad employees have of this bill has been gained in the past 60 days.

If Congress wants to do something for railway employees, let this bill be cumulative, let it be in addition to and not in exclusion of our present laws. We are willing to take our chance in our home Arkansas courts for justice. This proposed "workman's compensation act" as now framed is the most damnable piece of legislation that was

ever attempted to be railroaded through any lawmaking body. Every feature of it is bad.

Yours, truly, R. I. FORSTER,
Chief Conductor, Division 566, Order Railway Conductors.

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LITTLE ROCK, ARK., *May 21, 1912.*

To the honorable Members of the United States Congress,
Washington, D. C.

SIRS: We, the undersigned railway employees, members of the Order of Railway Conductors, do earnestly beseech and implore that you use your best efforts to defeat, or at least postpone, any favorable action whatever on the bill entitled "Employees' compensation act."

We are heartily in accord with the minority of the United States Senators, who, in our estimation, stood so nobly by the rank and file of their constituents' interest in an effort to defeat this most infamous legislation.

M. J. Armbrust, conductor; R. W. Darnell, conductor; Wm. Mohnkem; D. Clem; G. Corn; W. A. Perry; J. W. Bond; M. Groom; W. N. Graves; C. D. Reese; Jno. F. Rall; C. L. Spear; W. H. Moore; R. O. Doran.

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R. L. Jones, W. J. Hubbard, J. H. Williams, J. F. Branham, R. N. Peduck, H. A. Schwenk, J. Honest, William Scott, F. G. Vail, Wm. Slater, O. W. Halter, E. N. Hill, L. M. H. Nowell, P. J. Mickle, Claude Drye, W. H. Fitzgerald, J. E. Holt, J. J. Mundo, Ban Shelton, G. Shelton, J. G. Galstee, Chas. Birss, F. H. Vinsel, C. L. Frith, J. W. McPherson, R. G. McCann, E. J. Callahan, L. G. Bruczyuski, E. Winther, R. G. McCann, Richard Thail, Kirby Dolan, Robt. Lauser, Copperas Brain, Con Bairs, J. A. Epple, Chas. Sechenel, J. G. Kerr, W. P. Booth, Will Eppert, C. E. Weed, A. Wright, S. L. Watts, A. Shirerman, W. S. Pedrick, Nolan West, L. E. Shelton, Fred Shelton, H. Griffin, Al. Wildt, N. L. Rickard, J. H. Lindsey, L. J. Borecky, C. C. Morris, A. L. Elliott, E. A. Morris, G. A. Williams, J. R. Young, F. F. Neely, E. L. Calk, C. F. Guner, J. L. Sutton, D. L. Teeter, Z. M. Branel, J. L. Dilworth, J. O. Hill, Wm. Zwick, F. J. Peil, W. A. Mase, J. H. Niehaus, jr., R. C. Harden, C. D. May, Wm. Cox, M. N. Stilhan, R. E. Achterberg, George Wilkinson, E. J. McGowan.

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LITTLE ROCK, ARK., *May 21, 1912.*

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Washington, D. C.

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Alf Johnson, J. B. Milliken, J. G. Kirk, E. J. Rainey, John Rothery, Jno. F. Rall, C. L. Spear, C. J. Silverthorne, C. L. Crawley, J. T. Salter, John Barley Corn, George R. Eckels, W. L. Holley, J. J. Hunter, J. F. Pryor, W. P. Bird, Tom Halliburton, J. J. Fitzgerald, W. W. Barnard, J. C. King, J. D. McGehar, D. A. Brown, W. R. Rogers, J. P. Ferine, William Kelly, W. G. Walsh, A. S. Marrs, H. D. Raiff, J. A. Smith, C. W. Hitchcock, Wm. W. Alls, C. H. Barnele R. E. Mowen, J. A. Merrill, J. O. Swink, A. C. Reynerson, W. McCarron, W. B. Stansbery, and W. T. Roll.

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ORDER OF RAILWAY CONDUCTORS,
Little Rock, Ark., July 12, 1912.

Mr. J. C. FLOYD, *Washington, D. C.*

SIR: I have the honor to transmit herewith petitions of railway men against the passage of the workman's compensation act. I mailed to you a number of these petitions in June, and you acknowledged receipt of them under date of June 14, 1912.

Yours, truly,
JIM S. BARKMAN, *Secretary.*

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LITTLE ROCK, ARK., *May 21, 1912.*

To the honorable Members of the United States Congress,
Washington, D. C.

SIRS: We, the undersigned railway employees, do earnestly beseech and implore that you use your best efforts to defeat, or at least postpone, any favorable action whatever on the bill entitled "Employees' compensation act."

We are heartily in accord with the minority of the United States Senators, who, in our estimation, stood so nobly by the rank and file of their constituents' interest in an effort to defeat this most infamous legislation.

Wm. Lawton, G. F. Hill, O. W. Guthrie, Jno. H. Paulett, F. V. Dickey, G. L. Ruff, O. B. McGraw, A. W. Butts, M. La Velle, L. E. Akers, J. W. Gossier, P. M. Mayfield, W. A. Cline, I. Bankston, C. A. Myers, L. S. Casstevens, J. M. Gritton, John De Witt, J. F. Jones, R. J. Myer, P. C. Myer, E. L. Yeary, T. O. Woodward, W. W. McNamara, Jno. Farmer, C. E. Hay, D. W. Boggs, M. L. Owen, P. A. Dulin, C. Compton.

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LITTLE ROCK, ARK., *May 21, 1912.*

To the honorable Members of the United States Congress,
Washington, D. C.

SIRS: We, the undersigned railway employees, members of the Order of Railway Conductors, do earnestly beseech and implore that you use your best efforts to defeat, or at least postpone, any favorable action whatever on the bill entitled "Employees' compensation act."

We are heartily in accord with the minority of the United States Senate, who, in our estimation, stood so nobly by the rank and file of their constituents' interest in an effort to defeat this most infamous legislation.

J. W. Weed, E. Flavin, H. G. Warren, J. M. Bates, J. M. Graham, C. J. Darrall, F. H. Willis, S. A. Parris, L. R. Conner, E. C. Demington, J. D. Bramblin, F. O. Woodward, T. J. Letson, J. B. Holcomb, W. R. Irving, R. F. Reed, E. E. Young, R. Day.

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Mr. FLOYD. Now, in addition to those communications which come from my own State, and in view of the fact that this organization was referred to the other day by Mr. HARDWICK in his discussion before the committee, I desire to submit a letter, dated October 20, 1912, from Mr. W. S. Hall, secretary of the Railway Workers' Nonpolitical Association, Chicago, Ill., together with resolutions adopted by the sixth special congress of the Railway Workers' Nonpartisan Association, while convened at the Briggs House, Chicago, Ill., August 25, 1912:

RAILWAY WORKERS' NONPARTISAN POLITICAL ASSOCIATION,
Chicago, Ill., October 20, 1912.

Mr. L. N. FAULKNER, *Stockton, Cal.*

DEAR SIR AND BROTHER: It is of vital importance that the attention of every railway man in the country be called to the vicious features of the pending "Brantley compensation bill," and that they be given an opportunity to study its application to them personally and those dependent upon them should the measure become a law.

We, the railroad men of Chicago, recognizing the seriousness of the menace and the importance of acting quickly, have formed an organization for the purpose of exposing this infamous measure and to bring to bear against it a strong impulse of protest from the railway workers.

We have printed a series of bulletins such as you will find inclosed and have undertaken to place them in the hands of every railroad man in the United States before the bill comes up for final passage in December.

We would request that you carefully study the bulletins and have them posted some place where railway men congregate, and that they be made a subject for discussion at your meetings, both in and out of your lodge rooms.

If you want a further supply for local distribution, or to send out over the road to isolated groups of men employed along the division, advise us, and we will forward any number of copies that you may require.

We are also inclosing a copy of a petition that we are having circulated. We will furnish other copies of this petition on request, and would ask that you aid its circulation as much as possible and return to us when filled.

We have undertaken to get 100,000 names to this petition to present to Congress in December, when the measure comes up for final passage, and would ask that every man who feels himself interested assist us in this work.

We would advise railway men in all parts of the country to follow the lead of Chicago, call meetings, and organize expressly for the purpose of fighting this measure. Interview your Congressman, find out how he stands on the proposition of compensation, especially if he is standing for reelection.

Kindly advise us of what action you take, so that we may act together and concentrate our force.

W. S. HALL, *Secretary.*

—

[Resolutions adopted by the sixth special congress of the Railway Workers' Nonpartisan Political Association, regularly convened at the Briggs House, Chicago, Ill., Aug. 25, 1912.]

Whereas there is a plan now well advanced, on the part of the "Taft administration" and those who are overzealous in their friendly interest with the large employers of labor, to have "railroaded" through Congress a measure that would deprive all railway employees in the United States of the rights which, after years of effort, they had finally secured under the employers' liability law of 1908, amended in 1910, and finally declared constitutional by the Supreme Court in January, 1912.

Said law reserves to railroad employees the right to sue under the Federal law, in the State courts, before a jury, for an award of damages in case of injury received in the service of employer; and

Whereas the proposed workmen's compensation bill (S. 5382), which passed the Senate May 2, 1912, restricts these rights by a provision that would repeal the employers' liability law, and nullifies or renders useless the safety-appliance act, in so far as it tends to benefit the workers in case of suit for damages; and

Whereas the Constitution of the United States provides that "neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

The sworn statement of the railway managers of the United States shows a total of 239,455 employees injured in four years.

The proposed compensation bill, section 22, compels a great number of the 239,455 injured employees to accept any position offered them or be denied compensation, thereby creating a system of compulsory service that would compel injured employees to accept service against their will even in time of possible labor trouble; and

Whereas this proposed compensation law restricts the rights of 1,600,000 American railway workers, depriving them and their posterity of their rights to liberty: Therefore be it

Resolved, That we, the members of the Railway Workers' Nonpartisan Political Association, employed as actual wage earners on the railroads of the United States, do hereby protest to Congress against the passage of any measure having embodied a provision repealing the employers' liability law.

Resolved, That we denounce Judge WILLIAM G. BRANTLEY, Member of Congress, as a "quibbler" with this all-important question.

We are aware that the safety-appliance act will not be repealed, but so far as injured employees are concerned it will be a dead letter on the statute books.

Section 6 of the proposed compensation bill says: "That no compensation shall be allowed for the injury or death of any employee where it is proved that his injury or death resulted from intoxication while on duty."

Judge BRANTLEY knows that under the employers' liability law, together with the safety-appliance act, if an employee was injured and such injury was caused by neglect of safety appliance on the part of the employer, even though said employee was proven to have been intoxicated, such intoxication would not be a bar to recovery. And he must admit that the above quoted section of the compensation bill denies the

right to recover if a company could prove intoxication, even though the accident was caused by a violation of the safety-appliance act.

Resolved, That we indorse Division No. 504, Brotherhood of Locomotive Engineers, of Great Falls, Mont., and that portion of their resolution in which it says: "It would tend to make the dependent families of engineers a prey to prostitution."

Resolved, That we indorse, with one exception, the proposed amendments of Senator HOKE SMITH, of Georgia, and extend to him our thanks for his fearless attitude in the interest of the workers by opposing the compensation law which the Taft administration was zealously attempting to force on the great army of railway employees.

Resolved, That we indorse the action of the Committee on the Judiciary of the House of Representatives for their postponement of action on the bill, which permitted the railway workers the opportunity of protest; and, further, we wish especially to express our thanks to Representative FLOYD for his confidence in the rank and file of the workers, and commend his ability and honesty, as shown in the line of questions he put to Mr. Gompers when that gentleman appeared before the committee and stated "that the representatives of the railroad brotherhoods and representatives of the railroad companies agreed on the schedules of the compensation bill at a private meeting."

Resolved, That we indorse W. L. Carter, international president of the Brotherhood of Locomotive Firemen and Engineers, for his stand in our behalf, and the proposed amendments by H. O. Teat, printed in the Firemen's Magazine of August, 1912.

Resolved, That we indorse the resolutions of Messrs. B. J. Jacoway, A. C. Mulford, and W. G. Beanland, committee of Division No. 175, Order of Railway Conductors, at Memphis, Tenn.

Resolved, That we denounce the Taft administration as being plutocratic in its attitude and for its attempt to force his infamous measure on railway workers.

Resolved, That where candidates for State or national offices refuse to answer straightforward questions, without evasion, on matters affecting the industry in which we are employed or affecting employees of said industry, that we refuse to give them our support and, where possible, place our own candidates in the field.

Resolved, That this body denounce as unfair to the workers, labor leaders who have in any way supported the infamous compensation bill of the Taft administration, namely, Messrs. Gompers, president of the American Federation of Labor; Stone of the engineers; Garretson, of the Order of Railway Conductors; Lee and Cease, of the Brotherhood of Railway Trainmen; and Wills, joint legislative representative.

Resolved, That a copy of these resolutions be sent to all local unions throughout the United States, as well as to all candidates for office, both State and national.

WILLIAM J. PINKERTON,
Y. J. MERRIMAN,
W. LEE HALL,
Committee.

These letters were handed to me by Mr. W. J. Pinkerton, national chairman of this association, who was in my office a few days ago, and who informed me that he had in his possession protests signed by 50,000 workingmen against this legislation, and he submitted to my view a document which, he said, contained those 50,000 names. He said it contained the original signatures of 50,000 workingmen. I have no reason to doubt the accuracy of his statement, for I am convinced that workingmen everywhere who understand this bill are opposed to it.

Mr. STERLING. Were they railroad men?

Mr. FLOYD. Yes.

Mr. DAVIS. What is the total number of railroad employees that would be affected by this bill? Has it appeared anywhere?

Mr. FLOYD. I am not prepared to answer; I don't know; I don't recall that anyone has made a statement or given an estimate of the total number of men to be affected by the bill, but it would certainly be a very large number of the railroad employees of the country.

Now, I have here a statement which is headed: "The following is a short statement relative to the present Federal employers' liability act and the proposed Federal compensation act. This argument was presented to Congress by Avondale Division No. 334, Order Railway Conductors, Birmingham, Ala." I don't know whether that has been printed in the record or not. If not, I would like to have it printed, because it gives a very careful analysis of both our employers' liability law and this proposed compensation act.

The following is a short statement relative to the present Federal employers' liability act and the proposed Federal compensation act. This argument was presented to Congress by Avondale Division, No. 334, Order Railway Conductors, Birmingham, Ala.:

EMPLOYERS' LIABILITY ACT.

The statute makes the railroad company liable to an employee, or his survivors, when he is injured or killed, when his injury or death results in whole or in part from the negligence of any of the officers, agents, or employees of such carrier or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, trucks, boats, wharves, or other equipment.

The statute also declares that contributory negligence of an employee who is injured is not a defense to any suit that may be brought because of the injury or death of the employee, but it provides that where there is contributory negligence—that is, where an employee is partly to blame for an injury or death—that there should be an apportionment of the damages. So that when an employee is injured and brings suit under this act, if both he and the railroad company were negligent, he would be entitled to a verdict at the hands of the jury, but the jury would have the right, if it saw fit, to reduce the amount in proportion to the amount of the negligence of the person injured or killed.

No contract, rule, regulation, or device whatsoever will enable the railroad company to avoid the payment of damages for any liability under this act. No insurance paid by the railroad company for injuries to employees under this act will relieve the railroad company from the payments of damages for injuries.

This act declares that an employee injured or killed is not guilty of contributory negligence of any kind in any case where his injury or death was caused by the failure of the railroad to comply with any of the safety-appliance statutes of the United States.

Nor can he be held to have assumed the risk of injury or death where the railroad company has failed to comply with the safety-appliance statutes.

The act also provides that suits can be brought under the statute in the courts of any States or of the United States which could have jurisdiction.

It is also provided by the present Federal law that a violation of the Federal safety-appliance acts makes the railroad absolutely liable for an injury or death to an employee and that no defense is available to the railroad where the injury or death results from such violation of the safety-appliance act. It is therefore well to state in this connection the provisions and requirements of the Federal safety-appliance acts.

Locomotives must be equipped with driving power brakes operated from the cab.

All trains must have cars equipped with continuous power brakes to enable an engineer of a train to control the speed of the train without a brakeman.

They must have couplers that will couple by impact; that is, by pushing them together.

They must have couplers that will uncouple without the necessity of men going between the cars to uncouple.

They must have grab-iron handholds on the ends of cars.

There is a standard height of drawbars of cars, and all cars must measure up to that standard.

The boilers of locomotives and its appurtenances must be in safe condition to operate without unnecessary peril to life or limb.

There must be secure sill steps on every car.

Every car must have efficient brakes.

There must be secure ladders on every car.

There must be secure running boards on every car.

There must be secure handholds or grab irons on roof of cars at top of ladder.

They can not haul cars coupled together by means of chains in any revenue train.

Locomotives must have ash pans that can be operated without going beneath the engine.

When a railroad company fails to have any of the foregoing safety appliances on their cars or engines or fails to have them in operating or good condition and an employee is injured or killed, the railroad company is guilty of negligence, and the employee, under the law, is neither guilty of contributory negligence nor has he assumed the risk of injury or death by using the unsafe appliances.

Therefore, when an employee is injured on an interstate highway and he is engaged in interstate commerce and the injury or death is caused by a failure to have any of the safety appliances in operation, the railroad company can offer no defense to the suit. It is only necessary to ascertain the extent of the injury and fix the financial loss for it.

Where the railroad company is itself an interstate highway or handles interstate freight, passengers, or express, and the employee is not engaged in the transportation of interstate commerce, his injury or death by a failure to comply with any of the safety-appliance statutes would give him the right to sue in any State independent of the Federal employers' liability act. He would then be held not to have assumed the risk of injury if he knew that the company failed to use proper safety appliances, for the Supreme Court of the United States has held that the safety-appliance act "is intended to embrace all locomotives, cars, and similar vehicles used on any railroad which is a highway of interstate commerce."

It may be said of the laws of the United States now in force that in practically no case can an employee who has been injured have his right to damages defeated if there is negligence on the part of the railroad. A casual reading of the act will make this clear, and when a failure to comply with the safety-appliance statute results in injury or death there is no defense available to the railroad.

PROPOSED COMPENSATION ACT.

The proposed compensation act contains the following features:

It is exclusive and compulsory, but it only displaces the Federal liability act.

It appoints an adjuster, who is really a special master of the United States court.

The adjuster has the right to fix the amount of compensation to be paid an injured employee under the act.

He has the right, after that amount has been fixed, to increase or diminish it.

He has the right to change a judgment of the court, even though that judgment had been upheld by the court of appeals and approved by the Supreme Court.

He has the right to stop payments provided for in a judgment of the United States court.

Appeals from his decision go to a jury, and the controversy is then between his findings and the injured employee.

It limits the employee in the employment of his attorney but it places no limit on the railroad as to the employment of an attorney.

It provides for compensation for death or injury and makes the following classifications:

Death.
Permanent total disability.
Permanent partial disability.
Temporary total disability.
Temporary partial disability.

It provides that no compensation shall be paid for the first 14 days.

It arbitrarily says that no man's wages shall be greater than $100 per month, and all calculation for compensation is based on that arbitrary declaration.

It provides for the practice before the adjuster, the method of appealing the cases, and as to who shall pay the cost. Under it the injured party will have to pay the cost if he excepts and appeals. If the injured employee excepts to the adjuster's findings, he has to pay the cost incurred thereby. If he wants a trial before a jury, he must demand it, and must pay the cost of that trial, but paragraph 4 of section 14 says that even before the jury the findings of the adjuster are prima facie evidence of the facts set forth in the findings.

That leaves the trial before the jury where it is not a trial as between the railroad and the employee, but as between the adjuster and the employee, for in the trial the employee will have to attack and overcome with evidence the findings of the adjuster.

It provides a limitation upon the employment of counsel by the employee, but does not limit the railroad company to the amount or quality of its attorneys or counsel nor to the number of its claim agents that are to be employed.

Section 20 is of more interest to railroad employees on account of its far-reaching effect than one would imagine by reading it. It means that they can say to any man earning over $100 a month when he is injured that he was not entitled to earn more than $100 per month. In future years when wage agreements are considered this limitation on a man's wages can be used by the railroad as an argument.

It provides that if a man receiving permanent partial disability—that is, his hand is cut off—and if he goes to work and he receives another partial disability—that is, his other hand is cut off—he would only be paid for the loss of both hands 50 per cent of his wages, limited to $100 per month, for a total of nine years and six months. The loss of both feet in the same way, or the loss of both eyes in the same way,

or the loss of a hand or a foot in the same way, would not give him the benefit of the compensation provided for for total permanent injuries.

It provides that dependent children over 16 years of age means children unable to earn a living by reason of mental or physical incapacity.

Many have read the bill a number of times and have failed to find all the jokers.

It provides, on page 41, beginning at line 1, that whenever an employee of an interstate highway is killed or injured it shall be presumed prima facie that he was engaged in interstate commerce.

All employees would prefer to bring their suits under State acts, but the proposed act puts on them the burden of proving that they were not engaged in interstate commerce. It will be almost impossible for them to carry this burden in many cases.

It provides that no man shall be paid for the first 14 days of his injury and under that a man could be injured, stay away from work 14 days, go to work on the fifteenth day, be injured again on that day, lose 14 days more, and go to work on the fourteenth day again, lose the month's time and get nothing for his injuries.

It forces an employee to accept the services of the company's physician unless he wants to employ his own at his own expense. The amount of the physician's bills and hospital bills that a man is entitled to from the road is limited to $200, and one serious surgical operation would cost that amount, and after the railroad had paid for that the employee would have to continue the payments.

It allows the employer and employee to constitute committees for the settlement of claims, and this gives the employer a hold that will enable him to squeeze many dollars out of injured employees, for everyone knows that an employee on a committee is not likely to be very severe on his employer when he knows that his own job is at stake.

It limits the payments to a widow to a total of eight years, but the payment stops if she dies or remarries. This would eliminate half the payments to widows. Another one is that children receive the benefits of this act until they are 16. The number of girls who can earn money enough to support themselves between the ages of 16 and 21 are few, and that class would be compelled to supplement their ordinary earnings in extraordinary ways. Take the case of an engineer earning $225 a month who had two girls in school at the ages of 16 and 17. They would immediately be thrown on the world to earn a living, and to them it would mean starvation or begging. That section could be illustrated in a number of ways.

Another thing, this bill puts a premium on carelessness and recklessness; it provides for the extreme reckless employee the same amount that can be recovered by the very careful employee, and that can be best illustrated in this way: A train hand earning $100 a month carelessly neglects to set a switch to a main line behind a freight train, and a high-class passenger train, properly operated by an engineer and conductor each earning $250 a month, runs into the open switch and the careful engineer and conductor and the careless train hand are all killed. Thirty passengers may be killed and a half million dollars' worth of property destroyed, yet the company will only have to pay for the careful engineer and conductor the same amount that it pays for the careless train hand.

It provides that if the widow has 1 child or 10 children she shall be paid 50 per cent of the wages of the deceased, limited to $50 a month.

It provides for certain payments to the dependent parents, and for a very small amount to be paid other relatives in case there is no widow, children, or parents.

It says that the loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the legs or arms, and an injury to the skull resulting in incurable imbecility or insanity are permanent total disabilities, but it leaves open to the adjuster and the courts the question of what other things are permanent disabilities, and provides in that way for many lawsuits.

To those who have the permanent total disabilities it only pays 50 per cent of the salary, limited to $100 a month, during the life of the employee.

It provides that for the loss of the arm above the elbow joint an employee is paid 50 per cent of his wages for six years. That would mean that an employee earning $200 a month will get $3,600 for the loss of his arm. One earning $50 per month will get $1,800 for loss of his arm. The loss of the leg above the knee joint would only cost the railroad $3,300 for a man earning $100 or more a month, and for a man earning $50 a month it would cost them $1,650.

A complete loss of hearing in both ears would entitle the employee to receive 50 per cent of his salary, as limited heretofore, for 72 months. For the loss of one ear he would be paid for 36 months. It provides that for the loss of the sight of one eye the employee would be paid 50 per cent of his salary, limited to $100 per month for 30 months. The loss of the sight of an eye permanently incapacitates a railroad man from ever engaging in the service again, and if he were a conductor earning $200 a month he would get $1,500 for that permanent injury.

For the loss of other members he would get similar amounts.

It also provides that if an injured employee goes to work and receives for his work as much as 90 per cent of his wages, limited to $100 per month, the company is to pay him nothing for his injury during the time he is at work. Should he receive less than 90 per cent, the compensation shall be diminished.

That portion of the bill really means that should a conductor earning $200 a month have his left hand cut off, the company would be due him $50 a month for 57 months. Should he lose a foot, they would be due him the same amount for 48 months, but if he accepted from them a position as train auditor, or any other position that would pay him $90 a month, they would never have to pay him a dollar for his injury, and when the 48 months or the 57 months expire the company could discharge him, having paid him $90 a month for his work, and nothing for his injury.

An effort has been made to show that this plan originated with railroad employees. That is true, but the employees were the claim agents of the railroad. You will find the scheme fully explained on page 44, Minutes of the Association of Railway Claim Agents at Montreal, and the same page shows you that their work to have this act passed has been done secretly.

The only knowledge that railway employees have of this bill has been gained within the past 30 days, the bill having been published in the various railroad publications since the 1st of March, and in the Railroad Trainman of April, page 355, is another proof of the employees' lack of knowledge of this question.

OUR OBJECTIONS.

We object to this bill because of the provisions above stated, and further because it will compel every railroad man to increase his cost of living by purchasing additional heavy insurance.

We object to it because it displaces the employers' liability act.

We object to it because it does not provide adequate compensation in the case of injury or death.

We object to it because it takes out litigation from the State courts and puts it in the hands of one man.

We object to it because the framers of it evidently hold human life and limb cheap.

We object to it because it is entirely in favor of the railroads and bears no provision in favor of the employee.

Mr. CARLIN. Have you the figures showing the amount of money payable for accidents that would be covered by this bill—the last 12 months?

Mr. FLOYD. I have not. The last investigation I made on the subject, I think, I had before me the railroad statistics of 1910 or 1911, which showed that the actual amount of damages paid by the railroad companies for damages for personal injuries for that year amounted to $10,000,000.

Mr. GRAHAM. Sutherland made that statement in his remarks before the committee.

Mr. CARLIN. Did that include settlements or just judgments?

Mr. FLOYD. Judgments, I presume. There would be practically no difference between the judgments and the settlements, because practically all our railroads are solvent.

Mr. WEBB. He means settlements without suit.

Mr. FLOYD. I am not able to say as to that; that may have included both, or it may have included only judgments. I think the figures given cover both judgments and the voluntary settlements.

Mr. DODDS. I think so.

Mr. FLOYD. Unless you have further questions to ask me, gentlemen, I am through, and desire to thank the committee for giving me this opportunity to present my views concerning this bill, and to incorporate in the hearings the letters and protests submitted in opposition to its passage.

Mr. WEBB stated that he desired to have printed as a part of the hearings certain letters he had received in opposition to the bill, which letters will appear in the following serial, No. 9.

Thereupon the committee adjourned.

Mr. BRANTLEY. Mr. Speaker, I yield two minutes to the gentleman from Maryland [Mr. LEWIS]. [Applause.]

Mr. LEWIS. Mr. Speaker, in the coming year 90,000 men are to be injured on our railroads and 10,000 killed. That is as much to be expected as the orderly operation of the planets themselves. Under existing law less than one-third of these victims will receive some $15,000,000, certainly not more than $20,000,000, with their lawyers to pay. Under the bill that is presented to the House to-night all the victims will be compensated and that sum will be lifted to from $48,000,000 to $60,000,000 as compensation to the victims of industry. [Applause.] We are confronted by a practical question. Are two-thirds of these victims to lose some $40,000,000 next year because lawyers would like to adapt this measure to the old legal remedial forms of procedure rather than accept it as an adequate principle in itself? It is hard on the lawyers as a class.

I am a lawyer, and I want to say that if I go back to the profession for my living, it will be very hard on me. But it will be an act of justice to the soldiers of industry such as even this great body will seldom have an opportunity to make. [Applause.]

The SPEAKER. The time of the gentleman has expired.

Mr. LEWIS. Mr. Speaker, I ask leave to extend my remarks in the RECORD.

The SPEAKER. Is there objection to the gentleman's request?

There was no objection.

Mr. BRANTLEY. Mr. Speaker, I reserve the balance of my time.

The SPEAKER. The gentleman from Georgia [Mr. BRANTLEY] reserves the balance of his time.

Mr. FLOYD of Arkansas. Mr. Speaker, I yield two minutes to the gentleman from North Carolina [Mr. WEBB].

The SPEAKER. The gentleman from North Carolina [Mr. WEBB] is recognized for two minutes.

[Mr. WEBB addressed the House. See Appendix.]

Mr. HENRY of Texas. Mr. Speaker, even if I were for this bill, you should not have my consent to railroading it through this House with only 40 minutes of debate when there are one hundred and more amendments.

For 10 years we endeavored to pass the employers' liability bill, abolishing the barbaric doctrines of assumed risk, contributory negligence, and the doctrine of fellow servant. And no sooner had we abolished them and established that law than the railroads began the crusade to repeal it; and to-night they come into this Congress, in the closing hours, and endeavor to repeal that act and shut the courthouse doors of every State in this Union against these litigants.

If you give the litigant the right to elect his remedy and go into court and assert his remedy, if he sees proper, I will vote for the bill. Let the courthouse doors be open so that the litigant may assert his right in the courts. If that is done,

I shall vote for the bill; but as long as you bar litigants from the courts, as long as you deny the right of petition and redress in those forums set up to protect the rights of citizens, I shall stand in the pathway of this act, resisting it with all the vigor possessed by me.

For years, in the Committee on the Judiciary, I have studied these questions, and last year while a member of that committee analyzed this bill. I want to say in this presence here tonight that if there ever was a measure proposed to the American Congress in behalf of the great railways of this country and against the interests of those who labor for them and under them this is the measure, a railroad measure to the core, and against the laboring interests of the Republic. [Applause.]

I shall oppose it and fight it to the bitter end. It is against those who toil and favors the great corporations with unfair privileges. [Applause.]

The SPEAKER. The time of the gentleman has expired.

Mr. FLOYD of Arkansas. Mr. Speaker, how much time have I remaining?

The SPEAKER. The gentleman from Arkansas has six minutes remaining.

Mr. FLOYD of Arkansas. I yield one minute to the gentleman from Illinois [Mr. SABATH].

Mr. SABATH. Mr. Speaker, in the short space of time allotted to me all I can hurriedly say is this: I am heart and soul in favor of a workmen's compensation bill which will provide for compensation to employees that are injured or killed; in fact, the first workmen's compensation bill considered by this House was introduced by me during the first session of the Sixtieth Congress, nearly six years ago. Since that time I have devoted a great deal of time and have expended large sums of money in an effort to acquaint the people with the principle underlying workmen's compensation and in endeavoring to convince them of the merits of this legislation. Therefore I regret exceedingly that after struggling for six years to secure workmen's compensation I can not cast my vote for the bill which is now before the House, for it is a compensation bill in name only; it should rightfully be called the "Railroad relief measure." Nearly every section is so drafted as to be in the interest of the railroads. It provides that this shall be the exclusive remedy that employees shall have and takes away from them their present statutory and common-law rights. Since the very beginning of my fight for workmen's compensation I have contended that such legislation should not deprive the injured employees of any rights which they now enjoy, but should give them additional protection, and in this connection I wish to insert in my remarks at this point the bill which I introduced and which I claim provides equitable compensation to those injured and killed:

A bill (H. R. 21962) to provide a system of compensation for injuries, resulting in disability or death, to employees of common carriers subject to the regulative power of Congress, to civil employees of the United States Government, and for other purposes.

Be it enacted, etc., That the provisions of this act shall apply to every common carrier subject to the regulative power of Congress and to any of the employees of every such common carrier while such employees are engaged in any employment subject to the regulative power of Congress, and to all civil employees of the Government of the United States.

SEC. 2. That any common carrier (hereafter designated employer) subject to the provisions of this act may elect to provide and pay compensation for injuries sustained by any of its employees arising out of and in the course of any employment covered by the provisions of section 1, according to the provisions of this act, and thereby such employer shall be relieved from any liability for the recovery of damages, except as herein provided. Every employer subject to the provisions of this act is presumed to have elected to provide and pay compensation as provided in this act unless and until notice in writing by the employer of his election to the contrary is filed with the Interstate Commerce Commission. No such employer, however, shall be entitled to any of the privileges or advantages specified herein until a notice in writing of an election by said employer to provide such compensation has been filed with the Interstate Commerce Commission, on blanks furnished by it for that purpose.

SEC. 3. That the filing of notice of an election to provide such compensation as aforesaid shall constitute an acceptance of all the provisions of this act, and such employer shall be bound thereby as to all his employees subject to the provisions of this act for a term of one year, and succeeding terms of one year thereafter until a notice by the employer of his intention to discontinue payment of compensation under the provisions of this act shall have been given to the Interstate Commerce Commission, and to all employees as aforesaid, by written notice at least 60 days prior to the expiration of any such annual term: *Provided*, That no compensation shall be allowed for the death or injury of an employee where it is proved that his injury or death was occasioned by his willful, wanton, and premeditated intention to bring about the injury or death of himself or another.

SEC. 4. That when any employer elects to provide and pay compensation as provided in this act, and files notice of such election with the Interstate Commerce Commission, and thereby becomes bound to provide and pay such compensation according to the provisions of this act, then every employee of such employer who enters the employment subject to this act after the adoption of this act by said employer as aforesaid, shall be deemed to have accepted all the provisions of this act as a part of his contract of hiring, and shall be bound thereby, except as hereinafter provided. Every employee subject to this act whose contract is in force at the time his employer elects to pay compensation and who continues to work for such employer, and every such employee who enters the service of such employer after the adoption of this act by the employer shall be deemed thereby to have accepted the provisions of this act and shall be bound thereby: *Provided, however*, That any such employee may, within 30 days after the election of the employer to pay compensation as provided by this act, or after such new employee enters the service of such employer, notify such employer in writing that said employee does not desire to receive the benefits or compensation provided for in this act, and from the day of the filing of said notice with said employer this act shall have no force or effect as to such employee, but the liability of the employer and the right to compensation by the employee shall remain the same as though this act had not been enacted: *Provided, however*, That before any such employee shall be so bound by the provisions of this act, his employer shall furnish to such employee personally, at the time of his hiring, a statement in writing of the compensation provisions of this act as herein provided, which statement shall also include a notice to the employee that the employer has accepted the provisions hereof. In the event that any such employee is unable to read the English language, then, in that case, before such employee shall be held to have accepted the provisions of this act, the said employer shall cause the said provisions of said statement and the notice to the employee that the employer has accepted the provisions of this act, to be read to the said employee, or interpreted from the said English language into such language as is understood by the said employee, by a competent interpreter, and thereupon the said interpreter shall make a statement in writing, under oath, to the said employer of the fact of such reading or interpretation to said employee.

SEC. 5. That no common-law or statutory right to recover damages for injury or death sustained by any such employee while engaged in any employment subject to the provisions of this act, other than the compensation herein provided, shall be available to any such employee who has accepted the provisions of this act nor to any of such employee's dependents or his legal representative: *Provided*, That where the injury to the employee was caused by the failure of the employer to furnish any safety appliance for use in said employment, which is now or may hereafter be required by any act of Congress, nothing in this act shall affect the present civil liability of the employer.

SEC. 6. That the amount of compensation which an employer who has elected to adopt the provisions of this act shall pay for injury to an employee which results in death shall be:

(a) If the employee leaves any widow, child or children, or parents, or other lineal heirs, who were dependent upon him for support, the compensation shall be a sum equal to eight times the average annual earnings of the employee, but not less in any event than $5,000 and not more in any event than $7,500. Any weekly payments other than necessary medical or surgical fees shall be deducted in ascertaining such amount payable on death.

(b) If the employee leaves collateral heirs who were wholly or partially dependent upon him at the time of his death, the compensation shall be such a percentage of the sum provided in clause (a) as the contributions which deceased made to the support of such dependents bore to his earnings at the time of his death.

(c) If the employee leaves no widow, child or children, or dependents as aforesaid, the compensation shall be the reasonable expense of his medical attendance and burial, not exceeding $200.

All compensation provided for in this section shall be paid to the personal representative of the deceased employee for the exclusive benefit of the persons entitled thereto, as provided in this section in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate: *Provided, however*, That in case the said decedent shall leave a widow or children entitled to compensation provided for in this section, compensation shall be paid for the first six months after the death of said employee in installments at the same intervals and in the same amounts that the wages or earnings of said employee were paid to him while he was living. After the expiration of the said period of six months the balance of the compensation shall be paid in monthly installments equal to 60 per cent of deceased employee's monthly earnings, but in no case to be more than $75 nor less than $30 per month.

After the monthly payments above provided for have continued for not less than six months either party may, upon due notice to the other party, apply to the probate court having jurisdiction of the case for an order commuting the future payments to a lump sum. This application shall be considered by the court, and may be granted where it is shown to the satisfaction of the court that the payment of a lump sum in lieu of future monthly payments will be for the best interests of the person or persons receiving or dependent upon such compensation, and that the payment of said lump sum will not be prejudicial to the public welfare. Where such commutation is ordered the court shall fix the lump sum to be paid at an amount which will equal the total sum of probable future payments, capitalized at their present value upon the basis of interest calculated at 5 per cent per annum with annual rests. Upon payment of such lump sum the employer shall be discharged from all further liability on account of the death of the employee, and shall be entitled to a duly executed release, upon filing which or other proof of payment with the Interstate Commerce Commission, the liability of such employer shall be discharged of record: *Provided*, That if the said widow or children entitled to compensation shall be residents of any foreign country the compensation due shall be paid in a lump sum at once. If there are other dependents as provided in this section, resident of any foreign country, said other dependents shall be paid compensation in a lump sum in amounts proportionate to the degree of their dependency upon the employee's earnings while living, but in no case shall the whole amount of such compensation exceed the maximum sum named in clause (a) of this section.

SEC. 7. That the amount of compensation which the employer shall pay to the employee for an injury resulting in disability shall be:

(a) Necessary medical and surgical treatment in all cases at the time of the injury, and thereafter until the degree of disability shall have been determined and the monthly or weekly payments due the injured employee shall have been fixed. Said medical and surgical treatment shall include all necessary medicines and apparatus, such as artificial limbs, crutches, and trusses, to aid in the success of the treatment and to diminish the effects of the injury. The employer may designate any duly qualified physician or surgeon to furnish the medical and surgical treatment necessary, and to prescribe the necessary medicines and facilities. Should the employee be dissatisfied with the treatment given him by the physician or surgeon designated by the employer, said employee shall have the right to select his own physician

or surgeon, but in that event the employer shall be liable only for such expense as he would have been liable for had the physician or surgeon designated by him been retained by the employee.

(b) If the period of disability lasts for more than seven calendar days, and such fact is determined by the physician or physicians as provided in section 9, compensation shall begin from the day the injured employee leaves work as the result of his injury, and shall continue as long as the disability lasts, or until the compensation paid equals the amount payable as a death benefit, payments to be made weekly in an amount equal to 60 per cent of the average weekly earnings of the employee at the time of his injury, but not less than $10 nor more than $18 per week.

(c) If the period of disability does not last more than seven calendar days from the day the injured employee leaves work as the result of his injury no compensation other than the medical and surgical treatment specified in clause (a) shall be paid.

(d) If any employee shall receive any serious and permanent disfigurement to the hands or face by reason of any injury arising out of and in the course of his employment, but which disfigurement does not actually disable said employee from pursuing his usual and customary employment, such employee, unless he elects to maintain an action at law as provided in sections 4 and 5 herein, shall have the right to resort to the arbitration provisions of this act for the purpose of determining a reasonable amount of compensation to be paid to such employee for said disfigurement, but in no case shall the amount of compensation allowed an employee under this clause exceed one-third the amount of compensation that would be due him in case of his death.

(e) If after the injury has been received it shall appear upon medical examination, as provided in section 9, that the employee has been partially, though permanently, disabled so as to be incapacitated from pursuing his usual and customary employment, he shall receive compensation equal to 60 per cent of the difference between his average earnings at the time of his injury and the average amount which he is earning or is able to earn in some suitable employment or business after the injury, if such employment is secured.

(f) If permanent total disability results from any injury, compensation equal to 60 per cent of his annual earnings at the time of his injury shall be paid to the injured employee during the remainder of his life, payments to be made monthly, and in no case to be less than $30 per month nor more than $75 per month. For the purposes of this section it shall be conclusively presumed that the injury resulted in permanent total disability in the following cases, namely, the total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the legs or arms, and an injury to the skull resulting in incurable imbecility or insanity: *Provided*, That the specific cases of total permanent disability enumerated in this section shall not be construed as excluding other cases. In case death occurs before the total of the payments made to an employee who is totally and permanently disabled equals the amount payable as a death benefit, as provided in section 6, then, in case the said employee leaves any widow, child or children, or parents, or other lineal heirs entitled to compensation under the provisions of this act, they shall be paid the difference between the compensation provided for death and the sum of such payment, but in no case shall this sum be less than $1,000.

In fixing the amount of the disability payments regard shall be had and deduction made for any payment, allowance, or benefit which the employee may have received from the employer during the period of his incapacity, except the expense of necessary medical and surgical treatment.

SEC. 8. That the basis for computing compensation as provided for in this act shall be as follows:

First. The compensation shall be computed on the basis of the annual earnings which the injured employee received as salary, wages, or earnings in the employment of the same employer during the year next preceding the injury.

Second. Employment by the same employer shall be construed as employment by the same employer in the grade in which the employee was employed at the time of his injury, uninterrupted by absence from work due to illness or any other unavoidable cause.

Third. The annual earnings, if not otherwise determined, shall be regarded as three hundred times the average daily earnings in such computation.

Fourth. If the injured employee has not been engaged in the employment for a full year immediately preceding the injury, the compensation shall be computed according to the annual earnings which employees of the same class in the same employment or employments of the same kind have earned during such period; and if this basis of computation should prove to be impracticable, then three hundred times the amount which the injured employee earned on an average during those days when he was working in the employment during the year next preceding the injury, shall be used as a basis for the computation: *Provided*, That in no case shall the yearly earnings of the injured employee be computed at a less amount than three hundred times the average daily wage of adult day laborers in the locality where the injury occurred.

Fifth. In computing compensation to be paid to an employee who before an injury was already disabled and drawing compensation, or entitled thereto under this act, additional compensation shall be awarded according to the combined disability, and in computing compensation for such combined disability the employee's earnings prior to his first injury shall be taken as a basis: *Provided*, That if the second injury was received while the employee was working for another employer than the one for whom he was working when he received his first injury, the compensation to be paid for the combined injury shall be apportioned between said two employers according to what each would be liable for in the case of the single injury happening under his employment.

Sixth. If an employee receive an injury which of itself would only cause partial disability, but which combined with a previous injury does in fact cause permanent total disability, such employee shall receive compensation for permanent total disability. If the second injury was received while the employee was employed by an employer other than the one for whom he was working when he received his first injury, then the payment of compensation for permanent total disability shall be borne by the said two employers share and share alike.

SEC. 9. That any employee entitled to receive compensation under this act shall be required, if physically able, to submit himself for examination by a duly qualified physician or surgeon, provided and paid for by the employer, at any time and place reasonably convenient for such employee, at any time within seven calendar days after the injury and at further intervals thereafter not oftener than six weeks, if deemed necessary by the employer, for the purpose of determining the nature, extent, and probable duration of such employee's disability and for the purpose of adjusting the compensation which may be due the employee from time to time. Said examination shall be made in the presence of a duly qualified physician or surgeon provided and paid for by the employee if said employee so desires, and in the event of a disagreement between said physicians or surgeons as to the nature, extent, or probable duration of said injury or disability the Interstate Commerce Commission shall be notified forthwith of said disagreement, and within six days after receiving such notice said commission shall select a third physician or surgeon, and the majority report of said three physicians or surgeons as to the nature, extent, and probable duration of such injury or disability shall be used for the purpose of estimating the amount of compensation payable to such injured employee according to the provisions of this act. Whenever it shall become necessary to select a third physician or surgeon, as provided in this section, such third physician or surgeon shall be paid by the Interstate Commerce Commission. If the employee refuses to submit himself to examination as herein provided, or unnecessarily obstructs the same, his right to compensation shall be suspended until such examination shall have been made, and no such employee shall be entitled to receive compensation for any such period of suspension.

SEC. 10. That if any injured employee shall be mentally incompetent at the time any right or privilege accrues to him under this act, a conservator or guardian of such incompetent, appointed pursuant to law, may claim and exercise any such right or privilege, on behalf of said incompetent, with the same force and effect as if the employee himself had claimed or exercised such right or privilege; and no limitation of time herein provided for shall run so long as said incompetent employee has no conservator or guardian.

SEC. 11. That compensation, payable under this act, may be settled by agreement between the parties. Every such agreement and every award shall be in writing, signed and acknowledged by the parties and by the arbitrator or secretary of the committee hereinafter referred to, and shall specify the amount due and unpaid by the employer to the employee up to the date of the agreement or award, and, if any, the amount of further compensation that shall be paid. Every such agreement or award and every subsequent modification thereof, which modification shall be signed and acknowledged by the parties in the same manner as the original agreement or award, shall be filed with the Interstate Commerce Commission within 10 days after it is made. Upon approval of said agreement or award by said commission the parties shall be duly notified, and thereupon said agreement or award shall become effective from the date it was signed and acknowledged as aforesaid.

SEC. 12. That if compensation be not settled by agreement between the parties, then if any committee representing the employer and the employee has been organized for settling disputes under this act, the compensation shall be settled by such committee, unless either party objects by notice in writing delivered or sent by registered mail to the other party before the committee meets to consider the matter. If either party so objects, or there is no committee as aforesaid, then the compensation shall be settled by the Interstate Commerce Commission through an examiner appointed and paid by said commission for the purpose of settling controversies under this act. Said examiner shall be designated "arbitrator of compensation," and the said commission is hereby authorized and directed to employ as many of said arbitrators of compensation as may be necessary properly to execute and enforce the provisions of this act. Whenever any dispute as aforesaid has been referred to any such arbitrator of compensation the decision of said arbitrator shall be final and conclusive, subject to an appeal by either party to the Interstate Commerce Commission, and to a further appeal to the Court of Commerce, subject to the rules of practice of said Court of Commerce.

SEC. 13. That said arbitrator of compensation shall not be bound by technical rules in making his investigation, but shall give the parties full opportunity to be heard, and shall act reasonably and without partiality. He shall have power to issue subpœnas, administer oaths, require the production of books and papers, examine witnesses, and receive depositions taken before any proper officer in any State or Territory of the United States. He shall be paid such salary as the Interstate Commerce Commission may determine, and shall be allowed his actual expense of travel, together with such reasonable allowance for subsistence as said commission may determine. When not employed in connection with any proceedings under this act, the services of said arbitrator may be utilized by said commission in any suitable or appropriate employment deemed necessary by said commission in furtherance of any of its administrative duties under any act of Congress.

SEC. 14. That no said arbitrator of compensation shall act in any case in which he is interested, nor where he is related to either party by marriage, or by consanguinity or affinity within the third degree, as determined by the common law. Whenever it shall appear to the satisfaction of the Interstate Commerce Commission, upon application of either party, that the arbitrator before whom any case is pending is disqualified, or that he entertains bias or prejudice, so that a fair and impartial hearing of the case can not be had before him, it shall be the duty of said commission to supply another arbitrator to act in the case.

SEC. 15. That any agreement or award as aforesaid may be modified by a subsequent agreement or award, in the same manner and with the same effect as the original agreement or award, at any time after the expiration of six months from the date on which said original agreement or award was approved by said Interstate Commerce Commission; and before the expiration of any period for which payment of compensation has been fixed thereby, but not afterwards, any such agreement or award may be reviewed by an arbitrator of compensation upon application of either party after due notice to the other party, upon the ground that the disability of the injured employee has subsequently ended, increased, or diminished. Upon such review the said arbitrator may increase, diminish, or discontinue the compensation, in accordance with the facts, or may make such other order as the justice of the case may require, but shall order no change in the status existing before the application for review. The findings of the arbitrator upon such review shall be served on the parties, and filed with and approved by the Interstate Commerce Commission, in like manner and subject to like disposition as in the case of the original award.

SEC. 16. That the arbitrator in any case may, on his own motion or upon application of either party, appoint a disinterested and duly qualified physician or surgeon to make all necessary examinations of the employee and testify with respect thereto. The reasonable fee of said physician or surgeon shall be paid by the Interstate Commerce Commission, upon properly executed vouchers filed with said commission in accordance with its rules for the payment of accounts.

SEC. 17. That no proceedings for compensation under this act shall be maintained unless notice of the injury has been given to the employer as soon as practicable after the happening thereof, and during

disability caused by such injury, and unless claim has been made within six months from the date of said injury; or in the case of the death of the employee, or in the event of his physical or mental incapacity, within six months after such death or removal of such physical or mental incapacity; or in the event that payments have been made under this act within six months after such payments have ceased. No want, defect, or inaccuracy of said notice shall be a bar to the maintenance of proceedings by the employee, unless the employer proves that he is unduly prejudiced in such proceedings by such want, defect, or inaccuracy, and then only to the extent of such prejudice. Notice of the injury shall in substance apprise the employer of the claim for compensation made by the employee, and shall state the name and address of the injured employee, the approximate time and place of the injury, and in simple language the cause thereof, if known. Such notice may be served personally or by registered letter addressed to the employer at his last known residence or place of business. Failure on the part of any employee entitled to compensation to give such notice shall not relieve the employer of his liability for such compensation when the facts and circumstances of such injury are known to such employer or his agent.

SEC. 18. That when an injury or death for which compensation is payable under this act is caused under circumstances also creating a legal liability for damages on the part of any carrier subject to the provisions of this act other than the employer, the right of the employee to recover against such other carrier shall be subrogated to the employer, and such employer may bring legal proceedings against such carrier to recover the damages sustained by the injured employee in an amount not exceeding the aggregate amount of compensation payable to the injured employee under this act. When an injury or death for which compensation is payable under this act is caused under circumstances also creating a legal liability for damages on the part of any person other than the employer, such person not being subject to the provisions of this act, legal proceedings may be taken against such other person to recover damages, notwithstanding the payment of or liability to pay compensation under this act; but if action is brought against such other person by the injured employee, or in case of his death by his dependents, and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, the employer shall be entitled to deduct from the compensation paid or to be paid by him the amount so received by such employee or dependents: *Provided*, That if the injured employee, or in case of his death his dependents, shall agree to receive compensation or institute proceedings to recover the same, or accept from the employer any payment on account of such compensation, such employer shall be subrogated to all the rights of such employee or dependents, and may maintain, or in case an action has already been instituted, may continue, an action either in the name of the employee or dependents or in his own name against such other person for the recovery of damages; but such employer shall nevertheless pay over to the injured employee or dependents all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid and to be paid under this act, and costs, attorney's fees, and reasonable expenses incurred by such employer in making such collection or enforcing such liability.

SEC. 19. That notwithstanding any agreement, award, or finding as hereinbefore provided, compensation shall not be paid for any case of disability while the injured employee is at work at wages which equal the established day's earnings he was receiving at the time of his injury. His failure to earn wages equal to what he was receiving at the time of his injury as aforesaid shall entitle him to compensation as provided in clause (e) of section ".

SEC. 20. That if any employee entitled to compensation under this act shall at the time of his injury be employed and paid jointly by two or more employers subject to this act, such employers shall contribute to the payment of such compensation in the proportion of their several wage liabilities to such employee. If one or more, but not all, of such employers are subject to this act, then the liability of such of them as are so subject shall be to pay the proportion of the entire compensation which their proportionate wage liability bears to the entire wages of the employee: *Provided, however*, That nothing in this section shall prevent any arrangement between such employers for a different distribution as between themselves of the ultimate burden of such compensation.

SEC. 21. When payment of compensation is made to a widow for the use of herself, or for the use of herself and child or children, her written receipt therefor shall acquit the employer. When payment is made to any child or other dependent 18 years of age or over, the written receipt therefor of such child or other dependent shall acquit the employer. When payment is due to any child under the age of 18 years, the payment shall be made to a duly appointed and qualified guardian of such child under the laws of the State of such child's residence, and the written receipt therefor of such guardian shall acquit the employer.

SEC. 22. That when compensation is being paid under this act to any dependent, such compensation shall cease upon the death or marriage of such dependent or whenever such dependent shall become self-supporting. Upon the remarriage of any widow receiving compensation under this act a sum of money equal to 20 monthly payments, as provided in section 6, but not less than $1,000, shall be paid to such widow, and further payment of compensation to such widow shall cease.

SEC. 23. That no employee subject to the provisions of this act, nor any beneficiary hereunder, shall have power to waive any of its provisions with respect to the amount of compensation which may be payable to such employee or beneficiary hereunder.

SEC. 24. That any contract or agreement made by any employee or dependent within seven calendar days after an injury, with any employer or his agent, or with any attorney, with respect to the prosecution or settlement of any claim for compensation under this act shall be presumed to be fraudulent.

SEC. 25. That any contract of employment, relief benefit, or insurance, or other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this act, shall be null and void; and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a misdemeanor, punishable by a fine of not less than $500 nor more than $1,000, in the discretion of the court.

SEC. 26. That any employee or dependent who shall become entitled to compensation under the provisions of this act, in the event of his inability to recover such compensation from the employer on account of his insolvency or other cause, shall be subrogated to all the rights of such employer against any insurance company or association which may have insured such employer against loss growing out of the compensation required to be paid by the provisions of this act, and in such case only a payment of the full amount of compensation that has accrued to the person entitled thereto, in accordance with the provisions of this act, shall relieve such insurance company or association from such liability.

SEC. 27. That the assignment of any cause of action arising under this act, or of any payments due or to become due under the provisions of this act, shall be void. Every liability and all payments due or to become due under this act shall be exempt from levy or sale for private debt. Every liability for compensation under this act shall constitute a first lien upon all the property of the employer liable therefor paramount to all other claims or liens, except for wages and taxes, and in case of insolvency shall be enforced by order of the court.

SEC. 28. That the term "dependent" shall include all persons who are entitled to receive compensation under the provisions of section 6, and wherever the context requires it, shall be held to include the personal representative of the deceased and guardians of infants or incompetent persons.

The term "injury" shall be held to include an injury resulting in death.

The term "employee" includes an apprentice and any person who is irregularly employed at the employment in which his injury occurred, but does not include one whose employment is purely casual and not for the purpose of the employer's business. It shall include the singular and the plural and both sexes. Any reference to an employee who has been injured shall, where the employee is dead and the context requires it, include a reference to his dependents or personal representatives.

The term "child or children" shall include posthumous children and all other children entitled, by the law of the State where the injury occurred, to inherit as children of the deceased employee.

The term "disability" shall mean want of capacity or ability by reason of injury to make full wages and full time in the position where the employee was working at the time of receiving his injury.

The phrase "personal injury arising out of and in the course of his employment" shall be held to cover an employee while engaged in the service of the employer in, on, or about the premises occupied by or under the control of the employer, where the employee's services are being performed, or while such employee is engaged elsewhere in or about his employer's business where his service requires his presence as a part of such service at the time of the injury and subjects him to dangers incident to that employment. It shall not include an injury caused by the willful act of another directed against the employee for reasons personal to such employee and not against him as an employee or because of his employment.

SEC. 29. That nothing herein contained shall be construed as doing away with or affecting any common-law or statutory right of action or remedy for personal injury or death happening before this act shall take effect.

SEC. 30. That nothing in this act shall interfere with any proceeding by the Government to enforce any act of Congress regulating the appliances or conduct of any common carrier, or affect the liability of any such common carrier to a fine or penalty under any such act.

SEC. 31. That 60 days after the passage of this act every common carrier subject to the regulative power of Congress shall be liable for the following excise taxes for the purpose of paying the administrative expenses of this act, and for paying the compensation herein provided for, namely:

First. There shall be levied, collected, and paid on every car or motor vehicle used in the transportation of persons or property on the lines of every common carrier subject to this act, whether steam or electric lines, an excise tax of $6 per year.

Second. There is hereby levied, and there shall be payable by every telegraph company operated along the line of or connected with any telegraph line built, constructed, or maintained along the line of any railroad and telegraph line to which the United States has granted subsidies, or which telegraph line shall have accepted the provisions of Title 65 of the Revised Statutes, an excise tax of $50,000 for and in respect of its plant within the District of Columbia.

Third. Every express company subject to this act shall pay an excise tax of $5 per year on every wagon or other vehicle used by it in the collection, distribution, and delivery of express matter, and on every car used exclusively by any express company on any line of railroad for the transportation of express matter a tax of $5 per year shall be levied and paid.

SEC. 32. That every common carrier subject to the taxes named in this act who carries on business without having paid the car or vehicle or telegraph excise tax herein provided for shall, in addition to being liable to the payment of said tax, be fined not less than $1,000 and not more than $5,000, and every distinct violation shall be a separate offense, and in case of a continuing offense each day shall be deemed a separate offense; and unless otherwise limited, all fines, penalties, and forfeitures imposed by this act or by any section of the Revised Statutes may be recovered in any court of competent jurisdiction. All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable and not inconsistent with the provisions of this act, are hereby extended and made applicable to the excise taxes hereby imposed, and all penalties, fines, matters of form and procedure, heretofore enacted for the collection of the internal revenue under an act to provide ways and means to meet war expenditures, and for other purposes, approved June 13, 1898 (30 Stat. L., 448), are made applicable to the collection of the revenue and the enforcement of this act as fully as though said act had not been repealed but had continued in full force and effect; and sections 3232, 3233, 3236, 3237, 3238, 3239, 3240, and 3243 of the Revised Statutes of the United States are, so far as applicable, made to extend to and include and apply to the special excises or internal-revenue taxes imposed by this act, and to the persons, natural or corporate, upon whom they are imposed, as fully as though they or any one of them were herein set forth at length: *Provided*, That the provisions of this act in respect of taxation of vehicles on the lines and of mileage taxation of telegraphic lines shall be, and they are, declared to be suspended in respect of any carrier accepting this act in the manner herein set forth, and after such acceptance abiding by and complying with the provisions of this act.

Whenever the Interstate Commerce Commission shall have certified to the Secretary of the Treasury that any such common carrier has not complied with the orders of said commission in respect of paying any compensation due, it shall be the duty of said Secretary of the Treasury to collect the excise taxes hereby imposed during or for such time or times as said carrier is not complying with any lawful orders of said commission with respect to the matters contained in this act. Said excise taxes under the provisions of this act when collected and paid into the Treasury of the United States shall be, and they are

hereby, specifically reappropriated, and shall constitute a permanent appropriation, to be called the "Federal compensation fund," to pay any compensation not paid by any carrier or person subject to this act, pursuant to any lawful order of said commission, and to meet the necessary expenses of administering this act; and all acts heretofore passed in aid of pensioners of the United States in respect of limitation of attorneys' fees, proof of claim, allowance, and payment and audit, are hereby, as far as applicable, extended to any funds exacted, collected, appropriated, and to be disbursed pursuant to this act.

SEC. 33. That it shall be the duty of every employer subject to the provisions of this act to make quarterly returns of accident payments and operations under this act to the Interstate Commerce Commission in such detail and form as the said commission may by general regulation require. Such reports shall be compiled by said commission, and the results made public in such manner as the said commission may determine.

SEC. 34. That it is hereby declared to be the intent and purpose of this act and the policy of Congress that the financial burden of injury and death to employees in industries subject to the regulative power of Congress, arising out of and in the course of the operation of such industries, shall be placed upon the industries involved; and the Interstate Commerce Commission is hereby empowered and directed to make all regulations reasonable and necessary, not herein provided for, to give effect to the provisions of this act and to accomplish its declared intent and purpose. To this end the said commission shall consider the payments authorized herein to be an element of the cost of transportation or the operation of the industries affected by this act, and in any proceedings affecting rates the said commission is directed to recognize and give effect to the intent and purpose of this act.

SEC. 35. That the scale of compensation herein provided for shall be recognized by the United States Government in all industries operated by it directly or in its behalf, by contract or otherwise, and all said employees of the Government of the United States shall be entitled to all the benefits and privileges of this act, and to that end it is hereby declared that the Government of the United States has elected to accept the provisions of this act with respect to all of its civil employees, however or wherever employed.

SEC. 36. That this act shall take effect on the 1st day of January, 1913, and shall be cited as the Federal compensation act of 1913.

I am firmly of the belief that the inherent risks in railroading and other dangerous occupations should be borne by the carriers and the industries instead of by the employees or those dependent upon them, and all of the bills which I have introduced have been so drafted as to accomplish this.

Mr. Speaker, the measure now under consideration, instead of protecting the employee has the opposite effect, it safeguards the railroads from injured employees. In the first place, it limits the maximum amount that can be recovered; and not content with this, it then places every possible obstruction in the way of the recovery of that limited amount. I favor a workmen's compensation bill that will give immediate relief and just compensation without litigation. This bill which is now before the House will not lessen litigation, in fact, it will increase it, for it will be impossible for the injured employees or their survivors to recover the large judgments that they have received in many cases in the past, and the railroads, no longer having this to fear, will refuse to agree to a settlement, preferring to carry the matter to the courts.

I now wish to insert my speech of May 26, 1908, in favor of workmen's compensation:

Mr. Speaker, owing to lack of opportunity to deliver my views on my compensation bill, H. R. 16739, printed in its present form February 10, 1908, and to the inability to obtain the floor of the House for the purpose of considering my bill I avail myself of this opportunity to present to the American people, under the privilege of leave to print, the remarks which follow.

The vast importance of the subject, its novelty as applied to the employees of all carriers of all interstate railroads, require a certain elaboration of this, the first general compensation bill.

The vitally important subject of the general compensation bill has been approved in principle by President Roosevelt, and it is proper that the attention of the people should be called to the general provisions of my general American compensation bill H. R. 16739, which may be found printed in the course of these remarks.

In the course of an experience of over 12 years on the bench in Chicago, one of the greatest cities in the world, every kind and class of cases were brought before me. My duty not only consisted in enforcing the laws, but in attempting to alleviate the misery and the damages caused by our modern economic system. This last function was impressed on me by the horrible cases of breaking up of families, degradation of the widows, and ruin of the daughters, caused by the loss of the father's or brother's earning power. Years and years of litigation, appeals, new trials, and all the necessary steps of our modern procedure brought it about that the results of the litigation were wasted, and social degradation of the family, without any fault of their own, ensued. Gradually the idea became stronger and stronger in my mind that some method must be found whereby this can be changed.

Inquiry into the circumstances which had induced foreign Governments to investigate all phases of the industrial situation abroad and enact adequate remedial legislation for the specific instances disclosed as requiring further official regulation, convinced me of the similar necessity resting upon us here to take up the problem and bring about some form of relief.

The object of my compensation bill (H. R. 16739), as of all compensation acts, is to correct what heretofore has amounted to a denial of justice.

Everyone of us is sworn to support the Constitution of the United States and, by inference, to afford to the people, our constituents and our fellow citizens, due process of law. The Constitution is a growing and living organism and entity. It has protected commerce from the canal boat and the post rider to the steam railroad, electric traction, telegraph, and telephone; and there is no reason why the persons employed in interstate commerce should be left to remedies which were thought adequate at a time when the simple relation between master and servant was not interfered with by colossal machinery and a complicated system of industrial organization.

INADEQUACY OF THE AMERICAN SYSTEM OF DAMAGES.

The theory of American law is that the contract between the employer and his employee, called at common law "his servant," is ample to take care of the person who is injured by reason of the contract. The law furthermore proceeds on the theory that the damages may be sought primarily against the wrongdoer. As a matter of fact, the injured persons in the complicated system inherent in our modern industrial conditions has no redress, because the person who primarily caused the wrong is financially unable to respond in damages. The law then allows an action against the master at common law on formal proof, with burden upon the person injured to show negligence, and puts the burden, as it should in all actions, upon the injured employee or widow, to sustain the cause of action against the master.

The reason for the rule has changed so entirely and the exceptions which have been ingrafted by the courts have become so noxious that the social problem has been overlooked or pushed aside for the benefit of legal jugglery and hair-splitting distinctions by great judges. The administration of the law has become so refined, delicate, and neat, for the purpose of maintaining the rights of the possessing classes or corporations, that the more important question, the human question, the question of humanity and of social justice of the complainant, is utterly forgotten in the defense of vested rights.

I do not go as far as Lewis, who states that vested rights may always be called intrenched wrongs; but I do claim that the maintenance of a rule which was harsh when it was started, which has become unjust in its operation, which under the totally changed industrial conditions under which great operations of manufacturing, of commerce, and of interstate commerce must be carried on, becomes a pernicious and dangerous form, because under the guise of exercising the law it brings about a denial of justice, and induces a feeling of distrust for the courts which it is hard to overcome.

When it is remembered that we hold all our property, in the last instance, through the forbearance and self-control of the vast class of persons who are at risk day by day, and who, were they united, could rend and tear not only our possessions, but our very bodies, it is surprising to see the dense carelessness of the possessing community before this great—I had almost said class; but there are no classes in America; at least it is so claimed.

But, Mr. Speaker, the method which has been pursued by the courts in enforcing the strict letter of the law has brought about a feeling that injustice is done to the employee in nearly every instance, which injustice is due not to the administration of the law, but to the inherent injustice of the theory and its perverse construction. The litigation which is necessary to enforce the rights of these persons at common law brings out the extreme of the law, which is always injustice.

The suitors in these cases are our maimed fellow citizens, or, in the event of his death, his widow or the guardian ad litem for his orphans. In no case do they stand before the court equally prepared with a great corporation which defends the action. It is absurd on the part of any person who has ever practiced even a few years in any court to say that the poor man can hire a great lawyer. His social and economic condition, his lack of relation to the great leaders of the bar, his very maimed condition or the depressed position, through the loss of the father, all prevent him or them having access to any except the ordinary persons who take these cases on contingent fees. That is the average rule. But let us assume that the widow or the injured person has the very best counsel, that they have counsel who are so impressed with their duty to the public and to the court and so carried along by the desire to do justice that, although they have been defeated in one court, they will appeal and appeal, and follow their first victory from the lower courts to the Supreme Court of the United States, until the law ultimately says that the corporation must pay damages.

In the course of these remarks I shall have to submit so many series of statistics that I shall not burden the RECORD with any unnecessary material, but a careful investigation has convinced me that the pluckiest and quickest litigants never get a final determination under four years, and that cases have been in the circuit court of appeals (Erie Rwy. Co. *v.* Kane) four times (118 F. R., 223; 142 F. R., 682; 155 F. R., 118), and the litigation has lasted 10 years. The accident to Kane occurred December 17, 1897; the circuit court of appeals handed down its opinion June 26, 1907. In cases of great historical importance, such as Johnson *v.* Southern Pacific Co., the injury took place within four days after the safety-appliance act went into effect, in August, 1900. The action was finally decided by the Supreme Court on December 19, 1904 (196 U. S., 1), and finally, in May, 1908, eight years after his injury, Johnson has received a slight sum by way of settlement with the company.

In the Schlemmer case the injury occurred within a day or two after the safety-appliance act went into effect; the case was decided by the Supreme Court on March 4, 1907 (205 U. S., 1), in favor of Schlemmer's widow, who on the second trial obtained a verdict against the carrier recently, and the action is now on its indeterminable route of delay to the higher State courts, and possibly will again return to the Supreme Court of the United States. Now, what do you think, Mr. Speaker, becomes of the widow in the interim? What care is taken of the children, and what has the State done to relieve itself of the duty which it owes to Schlemmer and to Johnson and to thousands and thousands of railway employees similarly situated all over the country? The litigation which these people are forced to undertake under the process of our common law, even if successful, is inefficacious. The fruits of the litigation are wasted in attorney's fees, printing cases, and costs, and to the repayment of debts necessary to maintain the family. The social standard of the survivors has been lowered or else the family has gone to pieces; the maimed man, if he has not died of his injuries, has become a tramp; the children have been taken from school; the families have been split up and separated perhaps forever.

Or let us take the case of a woman who was injured through the violation of the master in not guarding his machinery. St. Louis Cordage Co. *v.* Miller (126 F. R., 495) is a case in which Walter Sanborn, C. J., of the circuit court of appeals for the eighth circuit, wrote a very painstaking, carefully thought out, and exquisitely inhuman opinion. The woman, after having had her hand mashed in a cog, was thrown out of court. The judge writing the opinion of the court claimed that, although the factory act of Missouri protected her, yet she assumed the risk of her employment and must go forth without damages. Now, what can a factory hand do who has had a right hand or arm mashed? The probabilities are that she is unfit for domestic employment; her tastes, her habits have been fixed; the court throws her out. If there is any method for that woman to earn her living except to go on the streets, it is not due to any care that the State has taken to protect her from the

prospective evils; and surely the State owes these people some kind of a fair chance. These are our fellow citizens; these are people whose places may be taken in two or three generations from among the children of those sitting in this Chamber. In this country it is three generations from shirt sleeves to shirt sleeves, and the very thing we may overlook in the case of others may happen to our grandchildren or to their children, caught by and dragged down in the maelstrom of industrial coercion.

The courts will say that the laborer is free; that he chooses his occupation; that if he takes up a dangerous occupation he takes the risk—he does it with his eyes open; he is compensated for it, and that his wages in part may be used, if properly employed, toward buying insurance in some industrial or accident corporation to compensate him for the risk which he is bound to take. Is it not a truism, which must only be stated to be understood, that the choice or freedom of the laborers is entirely illusory; that they have no choice; that the fiction which claims to treat them as free agents is overcome by the actualities of their conditions, which make wage slaves of them all; that the wages are always so small and purchase so little, thanks to the protective system and to the trusts, that adequate self-insurance is impossible, and that very, very few of them have any insurance which will, under the present régime, keep their families out of the poorhouse?

DANGERS INHERENT IN ALL GREAT ENTERPRISES.

Let us briefly consider the financial burden imposed upon railroad employees by the casualties which are an incident of their calling. It is well known that employees in railroad train service are unable to procure insurance in any of the old-line companies except at rates that are practically prohibitive, while most of the companies absolutely refuse to accept such risks under any consideration. Certain of the companies will write 5, 10, and 15 year endowment policies for switchmen—a small portion of the employees under consideration—at premiums based upon a 20-year advance in age; thus, for instance, a switchman aged 25 years may obtain such a policy by paying the 45-year endowment premium rate. Inasmuch as insurance premium rates are based upon broad observation and are always the result of careful and accurate consideration, this fact is vastly significant. It means that the man who embraces the occupation of railroad switchman thereby at once cuts 20 years off his reasonable expectancy of life. If there is any compensating advantage in this occupation to offset the horror of this grim fact, I have failed to discover it in more than 10 years' close observation of the conditions of railway labor.

Being denied the benefits of ordinary insurance, railroad employees have been compelled to establish and maintain insurance societies of their own. Those societies are never called upon to pay death claims as a result of old age. Their payments, however, on account of railroad accidents are surprisingly large, and in most of the organizations represent a major portion of the total claims paid. In the year 1906 the Brotherhood of Railroad Trainmen, with a membership of 82,937, composed of conductors, brakemen, switchmen, and baggagemen, paid 1,350 claims, amounting to a total of $1,671,548.96.

More than two-thirds of these claims, or 927 of the whole number, representing a cash total of considerably more than a million dollars, were paid as a result of deaths and disabilities caused by railroad accidents. During the year ending June 30, 1907, the Brotherhood of Locomotive Firemen and Enginemen, with a membership of about 63,000 engineers and firemen, paid 663 death and disability claims, amounting to $947,100. More than 51 per cent of these claims, or 340 of the whole number, representing a cash payment of $489,500, were paid on account of deaths and disabilities caused by railroad accidents. The Switchmen's Union of North America is a comparatively small organization, with membership confined to switchmen employed in railroad-yard service. Last year (1906) this organization paid 179 death and disability claims. Three-fourths of these claims, or 128 of the whole number, were paid for deaths or disabilities incurred by members while in the ordinary discharge of their vocation.

Why should this enormous toll of life and treasure be exacted from railroad employees? Does the efficient operation of the Nation's splendid transportation system require that this great burden should remain where it now lies? Suppose we admit that the terrible sacrifice of lives and limbs is a necessary concomitant of railroad operation. Suppose we resign ourselves with oriental fatalism to the belief that our transportation juggernaut must continue to crush out the lives of its operatives without abatement. Even then, can we excuse ourselves for saddling upon those operatives the financial burden of providing for the needs of their widows and orphans, made such by the very exigencies of the industry itself? Is it not more to the point and more akin to justice that this burden should be assumed by the transportation industry and, through it, by society as a whole?

At the time when the law of master and servant received the form which we are now contending is utterly unjust, the industries were just beginning to receive the beneficent effect of the application of steam to machinery theretofore driven by human hands. The great decisions upon which the law of master and servant is based were rendered in the early thirties of the last century. They were rendered by men who had reached the place of chief justice long after the conditions under which the old theory of master and servant had developed—Ellenbrough in England and Chief Justice Shaw in Massachusetts. In laying down the law of fellow servants, as applied to railroads, they were but expounding the law as they had learned it when economic conditions were simple, when the master knew every person employed by him, and when the employee had a chance to say to his employer: "This man is a reckless and dangerous fellow, regardless of the rights of his fellow men, and I refuse to work with him. You have the choice between keeping me or discharging him." The mere statement of this rule, applied to modern conditions, shows that it is impossible of application.

LACK OF IMAGINATION.

Lombroso, one of the great psychologists in criminology, has well stated that great crimes—and certainly mass crimes—never can be committed unless there is a dullness of imagination or lack of nervous sentiency on the part of the perpetrator.

Probably the greatest railroad men in this country would shudder at the idea of becoming personally responsible for the existence and the choice of men in the thousand and one different branches of the enterprises in which their companies are involved. The machinery has become so colossal that the master can not inspect, can not supervise, and himself becomes a part of the carelessness induced by the modern forms of corporate management. The unavoidable requirement of specialization necessitates their devoting their intelligence and energy to one definite thing. No one man is therefore deliberately accountable for the horrors which follow the administration of the antiquated system of master and servant's law; each man can shift the responsibility upon that great entity created and sanctioned by the State or Federal governments, the corporation, and say: "We are not responsible. We are paid to do a definite amount of work, and as long as we do that work society at large—the State—should bear the burden." Were it possible to bring these men into one room with the victims and show to them the consequences of their hiding behind the forms of corporate coldness of heart, I believe that many of them would resign their places rather than resist the enactment of a humane compensation act which would avert crushing misery and a lowering of the social standard of the persons involved, if not total degradation of their fellow-citizens.

The accidents which occur in all industries involving dangerous machinery, such as factories, steel mills, coal mines, quartz mines, and other extractive industries, in their widest scope, are not subjects over which the Congress of the United States has jurisdiction directly, and do not concern us in the present discussion.

Limiting the discussion to the employees of railroads engaged in interstate commerce and to such other carriers as are subject to the power of Congress, I propose to show, principally from the statistics based on returns furnished by the carriers themselves, in accordance with law compiled by the Interstate Commerce Commission, that railroads require a regular percentage of life, limbs, and health of our fellow-citizens; that the number of men killed and injured is a regularly recurring number; that this number constantly increases, but is in regular proportion with the mileage operated; that a certain proportion of the manhood of this country is slaughtered every minute of the 24 hours of every day; that a regularly recurring number of our young men is each year thrown aside as "scrap," and, as far as the present system of administration of the law of master and servant is concerned, as far as prompt and effective compensation goes, is as valueless to the community at large as the rotten ties which we see moldering along the tracks of every railway in these great United States.

This is a startling statement to make, were it not proven to the hilt by statistics. These statistics cover a period of 20 years and are taken from the figures accessible to every man, published by the Interstate Commerce Commission, pursuant to the great law of its organization.

SUMMARY A.—*Comparative statement of accidents to railway employees for the years named.*

[Compiled from figures shown in the Annual Reports of Statistics of Railways in the United States, issued by the Interstate Commerce Commission.]

Year ending June 30—	Employees killed.		Employees injured.		Total employees killed or injured.	
	Number.	Per cent.	Number.	Per cent.	Number.	Per cent.
1907	4,534	8.55	87,644	10.79	92,178	10.65
1906	3,929	7.41	76,701	9.44	80,630	9.32
1905	3,361	6.34	66,833	8.23	70,194	8.11
1904	3,632	6.85	67,067	8.26	70,699	8.17
1903	3,606	6.80	60,481	7.44	64,087	7.40
1902	2,969	5.60	50,524	6.22	53,493	6.18
1901	2,675	5.04	41,142	5.06	43,817	5.06
1900	2,550	4.81	39,643	4.88	42,193	4.87
1899	2,210	4.16	34,923	4.30	37,133	4.29
1898	1,958	3.69	31,761	3.91	33,719	3.90
1897	1,693	3.19	27,667	3.40	29,360	3.39
1896	1,861	3.51	29,969	3.69	31,830	3.68
1895	1,811	3.41	25,696	3.16	27,507	3.18
1894	1,823	3.44	23,422	2.89	25,245	2.92
1893	2,727	5.14	31,729	3.90	34,456	3.98
1892	2,554	4.81	28,267	3.48	30,821	3.57
1891	2,660	5.01	26,140	3.23	28,800	3.33
1890	2,451	4.62	22,396	2.76	24,847	2.88
1889	1,972	3.72	20,028	2.47	22,000	2.55
1888	2,070	3.90	20,148	2.49	22,218	2.57
Total	53,046	100.00	812,181	100.00	865,227	100.00

SUMMARY B.—*Comparative statement showing number of railway employees in service and the per cent killed or injured for the years named.*

[Compiled from figures shown in the Annual Reports of Statistics of Railways in the United States, issued by the Interstate Commerce Commission.]

Year ending June 30—	Employees in service.	Employees killed.		Employees injured.		Total employees killed or injured.	
		Number.	Per cent.	Number.	Per cent.	Number.	Per cent.
1907	1,672,074	4,534	0.27	87,644	5.24	92,178	5.51
1906	1,521,355	3,929	.26	76,701	5.04	80,630	5.30
1905	1,382,196	3,361	.24	66,833	4.84	70,194	5.08
1904	1,296,121	3,632	.28	67,067	5.17	70,699	5.45
1903	1,312,537	3,606	.27	60,481	4.61	64,087	4.88
1902	1,189,315	2,969	.25	50,524	4.25	53,493	4.50
1901	1,071,169	2,675	.25	41,142	3.84	43,817	4.09
1900	1,017,653	2,550	.25	39,643	3.90	42,193	4.15
1899	928,924	2,210	.24	34,923	3.76	37,133	4.00
1898	874,559	1,958	.22	31,761	3.63	33,719	3.85
1897	823,476	1,693	.21	27,667	3.36	29,360	3.57
1896	826,620	1,861	.23	29,969	3.62	31,830	3.85
1895	785,034	1,811	.23	25,696	3.27	27,507	3.50
1894	779,608	1,823	.23	23,422	3.01	25,245	3.24
1893	873,602	2,727	.31	31,729	3.63	34,456	3.94
1892	821,415	2,554	.31	28,267	3.44	30,821	3.75
1891	784,285	2,660	.34	26,140	3.33	28,800	3.67
1890	749,301	2,451	.33	22,396	2.99	24,847	3.32
1889	704,743	1,972	.28	20,028	2.84	22,000	3.12
1888	[1]	2,070	[1]	20,148	[1]	22,218	[1]

[1] Figures not available.

SUMMARY C.—*Comparative statement showing mileage operated and accidents to railway employees per 100 miles of line for the years named.*

[Compiled from figures shown in the Annual Reports of Statistics of Railways in the United States, issued by the Interstate Commerce Commission.]

Year ending June 30—	Mileage operated (single track).	Employees killed.		Employees injured.		Total employees killed or injured.	
		Number.	Per 100 miles of line.	Number.	Per 100 miles of line.	Number.	Per 100 miles of line.
1907.....	229,951	4,534	2	87,644	38	92,178	40
1906.....	222,340	3,929	2	76,701	34	80,630	36
1905.....	216,974	3,361	1	66,833	31	70,194	32
1904.....	212,243	3,632	2	67,067	31	70,699	33
1903.....	205,314	3,606	2	60,481	29	64,087	31
1902.....	200,155	2,969	1	50,524	25	53,493	26
1901.....	195,562	2,675	1	41,142	21	43,817	22
1900.....	192,556	2,550	1	39,643	20	42,193	21
1899.....	187,535	2,210	1	34,923	19	37,133	20
1898.....	184,648	1,958	1	31,761	17	33,719	18
1897.....	183,284	1,693	1	27,667	15	29,360	16
1896.....	181,983	1,861	1	29,969	16	31,830	17
1895.....	177,746	1,811	1	25,696	14	27,507	15
1894.....	175,691	1,823	1	23,422	13	25,245	14
1893.....	169,780	2,727	1	31,729	19	34,456	20
1892.....	162,397	2,554	2	28,267	17	30,821	19
1891.....	161,275	2,660	1	26,140	16	28,800	17
1890.....	156,404	2,451	1	22,396	14	24,847	15
1889.....	153,385	1,972	1	20,028	13	22,000	14
1888.....	136,884	2,070	1	20,148	15	22,218	16

SUMMARY D.—*Comparative statement of accidents to railway employees showing the number of minutes elapsing for one employee killed or injured, and the average number employees killed or injured per day, for the years named.*

[Compiled from figures shown in the Annual Reports of Statistics of Railways in the United States, issued by the Interstate Commerce Commission.]

Year ending June 30—	Employees killed.			Employees injured.			Total employees killed or injured.		
	Number.	Number minutes elapsing for one killed.	Average per day.	Number.	Number minutes elapsing for one injured.	Average per day.	Number.	Number minutes elapsing for one killed or injured.	Average per day.
1907.....	4,534	116	12	87,644	6	240	92,178	6	252
1906.....	3,929	134	11	76,701	7	210	80,630	7	221
1905.....	3,361	156	9	66,833	8	183	70,194	7	192
1904.....	3,632	145	10	67,067	8	183	70,699	7	193
1903.....	3,606	146	10	60,481	9	166	64,087	8	176
1902.....	2,969	177	8	50,524	10	138	53,493	10	146
1901.....	2,675	196	7	41,142	13	113	43,817	12	120
1900.....	2,550	207	7	39,643	13	108	42,193	12	115
1899.....	2,210	238	6	34,923	15	96	37,133	14	102
1898.....	1,958	268	5	31,761	17	87	33,719	16	92
1897.....	1,693	310	5	27,667	19	76	29,360	18	81
1896.....	1,861	283	5	29,969	18	82	31,830	17	87
1895.....	1,811	290	5	25,696	21	70	27,507	19	75
1894.....	1,823	288	5	23,422	22	64	25,245	21	69
1893.....	2,727	193	7	31,729	17	87	34,456	15	94
1892.....	2,554	206	7	28,267	19	77	30,821	17	84
1891.....	2,660	198	7	26,140	20	72	28,800	18	79
1890.....	2,451	214	7	22,396	23	61	24,847	21	68
1889.....	1,972	266	5	20,028	26	55	22,000	24	60
1888.....	2,070	255	6	20,148	26	55	22,218	24	61
Total.....	53,046	.....	.....	812,181	.....	.....	865,227	.....	.....
Average..	.....	214	7	.....	16	111	.....	15	133

ANALYSIS OF SUMMARIES.

Summary A.—The first summary presented shows the number of railway employees killed, the number injured, and the total casualties for 20 years from 1888, the first year after the establishment of the Interstate Commerce Commission, to 1907, inclusive. During this period 53,046 employees lost their lives at the post of duty and over 800,000 employees were either maimed or crippled. The total casualties numbered 865,227, an average for the 20 years covered of over 43,000 a year. The per cent column is introduced to facilitate comparison of the years given with the total figures for the entire period.

Summary B.—The next summary shows the number of employees in service and the proportion killed and injured. The falling off in the number employed, as indicated by the figures for the years 1894 to 1898, was due to the panic of 1893, and reflects one of the economies introduced by the railway managements during the hard times following this financial crisis. The per cent column for employees killed clearly indicates the constant recurring death risk of the railway employee. There is hardly any perceptible fluctuation of this ratio for the years shown, and means approximately that 1 employee out of every 400 in service was killed each year. The proportion of injured has gradually increased each year until for 1907, the last year covered, the 5.24 per cent given indicates that 1 employee out of every 20 in service is injured, or that an employee in the service of a railway for 10 years has an even chance of being injured.

Summary C.—This summary, showing the mileage operated and the number of employees killed and injured per 100 miles of line, reflects from another angle the constant recurring death risk year after year. The number injured increases each year in a greater ratio than the mileage operated, and apparently substantiates the results shown by the injured column of Summary B.

Summary D.—The last summary presented shows the number of minutes elapsing for each casualty and the average number of casualties per day. Approximately in every seven minutes of every hour of every day for the last four years named 1 employee was killed or injured. During the 20 years covered the average was 1 killed or injured for every 15 minutes of this entire period. The average killed each day for the whole period covered was 7 and the average injured 111.

EQUIPMENT MORE VALUABLE THAN HUMAN LIVES.

The necessary factors of railroad operation are sentient and insentient—human beings and the tools and materials with which they work. Both are subjected to wear and tear; both are wasted in the performance of their functions. The railroads bear the expense of repairing and replacing the waste of their insentient instruments of operation—the wear and tear of roadbed and track, bridges and buildings, locomotives and cars—but for the 865,227 men killed and injured in 20 years they have no concern. The waste of human life and limb, the wear and tear of that active, intelligent army of human beings whose labor alone makes their operation possible is not a necessary item in the expense account of railroads.

As was said by Prof. Bushnell in a recent thought-provoking article calling attention to the alarming increase in the number of abnormal dependents in the United States:

"Soldiers suffer because they are professional destroyers, but members of this great industrial army are struck down every year in this country because they are producers. This is the price they have to pay for the privilege of earning their bread in serving civilization."

It is to the credit of President Roosevelt that he has perceived the essential injustice of this situation and has earnestly endeavored to correct it, not alone by advocating the passage of employers' liability and workmen's compensation acts, but by insisting upon a rigid enforcement of Federal statutes calculated to reduce the number of accidents, as well as pointing out the need of strengthening or supplementing such legislation in the interest of greater safety.

The keynote of this effort was struck by the President in his Georgia day speech at Jamestown, when, on June 10, 1907, in discussing the question of industrial accidents, he said:

"Legislation should be had, alike from the Nation and from the States, not only to guard against the needless multiplication of these accidents, but to relieve the financial suffering due to them. * * * It is neither just, expedient, nor humane, it is revolting to judgment and sentiment alike, that the financial burden of accidents occurring because of the necessary exigencies of their daily occupation should be thrust upon those sufferers who are least able to bear it, and that such remedy as is theirs should only be obtained by litigation which now burdens our courts."

Directly, this would affect a very small portion of the community. The freight charges might affect a still larger portion of the community, but, at all events, it is proper that the community which indirectly causes the railways to be so inhuman to the fellow citizens of us all should permit a recoupment, because in the last instance the people at large pay for the maimed and injured. They do this by taking care of those survivors of those thousands of railroad men whose families have fallen in the scale of life, who therefore will breed inferior children, who, in some form or other, contribute to the asylums and the jails, because there is no hope for the unfit and the injured. The vast army of hoboes and tramps, in many instances, is recruited from persons who have been blacklisted because they testified against the railway company on the trial for a fellow servant or have dared to raise their voices for the betterment of their and their fellow workers' conditions. (Adair *v.* United States, 208 U. S., 161.)

Coxey's army, ridiculous in its way, was a silent and peaceful protest, which some day may become of entirely a different character unless the persons who compose the hobo army are decreased. These hoboes, in part, were persons who were blacklisted by the corporations because of various things which they had done which affected the carriers; and nothing offends the carriers so much as to have a man go on the stand and bear witness against what they consider their rights in favor of an injured fellow employee.

INTERSTATE COMMERCE—ITS REGULATION.

It is characteristic of the workings of a democracy that no coherent plan of regulation is carried out in the beautiful unital way characteristic of bureaucracies. To some extent this is to be regretted, but it is more important that people should be free and make their mistakes than that they should be well governed and simply the slaves of their own servants.

Heretofore our attempts at the regulation of interstate commerce have been principally in the direction of reducing the inequalities of service; attempting to enforce just rates and giving localities an opportunity to protest against discrimination and manifest favoritism. The attempts of the Government to pass an employers' liability bill have been stricken down by the Supreme Court of the United States, and it does not become me, who has once administered justice, to criticize the action of our Supreme Court.

The object of my bill (H. R. 16739), printed hereinafter, is to do away with the necessity or the possibility of any such construction as has been put upon the acts of Congress in the case of Howard *v.* The Illinois Central and Brooks *v.* The Southern Pacific, commonly called the "employers' liability act decision." It is a significant fact that the property rights of the carriers are protected; that in the Debs case the Supreme Court found warrant to preserve the movement of postal cars, freight trains, and passenger coaches; that in Lennon's case a man was fined for refusing to haul an empty car lying on a sidetrack, although it was claimed to be a part of the interstate commerce of the country, while in the Johnson case below (117 F. R., 462) Judge Sanborn—of the same circuit court of appeals which decided the Cordage case against Miller—held that a dining car lying at a way station in Utah not equipped in accordance with the safety-appliance act was not subject to the safety-appliance act. The Supreme Court remedied the construction of the law in that particular case, but could afford no proper justice, for Johnson has not received any damages as a consequence of eight years of litigation, and finally was paid a small sum by way of settlement. Whenever a strike is threatened the carrier invokes the Federal character of the commerce and the persons involved go to jail (re Debs); when a receivership is asked for and a strike is threatened, the Federal character of the court having jurisdiction protects the commerce, and the person inciting to a strike is fined for contempt (re Phelan).

RECURRENCE OF INJURY.

This is in exceptional cases. Strikes do not take place every day. Riots, such as were claimed by the railways to have been caused by the

American Railway Union in Chicago, are not of daily occurrence, but the movement of freight trains and of passenger equipment is of hourly and daily occurrence to an extent undreamed of by a person who has not watched it, and when in this regularly recurring series of movements of trains one man is killed or injured every seven minutes of every hour of every day and night, his children are left to starve; his widow may be forced to sell all she possesses; the standard of life of four to six people is lowered and an American family is put on the "bum" while the courts for 8 or 10 years are blocked with wrangle of counsel and the pounding out of new distinctions of a law which is archaic, which was unfair when created, and which has become disastrously reactionary when enforced at the present time under modern industrial conditions. The systematized injustice, the denial of justice caused by the enforcement of antiquated laws—laws which the English, who originated them, have long since discarded as inept, as dangerous to their commercial progress—are retained by us as bulwarks of corporate resistance to social betterment and civilizing uplift.

We talk of the enlightenment of the American. We find it necessary to support missionary societies to carry the Gospel to heathen countries. We send thousands of school-teachers to the Philippine Islands; we send battleships to Asia Minor to protect American colleges against the outrages of the Turk, when it is a fact that America and Turkey stand preeminent in this, that no Federal or national compensation acts prevail in either Turkey or the United States, and that on the rest of the Continent the theory which formerly prevailed in England and which now prevails in these United States has been utterly discarded, abolished, and cast aside as antiquated and unfair, as antisocial, as un-Christian, and as dangerous to the modern industrial state.

The tendency of modern civilization in standardizing all things that are in daily use, in fixing the thread on the screw so that the screw that is turned out in Manchester or in Pittsburgh will fit; that the bolts which are put in the bridge at the bridge works in Pittsburgh will fit when laid down on the great bridges across the Nile at Atbara, require such close calculation that commercial progress and national efficiency in the last instance depend upon the perfection of the ways of communication. The country whose railroads, canals, and waterways are most efficient will ultimately win. The size of the country and its resources are nothing as compared with its efficiency. Its efficiency depends directly upon the ease with which the forces necessary to handling the commerce are recruited. Consequently, in a country so vast as ours, where in many instances the only highway known to two generations has been the railway, success depends directly upon the efficiency of this method of communication.

When, therefore, whole classes of citizens have been crushed out, thrown aside as scrap, the feeling of resentment against the carrier harms its efficiency and thereby hurts the national thrust forward in international commerce. For every pensioner that the United States Government maintains in every hamlet and wayside station, we may be assured that the broken families and wrecked men and the memories of some uncompensated loss feed an undying dislike, hatred, or malignant hostility to the great and necessary railways of the country, and indirectly against the country that has permitted 865,227 men killed or injured to be cast aside as scrap without prompt, permanent, and just compensation. The excuse has been the country was growing and we had no time to regard these problems.

A democracy can only take up one or two things in a generation and settle them, but the time has come, Mr. Speaker, when it becomes necessary for us to seriously weigh the danger of permitting corporate cupidity to continue a system of licensed butchery and murder, of permissive breaking up of families, of degrading the standard of American citizenship, infinitely worse than the slavery which was broken up 40 years ago, because that was confined to a small group, which inevitably was bound to come to encounter the economic progress of the rest of the world, restricted in area, whereas our present system, if continued, will inevitably lead to a growth of a feeling that a class, comprising a million and a half of men, consequently seven and a half million of American citizens, is being discriminated against, while the freight that they move and the passengers that they haul are to obtain the most favorable consideration at the hands of this body.

Germany, and in Germany preeminently Prussia, blazed the way. Germany was followed by England, New Zealand, and Bohemia. The social legislation of these countries stands forth as a great step forward against the antisocial theories with which we are still burdened. Their progress has in no small degree been caused by the efficiency of their workmen, and this, again, is the consequence of the compensation acts, in all their various forms and developments, which these countries have forced upon the Continent. They have forced this upon the Continent, not by the force of arms. The "blood and iron" policy of Bismarck ended when he had thrown France prostrate, and he turned his huge energy to the building up and repairing the ravages of war and making a fact that which the constitution of 1871 had held out to the various German tribes—a unified Germany. Politically this was accomplished very soon; economically the Germans, after the French war, were little better than their ancestors in the thirties or forties in this country; and the modern development of Germany has been caused in no indirect measure by the hearty cooperation of master and servants in every industry. This cooperation is due directly to the necessity of master and servants working together, and this working together was brought about by the necessary machinery called forth in the various compensation acts.

Based on the statistical material obtained from very large and thousands of small cities, Dr. Richard Freund, president of the Invalid and Old Age Insurance Co., of Berlin, in 1895 published a summary on an investigation of the question as to what manner the modern social legislation has affected the problems of poor legislation and the care of the poor. This was published in the Twenty-first Book of the German Society for Poor Relief and Beneficence. It is based on exhaustive statistical material and specially prepared interrogatories. Any Member who cares to read it can obtain it from the Library of Congress, and can find on page 83 the following summary of this statistical publication. He says:

"Even if the time within which the effectiveness of the labor insurance laws has been under observation has been much too short to permit a statement that the influence thereof upon public care of the poor should have completely shown its effect (especially since very unfortunate economic conditions in the last year have disturbed the statistical problem), still we may say that now there is a mighty effect to be recognized, and this although in many cases the organizations charged with administering the laws have not given the attention which is required to work out the statistical effects.

"The administration of care of the poor has been relieved in an important measure from the necessity of taking care of all by labor insurance. The labor insurance laws have in a great measure relieved the laboring population from the necessity of applying for poor relief.

"Labor insurance has done more than this. It has raised the standard of life of the lower classes of population in this short time, and has exercised such a mighty influence that the poor relief, bound to take cognizance of these facts, could use the resulting savings through strengthening and expansion of its services, nay, was forced to expend moneys beyond that."

In a summary of Fifteen Years of Social Legislation the president of the federal insurance office of the German Empire (twenty-eighth volume, Yearbook for Legislation, 1904, published by Schmoller), beginning on page 529, in an article on the progress of the German labor insurance in the last 15 years, states, on page 553, that 10.3 million persons were protected by sick insurance; 19.1 million persons were protected by accident insurance; 13.04 million persons were protected by invalidity insurance, for which purpose annually over 550,000,000 marks (over $131,000,000) were collected, and for whom up to the close of 1903 over 4,000,000,000 marks (nearly $1,000,000,000) were expended; a capital of 1,500,000,000 marks (nearly $400,000,000) were gathered and nearly 400,000,000 marks (nearly $100,000,000) were loaned out by the invalidity insurance associations of their employees, for building and loan associations, farmers' banks, erection of hospitals, sanitaria, tuberculosis homes, and other public and quasi-public institutions, for the purpose of raising and improving the conditions of the German working classes.

The Continent followed the Prussian and German system of social legislation, because it found that the betterment, while not directly quantitative, proved to be an absolute qualitative betterment and showed itself in the efficiency of those persons for whom social care was provided by the State.

In the convention of New York, in 1821, William L. Marcy, afterwards Secretary of State, said, in speaking of the growth of the idea of popular franchise, which was growing toward universal manhood franchise, that "Once having been granted, it could never be taken away, save by the force of bayonets."

And so the conditions of the modern workingman, who reads his paper, who sees that in times of prosperity inordinate profits are reaped from the movement of commerce of the country by those who control a very small majority of a still smaller holding company of a great system of railways; that his condition is no better than that of a wage slave, because the wages are paid to him in not sufficient quantity nor with sufficient regularity to allow him to take a share and lay it aside for labor insurance, or care of himself or his family in his old age; this man, I say, Mr. Speaker, is bound to ask us, his representatives, why it is that the Germans, English, French, Austrians, Spaniards, Italians, in their native land, are taken care of by Governments which we are taught to look down upon as monarchical, as bureaucratic, as inefficient, while in this country—the country of the free, the only true freedom—an injured workman has to "sue his company and be damned."

Sooner or later, Mr. Speaker, the railway employees will demand not that something be done for them by the Nation, but that their employers be directly forced to give them the compensation sought to be enacted in my bill H. R. 16739. I am not afraid of the charge that this is an entering wedge into the entire system of labor conditions. I want it to be an entering wedge.

The Congress of the United States can not legislate for coal mines in Utah, Pennsylvania, or West Virginia, for silver mines in Arizona, for the salt works in New York, or for the numerous trust-owned steel mills of Pittsburgh and Chicago; these are within the police powers of the respective States; but the commerce of this country—which is protected by the decision of the Supreme Court in the Debs case and all similar cases wherever the workingmen struck to better their conditions and where hoboes and rowdies burned cars and impeded the progress of the mails—has been taken charge of as being within the regulative power of Congress, and it is our duty not only to protect the commerce, but the human beings, our fellows, who make it move; it is our duty to pass all legislation which makes for its efficiency and which will keep us abreast of the times. The times are changing. The conditions which possibly were fair when 17 railways handled the freight from New York City to Buffalo have become unfair when the traffic from New York to Chicago, a distance of 996 miles, is handled under unital control. The master can have no idea of the details, is not responsible, as a matter of fact, for the employment, and can not exercise any supervision or selection of the employees in handling this traffic; and yet an employee running a locomotive for 40 years, careful and experienced, diligent and honest, faithful and loyal to his company, if wrecked through the stupidity of a telegraph operator or the untoward accident over which he had no possible control, is put to the proof of showing that he was free from negligence. If he is killed, his widow has the burden of proof to show that the engineer who ran into an open switch or whose locomotive was wrecked in a smash-up with a freight train, over which the engineer had no control, and was without any blame, yet under prevailing conditions she should have no effective compensation except after 8 or 10 years' wrangle, trickery, and litigation, while the railway mail clerks in the postal cars, the persons in the sleepers, or passengers who are behind the locomotive obtain fair compensation for their injuries.

On a troop train rushed forward under the requirement of the act to regulate commerce, which provides (sec. 6, lines 8–13, p. 12) "that in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic" the only persons not compensated in a fatal wreck would be the trainmen, engineers, and firemen, who are doing the work, while the taxpayers would pay pensions or compensation to every officer, soldier, and other military person enlisted to destroy and wreck property.

For a period of years the Government, to its credit, be it said, has authorized the payment of a small sum ($1,000) for every Railway Mail Service employee killed or dying of injuries contracted in the service within one year.

In other words, we have recognized the inevitable and constantly recurring danger and have taken the initial step in the right direction of compensation. The Government has to that extent, in carrying out the recommendations of the President in respect to this bill (H. R. 21696, a bill granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment), only extended the operation of former acts.

A combination of conditions such as I have sketched out, and which are within the knowledge of every Member in this House, can not but lead to a decrease of national efficiency. And this national efficiency, as I have tried to show, affects the international standing of the community. The maimed and killed, their widows, their declassed children, must be taken care of by societies or almshouses or by the community at large in an inefficient manner, when the direct burden which they

had assumed is our burden, and we should bear it as a necessity. Ultimately we must bear it in some form. Is it not better and more honest to bear it directly and to make that enterprise as an entity which causes these injuries—crippled and maimed and killed, American citizens all—pay proper and timely compensation for the damage fully and as fairly as they pay for repairs to locomotives, headlights to their engines, new equipment, and general replacement?

The Republican Party has been in control of the Government for 40 years. A very small period of this time excepted, it has controlled the Presidency, the Senate, and this House. In all that period of time the argument has been used that the burdens of the protective tariff were proper and necessary for the purpose of affording to the American workman a higher standard of living and more just compensation. I do not take any credit for not using the present condition of economic slowing down as a weapon for pointing out to the majority of this House the unfairness in not having given compensation to the employees. The solution of the problem is new. We have had other problems to deal with heretofore, and, as I have said, it is characteristic to solve one problem at a time.

I shall on another occasion insert as part of my remarks certain portions of W. J. Ashley's book on the progress of the German working classes in the last quarter of a century (1904), which show that Bismarck's commercial and social policy raised the standard of living and increased the efficiency of the German working classes to an immense degree and made possible the tremendous economic progress of Germany throughout this period as a consideration for the burdens and injustice of a moderate protective tariff.

THE LEGALITY OF THE PROPOSED LEGISLATION.

At the outset of this argument I stated that the system under which employees are bound to sue for damages virtually amounts to a denial of justice.

The greatest draftsman that England ever produced—the cardinal legate, Stephen Langton—forced King John to promise that he and his successors would no longer sell or deny justice to any man and that the law of the land should be applied to every man's grievances.

Our Constitution forbids, in the first eight amendments, the Congress to do certain things. The fourteenth amendment forbids the States abridging the rights of citizens or denying them the benefit of due process of law. The leading case, in which all the previous decisions were reviewed, Holden *v.* Hardy (169 U. S., 380), summarizes the decisions so clearly that all I shall do is to briefly refer to it.

"In the courts of England"—Mr. Justice Brown said—"while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation, and that the Constitution of the United States, which is necessarily and to a large extent inflexible and exceedingly difficult of amendment, should not be so construed as to deprive the States of the power to so amend their laws as to make them to conform to the wishes of the citizens as they may deem best for the public welfare, without bringing them into conflict with the supreme law of the land.

"Of course, it is impossible to forecast the character or extent of these changes, but in view of the fact that from the day the 'Magna Charta' was signed to the present moment amendments to the structure of the law have been made with increasing frequency it is impossible to suppose that they will not continue and the law be forced to adapt itself to new conditions of society, and particularly to new relations between employers and employees as they arise."

Although this case affected the mining laws of the State of Utah, yet its reasoning is, I believe, apt to this discussion, when we remember that under power to regulate commerce Congress is absolutely supreme, in so far as the power is sought to affect the relation of the carrier and its employees who are engaged solely in interstate commerce establishing and maintaining post routes.

Very little attention has been given to the power of the Government to refuse to contract for the carriage of the mail with any carrier who might refuse to abide by the provisions of an act like my bill (H. R. 16739). But if the people demand some form of a railroad men's compensation act its terms could be embodied in every contract for handling and hauling the United States mail and the protection afforded by the Revised Statutes withdrawn from any carrier who refused to accept and abide by its provisions.

On page 390 the court states:

"Recognizing the difficulty in defining with exactness the phrase 'due process of law,' it is certain that these words imply a conformity with natural and inherent principles of justice and forbid that one man's property or right to property shall be taken with any other, or for the benefit of the State, without compensation, and that no one shall be condemned in his person or property without an opportunity of being heard in his own defense."

On page 392 the court quotes, with approval, the following extract from the opinion of Chief Justice Shaw, in Commonwealth *v.* Alger, 7 Cushing, page 53, at page 84:

"Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious and to such reasonable restraints and regulations established by law as the legislature under the governing and controlling power vested in them by the Constitution may think necessary and expedient."

The court states that the power to regulate dangerous industries is necessarily inherent in every form of government, although prior to the adoption of the Constitution but sparingly used in this country:

"As we were even then almost purely an agricultural country, the occasion for any special protection to a particular class did not exist. Certain profitable employments, such as lotteries and the sale of intoxicating liquors, which were then considered to be legitimate, have since fallen under the ban of public opinion and are now almost altogether prohibited or made subject to stringent police regulations.

"But in the vast proportion in which these industries (the business of mining coal and manufacturing iron) have since assumed, it has been found that they can no longer be carried on with due regard to the safety and health of those engaged in them without special protection against the dangers necessarily incident in these employments. In consequence of this, laws have been enacted in most of the States designed to meet these exigencies and secure safety to persons peculiarly exposed to these dangers."

The court then instances ordinances and regulations of various kinds guarding hatches, stairways, elevator shafts, and employment of sanitary appliances, protecting persons against fire in theaters, hotels, factories, and other large buildings, and in the case of the mining industry stating the special provisions made for the shoring up of dangerous wheels, ventilation shafts, signaling to the surface, supplying fresh air, and the elimination as far as possible of dangerous gases, limiting the number of persons permitted to enter the cage, the covering of the cages, and the provision for fences and gates around the top of the shaft, besides other similar precautions.

These statutes, one and all, have been held constitutional within the various States, although imposing on the various industries necessary burdens, on the theory that the State at large was the guardian of those who industrially were unable to contract for their own safety, and that it was necessary to provide against their own greed, as well as the exploitation of their masters or employers.

In this great case the Supreme Court well said, in speaking of the argument that the freedom of the laborer to contract had been infringed upon (p. 397):

"The argument would certainly come with better grace and greater cogency from the latter class, but the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere *where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself.* [My italics.]

"The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected the State must suffer."

It might be assumed that this argument should apply with stronger cogency to the enactment of an employers' liability bill than it would to the remarks which I am addressing to this House in the matter of the compensation act.

The sad experience of every person who has studied the enforcement of employers' liability acts, factory acts, or safety-appliance acts, of every form of palliative legislation except a compensation bill, *forces one by a process of exclusion to rely upon the enactment of a compensation act as the only method whereby adequate relief can be given to those who have heretofore been judicially disinherited* and have been made to feel the strong arm of the law in a peculiarly atrocious method of whittling away the rights sought to be conferred upon them by State or national legislation. I take the credit for my bill (H. R. 16739) as the first Federal general-compensation bill.

THE ULTIMATE VALIDITY OF THE PROPOSED ACT.

It would be futile for me, Mr. Speaker, to have entered on this discussion were I not convinced that ultimately some legislation such as my bill (H. R. 16739) proposes to enact will become the law of this land, and that those who now scoff at its provisions will be the most earnest upholders of the new industrial conditions, of the social betterment and improved civilization, of which it, in its incipiency, is the forerunner. The act to regulate commerce was enacted in 1887, yet people are apt to forget that as far back as 1871 a bill of like character was introduced, and that the first step toward an attempt to force the carriers engaged in interstate commerce to submit to Federal regulation was introduced by Senator Sumner, of Massachusetts, in 1865. Progress in a country like ours is necessarily slow. Besides overcoming the natural timidity of capital, we must convince the Supreme Court of the United States that in the last instance it is a proper, lawful, and civilizing effort to raise the conditions of the persons who may be living in this great country under and pursuant to the Constitution.

The employers' liability act was declared unconstitutional by a majority of one. Five judges were in favor of declaring its provisions repugnant to the Constitution; four judges, on various grounds, dissented. When in the last analysis a statute is held unconstitutional on so narrow a margin, and when its advocacy and framing has had the benefit of the best legal talent in this House and in the other Chamber, it is proper to refer with respect to an opinion handed down by one judge below, whose opinion was not directly appealed from in the cases before the Supreme Court and whose reasoning has never been assailed in any court whatsoever. In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia, Hon. Emery Spear decided on the 25th of March, 1907, the case of Lucy Snead, administratrix, *v.* Central of Georgia Railway Co. In the course of his opinion that eminent judge said:

"The steamboats plying the lower river were thus forbidden access to its wharves. The National Government since its organization had been silent. It finally thought proper to act. The railroads were then informed that unless suitable drawbridges were constructed so that steamers might pass through unhindered their bridges would be removed. *In other words, the dormant power of the Constitution was aroused, and the railroads, the creatures of the State, whose action had been theretofore lawful, turned the listening ear and caught the words of that mandate and swiftly obeyed.* [My italics.]

"The creation of the Interstate Commerce Commission, the enactment against arbitrary and discriminating rates, of the antitrust law forbidding combinations in restraint of trade, held directly applicable to railroads, even though chartered by the States, the law denouncing rebates and forbidding passes in interstate traffic, the law forbidding a railroad engaged in such commerce from dealing in commodities like coal, which it transports (Railroad *v.* I. C. C., 200 U. S., 361)—all such legislation culminating in the power exercised by the most recent enactment, intrusting the commission, which is the agent of Congress, with the power to fix rates, and the bill to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon, enacted in the closing hours of the last session, are familiar illustrations of the exercise of the right and power of Congress to control such commerce. It is not difficult to foresee that this power may speedily be extended to reach and to paralyze the action of those daring financiers who water the stock of corporations engaged in interstate traffic, and who by this perilous expedient not only compel the public to pay interest upon evidences of fictitious values thus created, but endanger the stability of all business by the panics they engender and the calamities they threaten. In the meaning of the commerce clause, it is thus made clear that the words 'to regulate' impart the right and power to enact laws, and not merely to make rules and regulations. The necessity for such right and such power, more than all things else, contributed to the very establishment of the Government of the United States itself."

Although argument in that case was specifically directed to the contention that the interference by courts was unlawful in so far as it tried to establish a liability in favor of employees against their employers, and that it might affect in a contingent or casual way the relation of intrastate carriage, yet in the wider scope which this bill proposes to enact it seems to me that it enforces the general arguments to a very great degree.

Judge Spear well says, speaking of the employers' liability act:

"The law itself deserves the approbation of the entire country. Its incentive to carefulness on the part of those who control railways will be immeasurable. It will bring to many an honest, fearless heart the consciousness that he and his loved ones are insured against the folly and negligence of his fellows, whom he can not control. Had it been of

force in the past, thousands of our countrymen who are sleeping in untimely and tragic graves might now be leading useful lives, and many additional thousands who now spend the interval of life which remains to them in the mortification of mutilation and in its incurable suffering might now be happy and well. Surely at a period when every day brings its story of crashing and murderous collisions, of derailed and shattered trains, the long catalogue of the slain, the mangled, and dismembered, such efforts on the part of the Government to extend its protecting care around its people, employed in its mightiest interest, should not be lightly discredited. The philanthropy and statesmanship which prompted it are not undeserving of such a eulogium as that pronounced by Macaulay on the philosophy of Bacon:

"'It has lengthened life; it has mitigated pain; it has extinguished diseases; it has increased the fertility of the soil; it has given new securities to the mariner; it has furnished new arms to the warrior; it has spanned great rivers and estuaries with bridges of form unknown to our fathers; it has guided the thunderbolt innocuously from heaven to earth; it has lighted up the night with the splendor of the day; it has extended the range of the human vision; it has multiplied the power of the human muscles; it has accelerated motion; it has annihilated distance; it has facilitated intercourse, correspondence, all friendly offices, all dispatch of business; it has enabled man to descend to the depths of the sea, to soar into the air, to penetrate securely into the noxious recesses of the earth. * * * These are but a part of the fruits, and of its first fruits. For it is a philosophy which never rests, which has never attained, which is never perfect. Its law is progress. The point which yesterday was invisible is its goal to-day and will be its starting post to-morrow.'"

The Supreme Court of the United States on May 18, 1908, handed down its decision in St. Louis, Iron Mountain & Southern Railway Co. against May Taylor, as administratrix of George W. Taylor.

The case had been tried twice in the State courts, and eight years after Taylor's death the Supreme Court reversed the judgment obtained against the carrier; but the court laid down in its opinion a salutary rule, which is applicable to the principle of my compensation bill (H. R. 16739). Here is what the court said (my italics and small capitals) in that case which, with Holden against Hardy (cit. ut supra), gives my bill (H. R. 16739) its constitutional justification:

"In deciding the questions thus raised, upon which the courts have differed (158 Fed., 931), we need not enter into the wilderness of cases upon the common-law duty of the employer to use reasonable care to furnish his employee reasonably safe tools, machinery, and appliances, or consider when and how far that duty may be performed by delegating it to suitable persons for whose default the employer is not responsible. In the case before us the liability of the defendant does not grow out of the common-law duty of master to servant. The Congress, not satisfied with the common-law duty and its resulting liability, has prescribed and defined the duty by statute. We have nothing to do but to ascertain and declare the meaning of a few simple words in which the duty is described. It is enacted that 'no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard.' There is no escape from the meaning of these words. Explanation can not clarify them and ought not to be employed to confuse them or lessen their significance. The obvious purpose of the legislature was to supplant the qualified duty of the common law with an absolute duty deemed by it more just. If the railroad does, in point of fact, use cars which do not comply with the standard, it violates the plain prohibitions of the law, and there arises from that violation the liability to make compensation to one who is injured by it. It is urged that this is a harsh construction.

"To this we reply that, if it be the true construction, its harshness is no concern of the courts. They have no responsibility for the justice or wisdom of legislation, and no duty except to enforce the law as it is written, unless it is clearly beyond the constitutional power of the lawmaking body. It is said that the liability under the statute, as thus construed, imposes so great a hardship upon the railroads that it ought not to be supposed that Congress intended it. Certainly the statute ought not to be given an absurd or utterly unreasonable interpretation leading to hardship and injustice, if any other interpretation is reasonably possible. But this argument is a dangerous one, and never should be heeded where the hardship would be occasional and exceptional. *It would be better, it was once said by Lord Eldon, to look hardship in the face rather than break down the rules of law. But when applied to the case at bar the argument of hardship is plausible only when the attention is directed to the material interest of the employer to the exclusion of the interests of the employee and of the public. Where an injury happens through the absence of a safe drawbar there must be hardship. Such an injury must be an irreparable misfortune to some one. If it must be borne entirely by him who suffers it, that is a hardship to him. If its burden is transferred, as far as it is capable of transfer, to the employer, it is a hardship to him.* IT IS QUITE CONCEIVABLE THAT CONGRESS, CONTEMPLATING THE INEVITABLE HARDSHIP OF SUCH INJURIES, AND HOPING TO DIMINISH THE ECONOMIC LOSS TO THE COMMUNITY RESULTING FROM THEM, SHOULD DEEM IT WISE TO IMPOSE THEIR BURDENS UPON THOSE WHO COULD MEASURABLY CONTROL THEIR CAUSES, INSTEAD OF UPON THOSE WHO ARE IN THE MAIN HELPLESS IN THAT REGARD. SUCH A POLICY WOULD BE INTELLIGIBLE, AND TO SAY THE LEAST, NOT SO UNREASONABLE AS TO REQUIRE US TO DOUBT THAT IT WAS INTENDED AND TO SEEK SOME UNNATURAL INTERPRETATION OF COMMON WORDS. We see no error in this part of the case." * * *

I also desire to embody in my remarks a copy of my speech on this subject which I delivered on June 6, 1910:

Mr. Speaker, I appreciate the spirit which prompts the objections of the gentlemen to the passage of this resolution. Personally I am very much opposed to the creation of commissions which require large appropriations of money to conduct investigations which result usually in voluminous reports of no consequence. However, I am hopeful that I can convince the gentlemen of the vital importance of the creation of the commission which is proposed under this resolution.

This resolution, proposing the creation of a commission to make a thorough investigation of the subject of employers' liability and workmen's compensation, is the result of a number of hearings had before the Committee on the Judiciary on my workmen's compensation bill, H. R. 1. I would much rather have preferred that the committee would have seen fit to report my bill favorably to this House instead of this resolution.

However, it is the desire of the committee to secure more information and knowledge on the great principles of "workmen's compensation," which are the basic principles of my bill. It is therefore out of the question to secure a favorable report of my bill at this session, and I have but one alternative and that is to accept this resolution in lieu of a favorable report on my bill. No matter what the personnel of the proposed commission under this resolution will be, I am firm and positive in my belief that it will be forced by the righteous and just principles involved in my bill to recommend its passage and enactment into law. Of course it will delay the legislation proposed by my bill for some time, but I am hopeful that the day is not far distant when my efforts and labors for a workmen's compensation act by this Congress will become a part of the statute law of the United States.

I do not contend that the creation of this commission is indispensable, but it is in line with the investigations which are being conducted in the States of Illinois, New York, Minnesota, and Wisconsin since the introduction of my first bill on the subject of "workmen's compensation" in Congress. The objection on the part of the gentlemen relative to the fact that there is no limitation as to the cost of the proposed investigation on this subject, which will result in a great benefit to thousands of our fellow beings, can easily be overcome. I had nothing to do with the drafting of the resolution, and it seems to me that my colleague, who introduced it, was of the opinion that the cost would be decided upon by the House. I am satisfied that the gentlemen from Arkansas and Minnesota would not object to an honest, fair, and impartial investigation of the principles of my bill, even if the cost to do so would reach the sum of $100,000.

Now, Mr. Speaker, I desire to engage the time and attention of the Members of this House upon my bill, the subject matter of which is sought to be thoroughly investigated by the proposed commission to be created under the resolution.

On February 3, 1908, I introduced a workmen's compensation bill, which was the first measure of its kind embodying the principles of workmen's compensation for injuries brought before Congress. Only a limited number of Members of the House had at that time any adequate knowledge of the principles upon which my bill was based, how far-reaching it was, and the great benefit that would result from its enactment into law in the cases of workmen engaged in hazardous employments to which the regulative power of Congress applies. The bill would ameliorate the terrible plight of thousands of families who are annually deprived of either a father or son, who in nearly every instance is the chief support and breadwinner of the family, through the inexorable drain on human life which is annually sacrificed in dangerous and hazardous employments which commerce and industry claims. The dependent survivors—the unfortunate widows and orphans—are thus cast upon the community as indigents, and in spite of such bitter charity which might come to them in the wake of their bereavement they are obliged to endure and suffer indescribable hardships, misery, and want, due to the fact that under our present system of jurisprudence no adequate, just, and timely relief is afforded them, and in their sad affliction the law shifts upon them the entire burden, risk, and responsibility in all industrial accidents. For ought the law cares they might perish from the pangs of hunger. And all this actually happens, is permitted, and even sanctioned in what we proclaim and maintain to be the most enlightened country in the world; and, as admitted by everyone, the richest and wealthiest of all countries—in short, a country of plenty. These pitiful conditions resulting from commercial and industrial accidents are primarily due to the indifference and neglect of our legislators in the States, as well as in this and the other House of Congress. Still I am satisfied that if a majority of the Members would see for themselves the hardship, misery, and want to which these unfortunate people are subjected by reason of the iniquitous method of common-law procedure in personal-injury cases with respect to the recovery of damages by the plaintiffs, there would be no hesitation to pass and enact into law this bill. The justice in abrogating the antiquated doctrines of "fellow servants," "assumed risk," "contributory negligence," and kindred common-law defenses which operate almost exclusively against a recovery for the plaintiff in personal-injury suits would at once assert itself.

Following the introduction of my first "workmen's compensation" bill, I also introduced in the Sixtieth Congress H. R. 16739, H. R. 24339, and H. R. 25408, and on the first day of the first session of this Congress I introduced H. R. 1, upon which I succeeded in securing hearings before the Committee on the Judiciary; and during this session I introduced H. R. 25334, upon which I desire at this time to address you particularly. All of the bills, including the present one, are amplifications and modifications of the original bill which I introduced. By successive redrafts of said bill I endeavored to meet objections urged and pointed out to me from time to time. I believe that the present bill will stand any reasonable and fair test to which you may subject it, and I am sanguine that it will survive the close and critical scrutiny of the Supreme Court.

As I have said at the outset, there were but few Members who had any adequate conception of the problem of "workmen's compensation," and realizing and appreciating the need of legislation along this line, I commenced a campaign of publicity and education, and I have spared neither time nor expense to accomplish my purpose in this direction. I have written articles which have been published in the columns of the press throughout the country and in the magazines. I have sent copies of my bills on "workmen's compensation," together with copies of my speech upon the same, to all the governors, lieutenant governors, and to many Senators and members of the legislatures of the States of the Union; to employers' and employees' organizations; in fact, I endeavored to reach everyone whom I thought to be interested and where it would do some good. To-day I am pleased to say that my efforts were not misdirected, for a majority of the American people have become acquainted with the underlying principles of "workmen's compensation," and I say it with pardonable pride that my bill has met with the approval of a majority of the country's leading men in all walks of life, who have come to realize the vast good and great saving that can be accomplished by its enactment into law.

Since the introduction of my first "workmen's compensation bill" the subject has been taken up in this country with a determination that is bound to bring into universal favor legislation along the lines proposed in my bill. There have been held several conferences, meetings, and conventions of a civic, industrial, and legislative character, where all interests and classes were represented, to discuss and formulate plans with respect to this important question. Later on I shall take the privilege to read or include in these remarks extracts from the Tenth Annual Meeting of the National Civic Federation, held at New York City November 22 and 23 last past, the greater portion of which meeting was devoted to the discussion of "workmen's compensation" legislation and other pertinent articles and reports. In addition to discussions at various meetings and conferences held upon this subject, several States have, through their respective legislatures, appointed special commissions to investigate and report on workmen's compensation legislation. Notable among the States taking this action are Minnesota, Illinois, Wisconsin, and New York. The special commission cre-

ated by the New York State Legislature to investigate this subject transmitted a report on March 18 and recommended the enactment of an alternative workmen's compensation scheme, preserving the liberty of contract of both parties.

Undoubtedly you are all acquainted and familiar with the employer's liability legislation. In 1906 Congress passed an employer's liability law which tended to give a workman who was injured while in the pursuit of his occupation, or in the event that the injuries so sustained resulted in his death, then to his widow or dependents, a better chance to recover damages. In other words, the act improved their right of action by diminishing to a certain extent some of the defenses heretofore available; but the Supreme Court, in what are known as the Employer's Liability cases (207 U. S., 463), declared the act to be unconstitutional. During the past Congress we passed another similar law, known as the employer's Federal liability act of 1909, with a view toward meeting the objections to such legislation as were noted by the ruling of the Supreme Court on the act of 1906, and it is reported that already some of the judges hold this act unconstitutional, upon the ground that Congress is not vested with the authority and the power to enact such legislation. For argument's sake, let us say that we pass an employer's Federal liability law which the Supreme Court will finally hold to be constitutional. What will we have accomplished? We will have given approximately 100,000 railroad employees who are annually injured or killed, or to their unfortunate widows or dependents, a right of action obviating some of the defenses of the employer to personal injury suits.

In this connection I can not find a more fitting and pertinent expression than that of Hon. A. H. Gill, a member of the British Parliament, in an address to the members of the National Civic Federation, at the tenth annual meeting, on November 23, 1909, where a discussion was had on "Workmen's insurance in foreign countries," "Employer's liability in the United States," "Compensation for injured wage earners," and kindred economical topics. In the course of his address Mr. Gill said:

"I venture to say that every person who works for an employer, no matter in what occupation he is engaged, has a right to be protected in his labor from injury, so far as it is possible to be."

"The present act of Parliament [Congress] that you have in operation, the employer's liability act, does not tend in that direction. It is a similar act to what we had in operation years ago, and we found that it was difficult to get on with it. We found that it did not prevent the accidents taking place which we had a right to expect. We found, also, that it was most difficult for workmen, when they were injured, to succeed in the court in getting compensation awarded. Anything that is indefinite, anything that places a premium on the employer to get out of the difficulty, to cause him, if it is possible, or the workman, also, to suppress evidence will not bring before the public or before the courts the difficulties, the defects that exist in regard to industrial machinery; but as soon as employers find out that they have a definite payment to make for every accident that occurs, no matter how it occurs, whether it is from negligence or otherwise, you can depend upon it that those employers will begin to look around and see if they can not find some means of preventing those accidents taking place."

The present method of requiring an injured employee to sue the employer is both antiquated, vicious, and produces strife and contention instead of rendering prompt, certain, and definite justice. The suitor is subjected to meet the ancient legal fictions of "contributory negligence," "assumption of risk," and "fellow servants" forms of defenses interposed by the employer in nearly all personal-injury suits. The method which has been pursued by the courts in enforcing the strict letter of the law has brought about a feeling that an injustice is done to the employee in nearly every instance, which injustice is due, not to the administration of the law, but to the inherent injustice of the theory and its perverse construction. The litigation which is necessary to enforce the rights of these persons at common law brings out the extreme of the law, which is always injustice.

The suitors in these cases are our maimed fellow citizens or, in the event of their death, their widows or the guardians ad litem for their orphans. In no case do they stand before the court equally prepared with a great corporation which defends the action. It is absurd on the part of any person who has ever practiced even a few years in any court to say that the poor man can hire a great lawyer. His social and economic condition, his lack of relation to the great leaders of the bar, his very maimed condition or the depressed position, through the loss of a father, all prevent him or them having access to any except the ordinary lawyers, who take these cases on contingent fees. That is the average rule.

But let us assume that the injured person or the widow has the very best counsel; that they have counsel who are so impressed with their duty to the public and to the court, and so carried along by the desire to do justice that, although they have been defeated in one court, they will appeal and appeal and follow their case from the lower courts to the Supreme Court of the United States until the law ultimately says that the corporation must pay damages, all of which takes from 4 to 10 years, and I know of a number of cases that have been pending in the courts for 15 and 20 years before an entry of final judgment was had. Now, what do you think becomes of the widow in the interim? What care is taken of the children, and what has the State done to relieve itself of the duty which it owes to thousands and thousands of railway employees similarly situated all over the country? The litigation which these people are forced to undertake under the process of our common law, even if successful, is inefficacious. The fruits of the litigation are wasted in attorney's fees, stenographer's fees, printing of briefs, and costs, and to the repayment of debts necessary to maintain the family. The social standard of the survivors has been lowered or else the family has gone to pieces; the maimed man, if he has not died of his injuries, has become a tramp; the children have been taken from school; the families have been split up and separated, perhaps forever. And this litigation, which is almost tantamount to a denial of justice, these burdens and hardships, are all permitted; yes, encouraged by the State, and at its enormous cost. To-day nearly one-half of our courts are burdened with the trials of personal-injury cases, wherefore justice is delayed in all other cases pending. I am inclined to think that the cost of maintaining our courts, the salaries paid to judges, clerks, and bailiffs, jurors, witness and stenographer's fees, fees for expert testimony, printing of briefs and stationery, and other incidental expenses necessary to defray the costs of these personal-injury cases would pay a fair compensation to all the litigants prosecuting such cases.

Every one of us is sworn to support the Constitution of the United States and by inference to afford to the people, our constituents and our fellow citizens, due process of law. The Constitution is a growing and living organism and entity. It has protected commerce from the canal boat and the post rider to the steam railroad, electric traction, telegraph, and telephone; and there is no reason why the persons employed in interstate commerce should be left to remedies which were thought adequate at the time when the simple relation between master and servant was not interfered with by colossal machinery and a complicated system of industrial organization.

The theory of the American law is that the contract between the employer and his employee, called at common law "his servant," is ample to take care of the person who is injured by reason of the contract. The law, furthermore, proceeds on the theory that the damages may be sought primarily against the wrongdoer. As a matter of fact, the injured person in the complicated system inherent in our modern industrial conditions has no redress, because the person who primarily caused the wrong is financially unable to respond in damages. The law then allows an action against the master at common law on formal proof, with burden upon the person injured to show negligence, and puts the burden, as it should in all cases where negligence is the test, upon the injured employee or widow to sustain the cause of action against the master.

The reason for the rule has changed so entirely and the exceptions which have been ingrafted by the courts have become so noxious that the social problem has been overlooked or pushed aside for the benefit of legal jugglery and hair-splitting distinctions by great judges. *The administration of the law has become so refined, delicate, and neat, for the purpose of maintaining the rights of the possessing classes or corporations, that the more important question, the human question, the question of humanity and of social justice of the complainant, is utterly forgotten in the defense of vested rights.*

I do not go as far as Lewis, who states that vested rights may always be called intrenched wrongs; but I do claim that the maintenance of a rule which was harsh when it was started, which has become unjust in its operation, which, under the totally changed industrial conditions under which great operations of manufacturing, of commerce, and of interstate commerce must be carried on, becomes a pernicious and dangerous form, because under the guise of administering mistaken and inept theories of law it brings about a denial of justice and induces a feeling of distruct for the courts which it is hard to overcome.

The courts will say that the laborer is free; that he chooses his occupation; that if he takes up a dangerous occupation, he takes the risk—he does it with his eyes open; he is compensated for it; and that his wages, in part, may be used, if properly employed, toward buying insurance in some industrial or accident corporation to compensate him for the risk which he is bound to take. Is it not a truism, which must only be stated to be understood, that the choice or freedom of the laborers is entirely illusory; that they have no choice; that the fiction which claims to treat them as free agents is overcome by the actualities of their conditions, which make wage slaves of them all; that none of the braver occupations are exempt from identically the same perils, and the same doctrines of class prejudice or judicial ineptitude follow the workman into any new job? Thus, in the case of Brinkmeyer *v.* Missouri Pacific Railway Co. (93 Pac. Rep., 621, and 105 Pac. Rep., 221) the plaintiff—who, after nine years of unsuccessful litigation for the loss of his leg, still owes the Missouri Pacific Railway Co., the defendant, for the bill of costs—lost all the fingers of his right hand in a planing mill on the very day that the railway's counsel again obtained a new trial; that the wages are always so small and purchase so little that adequate self-insurance is impossible; and that very, very few of them have any insurance which will, under the present régime, keep their families out of the poorhouse.

Why should this enormous sacrifice be exacted from railroad employees and others who are engaged in hazardous employments? Does the efficient operation of the Nation's splendid transportation system require that this great burden should remain where it now lies? Suppose we admit that the terrible sacrifice of lives and limbs is a necessary concomitant of railroad operation. Suppose we resign ourselves, with oriental fatalism, to the belief that our transportation juggernaut must continue to crush out the lives of its operatives without abatement. Even then, can we excuse ourselves for saddling upon those operatives the financial burden of providing for the needs of their widows and orphans, made such by the very exigencies of the industry itself? Is it not more to the point and more akin to justice that this burden should be assumed by the transportation industry and, through it, by society as a whole? Commerce and industry should shoulder the burden of compensation for personal injuries to workmen, or to their widows or dependents, and it is but plain sense to say that this burden shall be made a fixed charge added to the cost of commerce and industry, which can easily and readily bear it. The maimed and crippled workmen or their widows and orphans can least afford to bear it, and justice will be done to them.

At the time when the law of master and servant received the form which we are now contending is utterly unjust the industries were just beginning to receive the beneficent effect of the application of steam to machinery theretofore driven by human hands. The great decisions upon which the law of master and servant is based were rendered in the early thirties of the last century. They were rendered by men who had reached the place of chief justice long after the conditions under which the old theory of master and servant had developed—Ellenbrough, in England, and Chief Justice Shaw, in Massachusetts. In laying down the law of fellow-servants, as applied to railroads, they were but expounding the law as they had learned it when economic conditions were simple, when the master knew every person employed by him, and when the employee had a chance to say to his employer: "This man is a reckless and dangerous fellow, regardless of the rights of his fellow-men, and I refuse to work with him. You have the choice between keeping me or discharging him." The mere statement of this rule applied to modern conditions, shows that it is impossible of application.

Lombroso, one of the great psychologist in criminology, has well stated that great crimes—and certainly mass crimes—never can be committed unless there is a dullness of imagination or lack of nervous sentiency on the part of the perpetrator.

Probably the greatest railroad men in this country would shudder at the idea of becoming personally responsible for the existence and the choice of men in the thousand and one different branches of the enterprises in which their companies are involved. The machinery has become so colossal that the master can not inspect, can not supervise, and himself becomes a part of the carelessness induced by the modern forms of corporate management. The unavoidable requirement of specialization necessitates their devoting their intelligence and energy to one definite thing. No one man is therefore deliberately accountable for the horrors which follow the administration of the antiquated system of master-and-servant law; each man can

shift the responsibility upon that great entity created and sanctioned by the State or Federal Government, the corporation, and say: "We are not responsible. We are paid to do a definite amount of work, and as long as we do that work society at large—the state—should bear the burden." Were it possible to bring these men into one room with the victims and show to them the consequences of their hiding behind the forms of corporate coldness of heart, I believe that many of them would resign their places rather than resist the enactment of a humane compensation act which would avert crushing misery and a lowering of the social standard of the persons involved, if not total degradation of their fellow-citizens.

The accidents which occur in all industries involving dangerous machinery, such as factories, steel mills, coal mines, quartz mines, and other extractive industries, in their widest scope, are not subjects over which the Congress of the United States has jurisdiction directly, and do not concern us in the present discussion.

Limiting the discussion to the employees of railroads engaged in interstate commerce and to such other carriers as are subject to the power of Congress, I propose to show, principally from the statistics based on returns furnished by the carriers themselves, in accordance with law compiled by the Interstate Commerce Commission, that railroads require a regular percentage of life, limbs, and health of our fellow-citizens; that the number of men killed and injured is a regularly recurring number; that this number constantly increases, but is in regular proportion with the mileage operated; that a certain proportion of the manhood of this country is slaughtered every minute of the 24 hours of every day; that a regularly recurring number of our young men is each year thrown aside as "scrap," and, as far as the present system of administration of the law of master and servant is concerned, as far as prompt and effective compensation goes, is as valueless to the community at large as the rotten ties which we see moldering along the tracks of every railway in these great United States.

This is a startling statement to make, were it not proven to the hilt by statistics. These statistics cover a period of 21 years and are taken from the figures accessible to every man, published by the Interstate Commerce Commission, pursuant to the great law of its organization.

Comparative statement showing number of railway employees in service and the per cent killed and injured for the years named.

[Based on figures shown in the Annual Reports on the Statistics of Railways in the United States, issued by the Interstate Commerce Commission.]

Year ending June 30—	Total mileage operated at end of year (single track).	Employees in service at end of year.		Employees killed.				Employees injured.				Employees killed and injured.			
		Number.	Per 100 miles of line.	Number.	Per cent.	Average number killed per day.	Average number minutes elapsing for 1 killed.	Number.	Per cent.	Average number injured per day.	Average number minutes elapsing for 1 injured.	Number.	Per cent.	Average number killed and injured per day.	Average number minutes elapsing for 1 killed or injured.
	Miles.														
1908	[1] 230,494.02	[2] 1,458,244	[3] 623	3,470	0.24	9	152	83,357	5.72	228	6	86,837	5.96	237	6
1907	227,454.83	1,672,074	735	4,534	.27	12	116	87,644	5.24	240	6	92,178	5.51	252	6
1906	222,340.30	1,521,355	684	3,929	.26	11	134	76,701	5.04	210	7	80,630	5.30	221	7
1905	216,973.61	1,382,196	637	3,361	.24	9	156	66,833	4.84	183	8	70,194	5.08	192	7
1904	212,243.20	1,296,121	611	3,632	.28	10	145	67,067	5.17	183	8	70,699	5.45	193	7
1903	205,313.54	1,312,537	639	3,606	.27	10	146	60,481	4.61	166	9	64,087	4.88	176	8
1902	200,154.56	1,189,315	594	2,969	.25	8	177	50,524	4.25	138	10	53,493	4.50	146	10
1901	195,561.92	1,071,169	548	2,675	.25	7	196	41,142	3.84	113	13	43,817	4.09	120	12
1900	192,556.03	1,017,653	529	2,550	.25	7	207	39,643	3.90	108	13	42,193	4.15	115	12
1899	187,534.68	928,924	495	2,210	.24	6	238	34,923	3.76	96	15	37,133	4.00	102	14
1898	184,648.26	874,558	474	1,958	.22	5	268	31,761	3.63	87	17	33,719	3.85	92	16
1897	183,284.25	823,476	449	1,693	.21	5	310	27,667	3.36	76	19	29,360	3.57	81	18
1896	181,982.64	826,620	454	1,861	.23	5	283	29,969	3.63	82	18	31,830	3.85	87	17
1895	177,746.25	785,034	441	1,811	.23	5	290	25,696	3.27	70	20	27,507	3.50	75	19
1894	175,690.96	779,608	444	1,823	.23	5	288	23,422	3.00	64	22	25,245	3.24	69	21
1893	169,779.84	873,602	515	2,727	.31	7	193	31,729	3.63	87	17	34,456	3.94	94	15
1892	162,397.30	821,415	506	2,554	.31	7	206	28,267	3.44	77	19	30,821	3.75	84	17
1891	161,275.17	784,285	486	2,660	.34	7	198	26,140	3.33	72	20	28,800	3.67	79	18
1890	156,404.06	749,301	479	2,451	.33	7	214	22,396	2.99	61	23	24,847	3.32	68	21
1889	149,948.66	704,743	459	1,972	.28	5	266	20,028	2.84	55	26	22,000	3.12	60	24
1888	149,901.72	[4]	[4]	2,070	[4]	6	255	20,148	[4]	55	26	22,218	[4]	61	24
Grand total				56,516	.....	7	195	895,548	.....	117	12	952,064	.....	124	14
Total 1899–1908				32,936	.....	9	160	608,325	.....	167	9	641,261	.....	176	8
Total 1889–1898				21,510	.....	6	245	267,075	.....	73	20	288,585	.....	79	18

[1] Excludes mileage returned for switching and terminal companies.
[2] Includes 21,969 employees of switching and terminal companies.
[3] Based on mileage shown in column 2 and 1,436,275 employees, which excludes those reported by switching and terminal companies.
[4] Figures not available.

Percentage of increase in number of employees in 1908 over number in 1889, 106.92 per cent.
Ratio of increase in percentage of number killed and injured in 1908 over percentage of number killed and injured in 1889, 91.02 per cent.
Ratio of increase in percentage of number injured in 20 years, 101.41 per cent.
Ratio of decrease in percentage of number killed in 20 years, 7.15 per cent.
Percentage of increase in number of employees killed and injured in 1908 over number killed and injured in 1889, 294.71 per cent.
Ratio of the percentage of increase in the number of employees killed and injured in 1908 over the number killed and injured in 1889 to the percentage of increase in the number employed in 1908 over the number employed in 1889, 191.02 per cent.

The first column presented shows the total mileage at end of each year, single track; the second column shows the number of employees in service at end of each year and the number of employees for each 100 miles of line.

The third column shows the number of railway employees killed, the per cent of employees killed, the average number of employees killed per day, and the average number of minutes elapsing for one killed.

The fourth column shows the number of employees injured, the per cent of employees injured, the average number of employees injured per day, and the average number of minutes elapsing for one injured.

The fifth column shows the number of railway employees who are killed and injured, the per cent of killed and injured, the average number of killed and injured per day, and the average number of minutes elapsing for one killed or injured.

In other words, these figures show that the total casualties for 21 years from 1888, the first year after the establishment of the Interstate Commerce Commission, to 1908, inclusive, 56,516 employees lost their lives at the post of duty and 895,548 employees were either maimed or crippled. The total casualties reached the astounding figure of 952,064, an average for the 21 years covered of 45,336 a year.

These figures further show the number of employees in service and the proportion killed and injured. The falling off in the number employed, as indicated by the figures for the years 1894 to 1898, was due to the panic of 1893, as is the present apparent reduction due to the panic of November, 1907, and reflects one of the economies introduced by the railway managements during the hard times following this financial crisis. The per cent column for employees killed clearly indicates the constant recurring death risk of the railway employee. There is hardly any perceptible fluctuation of this ratio for the years shown and means, approximately, that one employee out of every 400 in service was killed each year. The proportion of injured has gradually increased each year, until for 1908, the last year covered, 5.72 per cent given indicates that 1 employee out of every 17 in service is injured, or that an employee in the service of a railway for 10 years has an even chance of being injured. The columns showing the number of minutes elapsing for each casualty and the average number of casualties per day demonstrate that approximately in every seven minutes of every hour of every day for the last five years named 1 employee was killed or injured. During the 21 years covered the average was 1 killed or injured for every 14 minutes of this entire period. The average killed each day for the whole period covered was 7 and the average injured 117.

Compare these figures with the returns of some battles in the Civil War, and remember that among the men who are not employed to fight, but to move the daily traffic of the Nation, there are no returns for "missing."

Shiloh, or Pittsburg Landing, Tenn., Apr. 6–7, 1862.

[Figures made up in Pension Office.]

	Killed.	Wounded.	Missing.	Total.	Killed and wounded.
Union loss	1,754	8,408	2,885	13,047	10,162
Confederate loss	1,723	8,012	959	10,694	9,735
Total	3,477	16,420	3,844	23,741	19,897

Union victory.

Gettysburg, Pa., July 1–3, 1863.

	Killed.	Wounded.	Missing.	Total.	Killed and wounded.
Union loss	3,070	14,497	5,434	23,001	17,567

Union victory.

Antietam, Sept. 17, 1862.

	Killed.	Wounded.	Missing.	Total.	Killed and wounded.
Union loss	2,108	9,549	753	12,410	11,657

Union victory.

It is said that more men were killed on the above date than on any other one day during the Civil War.

Wilderness, Va., May 5-7, 1864.

	Killed.	Wounded.	Missing.	Total.	Killed and wounded.
Union loss	2,246	12,037	3,383	17,666	14,283

Confederate victory.

Malvern Hill, Va., July 1, 1862.

	Killed.	Wounded.	Missing.	Total.	Killed and wounded.
Union loss	397	2,092	725	3,214	2,489
Confederate loss, killed, wounded, and missing				5,355	
Total				8,569	

Vicksburg, Miss.

	Union loss.				
	Killed.	Wounded.	Missing.	Total.	Killed and wounded.
May 19, 1863	157	777	8	942	934
May 22, 1863	502	2,550	147	3,199	3,052

Confederate victory.

The siege of Vicksburg continued until July 4, 1863, when it was surrendered to the Union forces.

Atlanta, Ga., 1864.

	Union loss.			
	Killed.	Wounded.	Missing.	Total.
Campaign May 5 to 31	1,458	7,436	405	9,299
Campaign during June	1,125	5,740	665	7,530
Campaign of July	1,110	5,915	2,694	9,719
Campaign during August	453	2,318	466	3,237
September 1	277	1,413	212	1,902

Making a grand total of 4,423 killed, 22,822 wounded, and 4,442 missing during the campaigns of these months.

In the above are included numerous battles, amongst others Rocky Face Ridge, May 5–9; Resaca, May 13–15; New Hope Church, May 25; Dallas, May 28–31 and June 1–4; Kenesaw Mountain, June 20–30; assault on Kenesaw, June 27; Peach Tree Creek, July 20, etc.

First Bull Run, or Manassas, Va., July 21, 1861.

	Killed.	Wounded.	Missing.	Total.
Union loss	470	1,071	1,793	3,334
Confederate loss	387	1,582	13	1,982
Total	857	2,653	1,806	5,316

Confederate victory.

Second Bull Run.

	Killed.	Wounded.	Missing.	Total.
Union loss (Aug. 16–31, 1862)	1,747	8,452	4,263	14,462
Confederate loss (Aug. 21 to Sept. 2, 1862)	1,481	7,627	89	9,197
Total	3,228	16,079	4,352	23,659

The above includes engagements at Rappannock, Chantilly, and Bristoe Station. Confederate victory.

At the battle of Fredericksburg, Va., December 11–15, 1862.

	Killed.	Wounded.	Missing.	Total.
Union loss	1,284	9,600	1,769	12,653
Confederate loss	596	4,068	651	5,315
Total	1,880	13,668	2,420	17,968

Confederate victory.

The necessary factors of railroad operation are sentient and insentient—human beings and the tools and materials with which they work. Both are subjected to wear and tear; both are wasted in the performance of their functions. The railroads bear the expense of repairing and replacing the waste of their insentient instruments of operation—the wear and tear of roadbed and track, bridges and buildings, locomotives and cars—but for the 953,063 men killed and injured in 21 years they have no concern. It is but too probable that ere the next bunch of railroad returns are gathered and compiled an additional 63,900 men will either have lost their lives or have been maimed in railroading, so that in 22 years the railroads will have wrecked the lives of 1,066,000 men, and have then let them sue, instead of paying them compensation for their injuries. The waste of human life and limb, the wear and tear of that active, intelligent army of human beings whose labor alone makes their operation possible is not a necessary item in the expense account of railroads.

Acting under the authority conferred by section 20 of the act to regulate commerce, the Interstate Commerce Commission promulgated a classification of operating accounts to be kept by carriers by rail. Possibly the most important method introduced were the depreciation accounts, created for the purpose of providing a fund for the replacement of equipment when retired from service. These depreciation accounts are maintained by making monthly charges direct to operating expenses based on the average life of the several classes of equipment affected and crediting these amounts to a replacement fund.

The carriers maintain a fund for the replacement of the insentient factors of operation that are worn out or wrecked and have to be consigned to the scrap heap. But the human being, our fellow citizen, of whom one risks being killed or injured every time seven minutes of the day or night elapse, if wrecked, as a consequence of his professional risk, so as to make him unfit for further service, is cast aside, and the carrier assumes no responsibility whatever for his condition. He must assume his own risk, must bear his own damage, as though it occurred by reason of his fault or his negligence, when, as a matter of fact, his damage is as much the result of the operation of the property as is the damage to locomotives and cars, bridges and buildings, roadway and track, for all of which the carrier provides without question.

The couplers which keep the trains together and make the vast commerce of the country possible are inspected by the carriers and in part by the Government. Skilled employees are required to make this movement possible, without whose aid, without whose intelligence, and without whose energy and watchfulness the entire commerce of the country would lie stagnant and become impossible, bringing about starvation and misery. Yet these employees, when injured through no fault of their own, through a regularly recurring risk, which is an incident of the employment, are cast aside, and no effort is required by law of the carriers to heal or repair them; these men are abandoned and are left without compensation. When broken in body, maimed, and injured, they are forced, under the most disadvantageous circumstances imaginable, to combat the carriers whose commerce they have been pushing through the country.

Every statement herein made can be confirmed. The professional risk—that is, the inherent liability of any person employed in railway traffic being killed or injured—is a permanent and continuous risk. It is a risk which the man can not shift, as is shown by the above tables of the steadily recurring numbers of men killed. In case of death by a railroad accident no question of the employees' inattention, stupidity, carelessness, or similar defenses urged by the defenders of corporate selfishness can well be urged. It is as much a part of the business of the carrier to pay for the injury of the person who handles the traffic as it is to replace the various items of inanimate transportation which I have heretofore mentioned.

I have referred to the safety-appliance acts. I have shown that the Government inspects couplers. The statistics of the Interstate Commerce Commission, in pursuance of the execution of this law, show that the accidents from that particular cause of casualties have decreased. Yet in spite of this decrease from this particular source the slaughter goes on and has increased in other forms of railway activity, showing that the palliative influence of the safety-appliance law, or of all similar laws, is not sufficient to compensate our fellow citizens who are engaged in handling this great commerce of the country from the risks which they are bound to bear. To state it in another form, where a regularly recurring per cent of our fellow citizens is maimed and killed it is the duty of the Nation to force the enterprise itself to bear the expenses involved therein. I may say that I do not care whether the railroads recoup themselves for the additional expense involved in paying just compensation to their employees by raising the rates, or by charging extra passenger fares, or by decreasing the amount of free baggage that they haul, or by declaring smaller dividends.

Mr. Samuel Gompers, president of the American Federation of Labor, in addressing the meeting of the National Civic Federation on November 22 last, on the subject, "Should industry bear the burden incident to industrial accidents," said:

"As to whether the industry itself should bear the risks of accidents to employees or whether society as such should bear the burden is of lesser consequence than that the burden should not be borne either by the injured workman or the family of the workman killed.

"We speak of the imposition of the risks and burdens of accidents upon employers as if the employers really would pay the compensation, or even liability, out of their own pockets. The fact of the matter is that whatever the cost of the finished product may be, the land, the plant, the machinery, the raw material, wages to workmen, insurance, taxes, are all of them counted in the price for which the employer sells his product, and if intelligent, comprehensive employer's liability or compensation were the fixed principle of the industry, the employers would count that as a fixed charge with which they must count and reckon in placing a price upon the finished product; so that, as a matter of fact, that feature of it is simply absurd to hold that that is an objection to the introduction of more liberal employer's liability or compensation laws.

"It is a common phrase in which so many indulge, 'The immense risks which employers are compelled to meet.' No one who has an intelligent understanding of industrial and commercial conditions will minimize that fact, but side by side with the risks of employers should not be forgotten the risks of labor."

But let us examine the reports of the Interstate Commerce Commission with respect to the finances of the railroads and see how the plan of compensation which I provide in the schedule of my bill would affect the roads. The operating revenues for the year 1908, according to the said report, amounted to the enormous sum of $2,393,805,989, and the net corporate income amounted to $395,902,474 for the said period, which amount was placed at the disposal of the boards of directors of the railroads for the payment of dividends and other corporation expenditures. Of this amount there was appropriated the sum of $271,328,453, to be paid in the shape of dividends on the excessively overcapitalized, or "watered stock," if you please, $28,086,454 for additions and betterments to the property, and $21,635,182 as appropriations to reserves and miscellaneous items, leaving a tremendous balance of $74,852,385 to be carried forward to the credit of profit and loss. But no part of this tremendous corporate income, not even a penny thereof, was given to the great army of the maimed and crippled railroad employees, nor to the dependents of those employees who were killed in service—the railroads protected by the ancient, vicious, and barbaric legal doctrines of "contributory negligence," "assumption of risk," and "fellow servant," left unnoticed the "scrap heap" upon which these unfortunate people are thrown under the present industrial system. The operating expenses of the railroads in the United States for the year 1908 amounted to $1,669,938,717. I contend that to carry out the schedule of compensation which I have drafted as a part of my bill will under no circumstances require an expenditure exceeding 1½ per cent of the operating expenses, which, if added thereto, will certainly leave an entirely sufficient and even a great amount of money in the coffers of the railroads to be distributed as dividends on the "watered stock," and enough money will be left to apply to their reserve funds.

From this computation it must be understood that I have not given any consideration to the cost of maintaining the great and expensive legal departments which handle all personal-injury suits. This cost, a tremendous item in itself, running up into many millions of dollars annually, will be greatly diminished. Therefore to say that the railroads can not meet this additional cost necessarily involved in the compliance with the provisions of this bill is utterly absurd. The absurdity is glaring when it is taken into consideration that the system of compensation proposed in my bill will limit the amount of compensation or annuity to practically small payments according to the nature and extent of the injuries sustained by the employee, or in the event an employee is killed, then certain, definite, limited, and reasonable annuities are payable to his dependents who survive him, which payments, however, cease upon the remarriage of the widow, and to such children as attain the age of 16 years, except in such cases where the surviving children are physically or mentally incapacitated from earning their own livelihood. Besides the probabilities of large verdicts will be avoided, and a greater and better efficiency will result in the ranks of the employees, who will realize and appreciate that if any accident should happen to them while at work they and their dependents will be saved from the "scrap heap," and thereby the safety of the traveling public will be increased.

Strikes do not take place every day. Riots, such as were claimed by the railways to have been caused by the American Railway Union in Chicago, are not of daily occurrence, but the movement of freight trains and of passenger equipment is of hourly and daily occurrence to an extent undreamed of by a person who has not watched it, and when in this regularly recurring series of movements of trains one man is killed or injured every seven minutes of every hour of every day and night, his children are left to starve; his widow may be forced to sell all she possesses; the standard of life of four to six people is lowered and an American family is put on the "bum" while the courts for 8 or 10 years are blocked with wrangle of counsel and the pounding out of new distinctions of a law which is archaic, which was unfair when created, and which has become disastrously reactionary when enforced at the present time under modern industrial conditions. The systematized injustice, the denial of justice caused by the enforcement of antiquated laws—laws which the English, who originated them, have long since discarded as inept, as dangerous to their commercial progress—are retained by us as bulwarks of corporate resistance to social betterment and civilizing uplift.

We talk of the enlightenment of the American. We find it necessary to support missionary societies to carry the Gospel to heathen countries. We send thousands of school-teachers to the Philippine Islands; we send battleships to Asia Minor to protect American colleges against the outrages of the Turk, when it is a fact that America and Turkey stand preeminent in this, that no federal or national compensation acts prevail in either Turkey or the United States, and that on the rest of the Continent the theory which formerly prevailed in England and which now prevails in these United States has been utterly discarded, abolished, and cast aside as antiquated and unfair, as antisocial, as un-Christian, and as dangerous to the modern industrial state.

The tendency of modern civilization in standardizing all things that are in daily use, in fixing the thread on the screw so that the screw that is turned out in Manchester or in Pittsburgh will fit; that the bolts which are put in the bridge at the bridge works in Pittsburgh will fit when laid down on the great bridges across the Nile at Atbara, require such close calculation that commercial progress and national efficiency in the last instance depend upon the perfection of the ways of communication. The country whose railroads, canals, and waterways are most efficient will ultimately win. The size of the country and its resources are nothing as compared with its efficiency. Its efficiency depends directly upon the ease with which the forces necessary to handling the commerce are recruited. Consequently, in a country so vast as ours, where in many instances the only highway known to two generations has been the railway, success depends directly upon the efficiency of this method of communication.

When, therefore, whole classes of citizens have been crushed out, thrown aside as scrap, the feeling of resentment against the carrier harms its efficiency and thereby hurts the national thrust forward in international commerce. For every pensioner that the United States Government maintains in every hamlet and wayside station, we may be assured that the broken families and wrecked men and the memories of some uncompensated loss feed an undying dislike, hatred, or malignant hostility to the great and necessary railways of the country, and indirectly against the country that has permitted 953,063 men killed or injured to be cast aside as scrap without providing permanent and just compensation. The excuse has been that the country was growing and we had no time to regard these problems.

We can only take up one or two things in a generation and settle them, but the time has come when it becomes necessary for us to seriously weigh the danger of permitting corporate cupidity to continue a system of licensed butchery and murder, of permissive breaking up of families, of degrading the standard of American citizenship infinitely worse than the slavery which was broken up 40 years ago, because that was confined to a small group, which inevitably was bound to come to encounter the economic progress of the rest of the world, restricted in area, whereas our present system, if continued, will inevitably lead to a growth of a feeling that a class, comprising a million and a half of men, consequently seven and a half million of American citizens, is being discriminated against, while the freight that they move and the passengers that they haul are to obtain the most favorable consideration at the hands of this body.

Should my bill (H. R. 25334) be passed, the persons who are injured have their choice of remedies. They can either sue in the courts as heretofore, bearing the burden of the proof, or else they can take the compensation which this act will provide for their relief.

The countries that have progressed most materially within the last generation have been those countries which have cast aside the reactionary and antiquated forms of compelling the workingman to sue, or compelling their citizens or subjects to go to law for damages, when compensation should have been paid to them by the enterprise which caused the injury as a necessary professional risk.

I desire to read a few statistical figures from the Atlas and Statistics of the German Labor Insurance, by Dr. G. A. Klein. It was published as part of that wonderful showing made by the German Government for the World's Fair in St. Louis (1904), and, of course, I do not claim it to be up to date. The hurry in which these data were collected must also be taken into account. These figures are from page 19, summary 111, "Income, expenses, and capital":

Accident insurance of German Empire.

Year.	Income.			Expenditures.					
	Income, total.	Contributions of employers.	Interest and other income.	Total expenditures.	Indemnities, total of.	Process of restoring to health.[1]	Payments, etc., during time of waiting.[2]	Hospitals and sanitaria.[3]	Annuity to family.[4]
1885	$239,015	$234,761	$4,254	$239,015	$4,762	$5	.....	.....	.....
1890	10,121,561	9,233,756	887,808	6,336,433	4,843,637	194,935	$8,591	$221,621	$67,821
1895	17,556,011	15,285,635	2,270,367	14,398,515	12,005,229	313,529	75,292	570,485	146,519
1900	25,098,039	21,844,484	3,253,555	24,008,647	20,789,671	483,434	166,984	797,342	199,191
1901	30,158,889	26,654,186	3,504,703	27,129,855	23,633,669	548,006	177,373	887,894	234,947
1902	33,651,804	29,907,868	3,743,936	29,701,662	25,735,679	599,778	164,167	969,139	268,247
1885–1902	278,614,331	246,231,383	32,382,949	231,206,097	19,338,374	5,233,979	1,262,251	8,254,516	2,682,472
[For every $100 income and expenses each column is proportioned in per cent.]									
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*
1886	100.00	96.76	3.94	100.00	37.44	2.29	.....	2.14	1.07
1891	100.00	90.51	9.49	100.00	78.32	3.06	0.13	3.58	1.06
1901	100.00	88.38	11.62	100.00	87.11	2.02	0.65	3.27	0.87

Year.	Expenditures.							Capital on hand.
	Payments for injuries.						Total expenses for administration.	
	Annuities.	Cash payments (German subjects).[5]	Death or burial moneys.	Annuities, for survivors.	Cash payments to widows in lieu of annuities.[6]	Cash payments in lieu of annuities for foreigners.[7]		
1885	$35	.....	$2,610	$2,112	.....	.....	$234,252	$1,897,098
1890	3,222,175	.....	66,602	974,372	$57,834	$29,750	1,492,736	15,663,732
1895	8,402,882	.....	75,972	2,281,230	97,818	41,412	2,393,328	34,128,248
1900	15,048,155	$15,729	116,967	3,748,500	137,564	75,684	3,218,950	40,429,060
1901	16,951,697	379,841	138,350	4,108,594	158,508	48,552	3,496,220	43,458,086
1902	18,653,488	330,339	128,877	4,422,040	160,174	48,270	3,966,032	47,408,172
1885–1902	136,613,254	725,909	1,364,168	35,641,690	1,487,262	603,330	37,822,246	47,408,172
[For every $100 expenditure each column is proportioned in per cent.]								
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*	*Per cent.*
1886	20.41	.....	2.46	8.17	0.17	0.13	62.56	.....
1891	53.31	.....	0.91	15.65	0.76	0.36	21.18	.....
1901	62.48	1.40	0.51	15.14	0.59	0.18	12.89	.....

[1] Free medical treatment, medicines, and other remedies outside of hospital treatment, as well as crutches, braces, and like appliances.
[2] During the first 13 weeks after the accident, during which time he is taken care of under sick-insurance laws.
[3] In place of free medical treatment and annuity payments the injured person may be taken care of in a sanitarium.
[4] The family of an injured person placed in a sanitarium receives same annuity as though he had been killed.
[5] If incapacity to earn living is 15 per cent or less, the annuity charge may be paid in one anticipated payment (since Oct. 1, 1900).
[6] On remarriage.
[7] Injured foreigners giving up their domicile in the German Empire may, on their motion, be paid off in full by threefold amount of annual annuity.

Table showing professional risk of railroad employees and workmen, Prussian-Hessian State railways. (From Archiv für Eisenbahnwesen for 1908, pp. 104, 105, and 108.)

Injuries (or death).	1906	Number for every 1,000 persons insured.									
		1897	1898	1899	1900	1901	1902	1903	1904	1905	1906
Transitory incapacity to earn livelihood	812	1.48	1.47	1.68	1.86	2.08	2.31	2.31	2.22	3.11	2.77
Permanent limited incapacity	1,012	3.51	3.68	3.87	3.84	4.06	4.10	4.27	4.14	3.59	3.45
Complete incapacity	177	.75	.62	.75	.73	.68	.70	.81	.76	.66	.60
Followed by death	400	1.43	1.67	1.47	1.58	1.48	1.48	1.39	1.39	1.44	1.37
Total	2,404	7.17	7.44	7.77	8.01	8.30	8.59	8.78	8.51	8.80	8.20
The following industrial associations had for every 1,000 employees insured the following killed and injured:											
Northwest Iron and Steel Industrial Association	.....	9.20	9.13	10.13	10.08	10.11	11.61	11.06	11.48	11.48	.....
North German Lumber Industrial Association	.....	11.01	11.43	12.17	11.73	12.23	11.56	11.52	11.28	11.35	.....
Millers' Industrial Association	.....	11.77	13.27	14.30	13.70	14.37	14.85	15.67	16.18	16.24	.....
Wagon and Transport Industrial Association	.....	17.51	17.81	15.87	14.81	20.82	19.60	22.75	21.31	23.77	.....
Mining Industrial Association	.....	12.09	12.77	12.10	12.19	13.06	13.53	14.59	15.46	15.53	.....
Rhein Westphalian Mine and Mills Industrial Association	.....	10.25	10.92	12.03	12.82	12.95	13.89	14.52	15.54	14.60	.....
Brewing and Malting Industrial Association	.....	12.01	12.11	12.31	13.67	13.46	13.32	14.43	14.85	14.61	.....

In 1906, 31,088 persons received $1,492,736 compensation within a few weeks of their injuries, payable from the earnings of the Prussian-Hessian State railways on a mileage of 20,848 miles.

Is there a doubt in the mind of any one of those to whom my words are addressed that the English were forced to give up the barbarous and archaic jurisprudence based upon the common-law system of master and servant by the stress of German competition? Their trades-unions, their system of allowing men's savings to be robbed by speculators, their intense effort to better this by the friendly societies acts and registration acts and the companies acts, all show the futility of applying the theory of laissez-faire in the modern industrial state, in which the employee with his muscles and intelligence stands opposed to the great masses of capital organized in heartless and necessarily efficient corporations.

In Germany and other European countries the percentage of killed and injured workmen upon the railroads is less than 50 per cent of that of the United States. Why? Because there the railroads are made by law responsible to the injured employee, or in the event of his death resulting from injury, then to his dependents, by a system of humane, just, fair, and equitable workmen's compensation law. Under this law the railroads have no recourse to any such defenses such as contributory negligence, assumed risk, nor the doctrine of fellow servants. That law has made the officials of the railroads to be *more careful*, and they have adopted stricter rules with respect to the operation and movement of traffic, and they are doing all in their power to prevent the occurrence of accidents voluntarily and without being forced to do so by the State or Government. To-day they exercise more care and caution for the safety of their employees than they do for their equipment and rolling stock. Before the enactment of this law the railroads in those countries had directed their efforts chiefly to the prevention of damage to their properties—they pursued the same course as our railroads are now doing—placing a higher and greater value upon property than upon human life, because they are obliged to repair and replace the equipment at their own cost.

In this country, if you will say that the railroads shall be held primarily responsible for damages for injuries sustained by their employees, or we will say that they must repair broken bones as they do damaged cars; but they must care for their employees on the general principle of humanity, and with the same promptness as they care for their rolling stock and other tangible property; and that when an employee is either injured or killed, neither he nor his dependents shall be thrown upon the "scrap heap," as is the case now, because the railroads can draft new recruits without paying the least attention to what becomes of those who are so discarded; and if you will say that the railroads must pay for the lives that they have destroyed, I am satisfied that within three years we will have 50 per cent less of the maiming and killing of employees of railroads alone, and the great number of fatal wrecks will be 50 per cent less, and, as a further sequence, the lives of thousands of passengers will be saved annually by reason of the fact that travel will be made less dangerous because of the increased efficiency of railroad employees and the greater degree of care exercised by railroad officials in the movement of traffic upon their railways.

The rate in the following table will show certain percentages in respect of railroads in the United States of group 2. This statistical group includes the mileage west of the Hudson River and the New York Central, up to Salamanca, to Pittsburgh, and from Pittsburgh to Parkersburg, and from Parkersburg down the Potomac and to the Capes and back again to New York. The territory includes and the mileage corresponds closely to that of the Prussian-Hessian railways. (See Senate Hearings on Railway Rates, 1905, Appendix IX, 59th Cong., 1st sess., No. 244, pt. 2, p. 13.)

Years.	Number of employees in service.		Total mileage operated (single track).		Number of employees per 1,000 miles of line.		Employees injured.						Employees killed.						Total employees killed or injured.					
							Number.		Ratio to number in service (per cent).		Number per 1,000 miles of line.		Number.		Ratio to number in service (per cent).		Number per 1,000 miles of line.		Number.		Ratio to number in service (per cent).		Number per 1,000 miles of line.	
	A.	B.	A.[1]	B.[2]	A.	B.	A.[3]	B.	A.[4]	B.	A.	B.	A.[3]	B.	A.[4]	B.	A.	B.	A.[3]	B.	A.[4]	B.	A.	B.
1907	401,725	486,318	23,886	22,095	16,819	22,010	12,100	1,044	3.01	0.21	507	47	1,179	526	0.29	0.11	49	24	13,279	1,570	3.30	0.32	556	71
1906	373,526	448,035	23,681	21,823	15,773	20,530	10,455	951	2.80	.21	441	44	1,126	512	.30	.11	48	23	11,581	1,463	3.10	.32	489	67
1905	335,237	413,508	23,281	21,421	14,399	19,304	9,256	877	2.76	.21	398	41	909	416	.27	.10	39	19	10,165	1,293	3.03	.31	437	60
1904	322,698	392,641	23,022	21,017	14,017	18,682	9,222	870	2.86	.22	401	41	952	401	.29	.10	41	19	10,174	1,271	3.15	.32	442	60
1903	326,782	373,551	22,759	20,669	14,358	18,073	8,844	755	2.71	.20	389	36	1,010	346	.31	.09	44	17	9,854	1,101	3.02	.29	433	53
1902	290,363	356,174	22,053	19,863	13,167	17,932	7,572	653	2.61	.18	343	33	835	320	.29	.09	38	16	8,407	973	2.90	.27	381	49
1901	267,024	352,752	21,881	19,434	12,204	18,151	6,449	664	2.41	.19	295	34	768	323	.29	.09	35	17	7,217	987	2.70	.28	330	51

NOTE.—Columns "A" represent United States railways in Group II. Columns "B" represent Prussian-Hessian State railways.

[1] On June 30 of year named.

[2] At the end of the year named.

[3] Represents accidents resulting from the movement of trains, locomotives, or cars.

[4] The number of employees used in the computation of this ratio includes employees of all classes, as the number of employees whose duties directly expose them to accidents resulting from the movement of trains, locomotives, or cars is not available.

The following figures will show the number of casualties occurring to a million travelers a year—the German railroads are the safest; this table is published by the German Versicherungs Zeitung, a prominent insurance journal, which indicates that German railroads are the safest of all. On the basis of the latest statistics it is shown that among every million railroad travelers a year the following casualties occur in various countries:

	Killed.	Injured.
Germany	0.08	0.39
Austria-Hungary	.12	.96
France	.13	.18
Great Britain	.14	1.94
Switzerland	.15	1.12
Belgium	.22	3.02
United States	.45	6.58

In other words, the number of fatal casualties occurring to a million travelers in one year on the railroads of the United States are about five times more than in Germany, four times more than in Austria-Hungary, four times more than in France, three times more than in Great Britain, three times more than in Switzerland, and twice more than in Belgium.

And the proportion of the same number of travelers who are injured in one year is about as follows:

About 20 times more than in Germany, about 7 times more than in Austria, about 53 times more than in France, about 4 times more than in Great Britain, about 5 times more than in Switzerland, and about twice as many as are injured on the railroads in Belgium.

There is a tremendous financial waste which results from the litigation of personal-injury suits. It is conservatively estimated that but 14 per cent of the moneys which are expended in this class of litigation, including, of course, the judgments awarded on the verdicts, ultimately reaches the plaintiff. The astounding waste amounts to 86 per cent, which provides, of course, for the payment of the verdicts, all the expenses involved in the defense and prosecution of these suits, and the fees of counsel for both sides in these controversies. But the 14 per cent of such moneys which eventually reaches the lucky suitors is practically minimized, because, as a matter of fact, the major portion of this 14 per cent goes to a small percentage of fortunate suitors, who obtain in some rare cases large verdicts. Does it not strike you favorably

what great good would come from this tremendous waste if it would be fairly and properly distributed among the vast number of victims of industrial accidents?

Every employer, every manufacturer, every producer, and every corporation is bent on eliminating, or at least minimizing, any possible occurrence of waste in the cost of production and sale of the commodities which are manufactured. No attempt, however, is made either by the employer or by the lawmakers to eliminate, or minimize, at least, the tremendous waste which must be borne primarily by the workman and in the last analysis by the general public in some form or other.

Over the bewildering progress of industry and commerce in this country there hovers a dark cloud, from which peer the specters of its victims who have been cast on the "scrap heap." The risks of the workmen have constantly increased, but the responsibility of the employers to respond in adequate damages for injuries sustained in hazardous occupations of workmen have diminished.

Employers of labor now find it convenient and expedient to shift the financial responsibility which they might incur by reason of industrial accidents to employees to so-called "indemnity" or "casualty" insurance companies, even though the responsibility so incurred might come squarely within the narrow opening still left available for the victims of industrial accidents by our courts from the extremely fine and delicate constructions of the antiquated doctrines of the common law which obtain in personal-injury litigation. These indemnity or casualty insurance companies, of recent origin, assume and take over all possible and probable risks of the employer for accidents to his employees in consideration of the payment by the employer to such companies of a premium. In the November (1908) issue of Everybody's Magazine, Mr. William Hard, a writer on economical topics, stated, as the result of an exhaustive study of indemnity and casualty insurance, that the employers of labor in the United States in 11 years paid the enormous sum of $99,000,000 in the shape of premiums to companies engaged in this line of insurance, so as to purchase complete protection for themselves from lawsuits which might be brought by injured employees or their dependents. Of this enormous sum only $30,000,000 was paid to injured workmen or their dependents. In other words, this shows a palpable waste of $69,000,000, or, to state it in other words, two-thirds of the premiums paid by the employers for insurance against claims for accidents sustained by their employees was retained by the indemnity or casualty insurance companies.

It is pertinent in this connection to quote some figures compiled by the New York State commission on employers' liability:

Percentage of actual payments and gross premiums received for employers' liability insurance for the years 1906, 1907, and 1908.

Name of company.	Total premiums.	Total payments.	Per cent.
Aetna Life Insurance Co	$5,417,444	$2,145,928	39.61
Employers' Liability Assurance Corporation	4,216,608	1,595,126	37.82
Fidelity and Casualty Co. of New York	3,010,497	1,186,991	39.42
Frankfort Insurance Co	1,321,775	490,015	37.07
General Accident, Fire, and Life Assurance Corporation	506,031	196,929	38.91
Standard Accident Insurance Co	1,502,985	683,937	45.50
United States Casualty Co	1,332,060	472,783	35.49
New Amsterdam Casualty Co	606,195	205,040	33.82
London Guarantee and Accident Co	2,739,036	695,487	25.39
Ocean Accident and Guarantee Corporation	2,870,954	887,523	30.91
Total	23,523,585	8,559,795	36.34

"From this table it is clear that on an average only 36.34 per cent of what employers pay in premiums for liability insurance is paid in the settlement of claims and suits. In other words, for every $100 paid out by employers for protection against liability to their injured workmen, less than $37 is paid to those workmen; $63 goes to pay the salaries of attorneys and claim agents whose business it is to defeat the claims of the injured, to the costs of soliciting business, to the costs of administration, and to profit."

Mr. Speaker, this system of "employers' liability" insurance, whereby the employer is enabled to shift his liability for injuries happening to workmen while engaged in their occupations to these casualty or indemnity insurance companies, is even more vicious and degenerate than all of the "judge-made" rules pertaining to the recovery of damages by the workman or his dependents for industrial accidents. This pernicious system of insurance, which permits the employer to evade his individual responsibility and liability, has a tendency to bring about a condition of disregard and neglect for the safety of the employees. Where a claim for injuries arises, these companies resort to every trick at their command to defeat the right to a recovery of damages by the workman or his dependents, and it practically severs the relationship between the employer and employee which might in some instances tend to effect a compromise in these cases. These companies do no consider the justice of the claims of injured workmen or their dependents; their objects are to settle claims for mere pittances and to contest to the limit every suit brought against an employer who holds a casualty policy. It matters little to them whether the injured workman or his dependents are suffering want and misery; it is even better that they do suffer; for in the end the unfortunate victims will be forced to settle their claims on the inhuman basis proposed by the company's claim agent. I warn you that this class of employers' liability insurance is a serious menace to our labor conditions, which is bound to bring strife and contention between labor and capital. I recall one case in particular which clearly demonstrates the tyranny of these companies. A manufacturer in Chicago retained in his employ a workman who was injured. The employee brought suit, and under the terms of the casualty policy the insurance company took up the claim for investigation. The investigation disclosed a clear liability, and an offer was made to the workman to settle the claim. The workman refused to consider the offer and his attorney brought suit to recover damages for the injuries sustained by the workman. During the pendency of this suit the plaintiff retained his position in the factory where he received his injuries. After numerous visits, during which he was continually harassed by claim adjuster of the insurance company which assumed the employer's liability, he finally ignored every overture made to him for a compromise of his suit. A few days thereafter the employer was notified by the casualty company that if the plaintiff was not discharged from his employment the company will find it necessary to cancel the policy of insurance against risk which the employer held in the company. The result was that the employer weakened and he discharged the employee. Why? Because the employee refused to accede to the terms of settlement proposed by the company which assumed the risk of the employer. Let me ask, How long will the American public tolerate such tyranny and despotism?

The enactment of my bill into law will have a tendency to stop the strife and contention which exists between the employer and employee under the present status of industry and legal jurisprudence, with respect to the payment of a fair and proper compensation to injured workmen or their dependents. Its tendency in this direction will not only be confined to the class of employments or accupations to which the regulative power of Congress applies, but it will prove the forerunner of "workmen's compensation" legislation in every State of the Union, and will comprise every occupation.

It will relieve the community from supporting hundreds of thousands of crippled, maimed, and disabled workmen and their families.

It will secure immediate relief and obviate the cruel and inhuman necessity now in vogue, to bring suit and wait many years for its final determination in the courts, during which time the entire burden of responsibility rests and must be borne by the injured employee or his dependents, who are thus left to shift for themselves, without any relief except such charity as may come to them from philanthropic sources.

It will prevent litigation, thus eliminating the enormous waste which results therefrom, and it will relieve the congestion caused by this class of litigation in our courts.

It will prevent perjury, which is rampant in all personal-injury suits, and the danger of excessive verdicts will be averted, only to be supplanted by a scale of compensation which is certain, definite, and limited, and is payable in the shape of reasonable annuities.

Through the pages of history it will be observed that humanity conquers ultimately. Through all the years that we have permitted this gross injustice to our workmen and their dependents, we have exerted our time and efforts in the interest of our vast industry only from a commercial aspect, but the greater, the nobler aspect—the human side of industry—we have shamefully and miserably neglected. The human side of commerce and industry is beginning to assert itself; in fact, I believe that the crisis is near where the present inadequate, unfair, unjust, and iniquitous system of recovery of damages for injuries sustained by workmen in the grind of industry and commerce must abdicate in favor of advanced and progressive thought and consideration for the human rights of our workmen. Our shame and miserable neglect can only be partially atoned; but let us do so by enacting a fair and reasonable, yet comprehensive, system of "workmen's compensation" law. I believe my bill to be such, and for it I bespeak your earnest and careful consideration.

In this same connection I desire to put in the RECORD the argument which I made in 1911 in support of my contention that Congress has jurisdiction to enact legislation of this character:

STATEMENT OF THE PROBLEM.

The theory upon which employers' liability legislation is based is a recourse to the courts whereby an action for damages is allowed.

The theory on which workmen's compensation is required of the industries causing recurring injuries is based on the recognition of the social obligations and its reciprocity toward the persons engaged in carrying on social effort. The two methods of regulation have nothing in common except so far as the employer in either system may become the object of litigation.

The reason workmen's compensation is the subject of present interest may be sought for by the fact that communities have come to see by a process of exclusion that in tinkering, modification, and amplification of the method whereby employers' liability is used as a method of repairing the loss to the persons injured in dangerous occupations is futile. Employers' liability is at present enforced by litigation, with all its hazards of delay, miscarriage of justice owing to appeals, and the bringing about of results which are not in accord with the duty of the modern industrial state, whose existence depends on a mass of dangerous occupations. It is impossible to conceive of litigation (and that is part of any employers' liability act) without antagonism between the employer and the employee. This furnishes an incentive for delay on the part of the employer. The unfortunate social effects on the witnesses for either side, the economic waste to the community, and finally, but foremost, the inadequate result flowing from the consequence of such litigation, in that instead of giving the injured workman, or if he is killed, his widow or survivors, prompt, just, and certain benefits, it confers on them nothing save a barren right of action which at best pits against one another those whose efforts should be directed toward the benefit of the entire community.

If, then, employers' liability means litigation and strife, a system of compensation for the injured, and for the survivors of those killed in the course of dangerous occupations, means social betterment, for these reasons: Compensation assures peace, while employers' liability foments strife. Employers' liability is a method of regulating violence. Every form of litigation, in its essence, is the result of an interposition of the State between two groups of persons requiring them to submit their difficulties to a court and thus avoiding self-help. No matter how finely worked out the methods under a system of employers' liability may be, their essentials are based on a crude, unscientific, inaccurate, and antisocial method of settling such matters as should be the subject of social settlement.

When a great industry regularly requires a recurring percentage of those engaged in it to suffer either death or injury, the relief which the present system awards to such persons does not conform to the standards of that duty which the Government in other phases of industrial life has permitted to be exercised on behalf of varied interests.

SCIENCE IN PLACE OF EXPERIMENTATION.

An employers' liability act promises verdicts which depend not upon the social loss which the community has suffered, and whose burdens may be accurately balanced in a number of years, but allows great sums to such successful litigants as manage to wedge through the narrow gate of an occasional verdict. These verdicts are rendered after years of litigation during which the persons most in need of relief have fallen in the social scale or have been broken up by the economic needs. A compensation act would, within a short time after the death of the breadwinner, pay a definite, certain, and reasonable sum as an annuity to the proper beneficiaries. Instead of the hazard of a large verdict occasionally meted out to a successful litigant, which must be paid from the current earnings of the industry, a compensation act, based on definite payments made in installments, would provide for a systematized elimination of all the sources of waste both on the part of the complainant and the industry, reducing the amount of friction, of social

discontent, envy, and dislike, and bringing about a system of industrial peace. A compensation act, instead of strife, litigation, and hatred, tends to bring about closer cooperation of employer and employee, and is a factor of efficiency in the work done which can not be reckoned in dollars and cents, unless one takes the whole industries of such countries as have successfully carried out such a plan and compares it with the work previously done by the same nation under conditions analogous to our barbarous form of master and servant liability.

My bill affords due process of law. It changes the method of admission of evidence as to what constitutes the causes of injuries. Congress has as much power to prescribe the rule of evidence as the courts had to import into the Federal jurisprudence the State law on negligence; and that is all that is done in excluding questions of negligence.

The Federal courts have no general or common law that Congress can not change. No one has a vested right in a rule of law, and least of all in a rule of the common law evolved after the Constitution went into effect. The only rights protected by the fifth amendment are such as natural persons could exercise and be protected in; that was what the framers of the Constitution could have had in mind. The framers of the Constitution could not have meant to safeguard the rights of mere creatures of the law to maim those upon whom by subsequent amendment national citizenship was conferred.

The rule of negligence is not and was not protected by the fifth amendment, because at that time it had not come into existence. The regulation of commerce was in the minds of the framers of the Constitution, and since the Supreme Court held in the Employers' Liabilities cases (207 U. S.) that (within limits) that power controlled the relation of master and servant, the extent of its exercise is a matter of congressional discretion and power.

The rule of negligence is, however, based on the theory of the exclusion of material evidence, namely, the professional risk inherent in these occupations. This is merely evidence or procedure, and can and must be regulated by Congress, because the inferior courts have no inherent power to maintain that as a rule of evidence which Congress legislates shall not hereafter be considered as evidence. Congress can require the courts to give heed to the evidence of inherent danger. Congress can require in every case brought before Federal courts a direction of a verdict for the employee, whenever it shall have appeared that he was solely and only engaged in the service subject to Federal regulation, and has not voluntarily injured himself for the purposes of being made a subject of compensation. The Congress has ousted the Federal courts of the rule of assumption of risk in the case of violations of the safety-appliance acts. (Section 8 was drafted by Senator White, of Louisiana, now Chief Justice.) In the new employers' liability acts the defenses of contributory negligence and assumption of risk have been shorn of their power to do harm, and thus, by cutting down the power of using obsolete theories of law, Congress has made a beginning, now logically sought to be carried out, to require all those that maim to pay, by saving them the need of litigating.

ON POWER OF TAXATION.

Exercise of the power of taxation in and of itself is due process of law. The taxes are for a public purpose. Taxation under the Veazie Bank case may be used to drive the privately-owned railroads out of existence, and any less amount of taxation is as proper when used on behalf of the employees as it was when used on behalf of national bankers to help the sale of United States securities. The power of Congress under the first clause of the fifteenth amendment has not heretofore been used.

This clause provides as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States," etc.

Neither was the power to regulate commerce, now so extensively invoked, brought into play for a long period of time. Yet that is no reason against this power being now used to change the status of the employees. That is what is proposed by this bill.

The power of changing the status of employees of mail carriers is a political question (by declaring the employees public servants and their services public services) not subject to the denial of due process of law. The exclusion by the courts of evidence of the inherent danger and the resting their ruling on the so-called negligence is nevertheless subject to legislative change.

In regulating the status of employees of carriers operating on mail routes Congress would be conferring due process on both master and servant, while the rules of law heretofore invoked in master-and-servant cases have been denying the elementary rights of adducing evidence to the disadvantage of the men at risk.

If the courts may under the judicial power group into a common employment all those employed by a common master, for the purpose of denying them damages, Congress must have the same power to group together all those (included by the opinion of the Supreme Court) in Employers' Liability cases under a common employment, with those engaged with the servants of mail carriers, to grant them compensation for professional risks.

The combination in one bill of powers drawn from various sources of the Constitution is as permissible in the interest of those at risk as it was to create railroads in the Union Pacific cases under the claim that they were needed to protect the military and postal service of the Government.

DELICTS.

The maiming and killing of persons is a delict. It may be made the subject of a fine. This fine may be amerced on the tort-feasor, actually the person committing the injury, or the operating influence; i. e., the corporation. In fining the corporation there is no element of fault or negligence safeguarded by the fifth amendment, so as to preclude the Congress from determining what shall be deemed to be a proper amount of compensation to be paid by the tort-feasor. The proceeds of the fines, whether called fines or common-law deodands, are purely within legislative power, and may either be used to pay governmental purposes or may be used in the legislative discretion to pay those maimed by unavoidable injury produced by the inherent danger.

There is certainly power, it is submitted, to make absolutely liable the wrongdoing car or locomotive, irrespective of its intent, or of the operator's intent in handling it, and giving a lien to the person injured or to the Government for the injury done. And the company can not complain if the amount so to be paid is transmuted from the car or locomotive to the other property of the company by public law. If the United States could create, irrespective of intent, a liability in the company causing damage by criminal proceedings due process is not taken away by making it liable for the damage done, irrespective of negligence. It resolves itself merely into a question of power.

The power of taxation may as properly be exercised in favor of one class of public servants, conserving commerce, as it may be invoked for the end of pensioning those who preserved our Union. The disposition of the proceeds of taxation is purely a matter of legislative discretion.

SPECIAL BODY OF THE JUDGE-MADE LAW.

Contributory negligence: If the employee who is injured has failed to use reasonable care, and that neglect contributed to his injury, he can not recover from his master in action at law, unless he can show his freedom from negligence. This rule of law was changed by the act of 1908.

Fellow-servant rule: If the employee be injured by the negligence of a fellow-servant, that fact will bar his recovery under the present class rules laid down by the courts, basing the same on Priestley *v.* Fowler (1837, 3 M. & W., 1), Abinger, C. B., in the court of exchequer, followed in Farwell *v.* Boston, etc., Railroad Co. (4 Metc., 49, 1842, by Shaw, C. J.). In the Priestley case Lord Abinger put the exception he was creating on inconvenience to masters to pay damages:

"The inconvenience, not to say the absurdity, of these consequences afford a sufficient argument against the application of this principle to the present case. But, in truth, the mere relation of the master and the servant never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do of himself. He is no doubt bound to provide for the safety of his servant in the course of his employment to the best of his judgment, information, and belief. The servant is not bound to risk his safety in the service of his master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself; and in most of the cases in which danger may be incurred, if not all, he is just as likely to be acquainted with the probability and extent of it as the master."

Assumption of risk is a vague and shadowy scheme of class justification, constantly shading into contributory negligence. The courts construe in the employee's contract of service an engagement to assume and consent to the ordinary and obvious risks incident to the employment, and if the servant is injured thereby he can not recover from his employer; for the ordinary and inevitable risks of the trade (the so-called professional risk), the accidents which are nobody's fault, the employer does not pay. But assumption of risk covers not only those risks which could not be avoided by the care of the employer, but also, if the employee knows of dangerous possibilities of his work (though such danger arises by neglect or fault of his employer, even amounting to the violation of the mandatory requirements of a statute), and if the servant, appreciating the dangers, does not at once throw up his job he consents thereto by continuing in such employment, then he can not recover when injured by such a risk.

As a matter of fact, this is another form of class justification for an obvious wrong, as it is contrary to the fact that workmen ever consent or bargain about the hazard risk. They work at these dangerous trades because of economic need, and the "assumption" of the risk and the "implied contract" are both fictions of the courts to perpetuate class exploitation without requital. The economic determinism of the courts in crushing labor, rather than hurting the chances for the budding industries, are part of the whole system of class domination, always finding justification in the courts or in those in authority. The development of these pernicious and disastrous doctrines was profoundly influenced by the belief of the courts that the necessity of profits of the masters owning the enterprises demanded protection at the hands of the State, even though the laborers, who then did not have political power at all, should for a few generations be decimated.

Now, it strikes us all as totally unjust that the employee should bear that which inheres in the cost of the product, and that his injuries are never a voluntary injury (in the sense that he would prefer to be maimed or killed than not to be so), and if workmen have as high a value for the integrity of their lives and limbs as we have, then the present system of requiring an action based on the theory of fault is totally misplaced, economically false, and juristically unjust, as well as sociologically indefensible, as long as we pretend to treat these men, not as slaves to be exploited, but as fellows in political life and in part the source of our power.

DISSATISFACTION WITH THE PRESENT SYSTEM OF EMPLOYERS' LIABILITY.

1. The system evolved by the courts has brought it about that only a very small proportion of the workers killed or injured by accidents of employment receive substantial damages or any compensation, and therefore they and their families and dependents as a rule are degraded in their standards of living and fall a burden to the community and are objects of either public or private charity after a useful, socially effective life.

2. The system so evolved by the courts benefits no one, clogs the courts with actions, hinders justice, is expensive to the Government, burdens the employers with litigation, makes perjurers of people, and when all is said and done is of small benefit to the employees, even when some of them do obtain the verdicts paid after years of litigation.

3. The delays incident to all lawsuits, where a poor man's purse is matched against a wealthy corporation's exchequer, is enhanced by the courts, treating the cases like a football match and reversing for trivial technicalities and having appeals follow appeals, so that cases have been in the courts for 7, 8, and even 10 years, and no end yet in sight.

4. The consequences are bound to emphasize the class contracts and the consciousness of antagonism between master and servants, and that is what a well-governed State tries to alleviate as much as is possible.

EXPENSE OF PRESENT CHAOTIC SYSTEM.

In New York we know from the commission's report that the employees received only $37 out of every $100 paid by the masters, and that $63 is spent in lawyers' and claim agents' fees and insurance expenses.

The contingent fees system forced on the laborers is no better, since 17 per cent to 34 per cent is spent before the employees get anything of the recovery.

The employee when injured must sue the men he worked with, as they are practically his master's witnesses, and if they testify too freely for him may be laid off at the first chance. And if he is fighting an insurance company, whose business it is to fight and cut down losses to his former master, he is worse off than before. "The present law, with its uncertain and uneven chances, promotes distrust and ill will between employers and employees to a serious extent."

In addition to this the corrupt practices of both sides, and the class tendencies of the courts to nonsuit the plaintiff, thus causing needless appeals, which, when decided, only give the litigant a chance to do that which of right he should have been permitted to do at the start, are evils for the community.

Then there have been attempts by both sides to completely disregard the laws made by the courts, and thus to arrive at a sensible basis, but this is charity on the part of some New York public-utility corporations. This is analogous to the modes whereby the members of the produce exchange are bound to arbitrate, so as to avoid the New York courts and the costly litigation. The various railroad relief funds are not voluntary, and are in the main built up by the men's own payments to the risk that should be borne by the enterprise.

No kind of an employers' liability act does away with the uncertainty of litigation. The English said of their employers' liability act of 1880:

"That act, however, can not be said to have been successful. The proof of negligence has been found extremely difficult, and in a vast proportion of the cases of accident no negligence of the nature required by the act in fact existed, or at all events could be proved; and even if there were prima facie evidence of negligence, the risks of litigation were most serious both for employer and employed. * * * Regarded, therefore, as a means of obtaining compensation for injury by accident with a reasonable degree of certainty, the employers' liability act of 1880 must be considered to have been a failure."

The New York commission, in their well-considered report, say, on page 39:

"It is hard to overestimate the force and sanity of the deliberate judgment of that report, though there seems very good reason to believe that the chance of the English workman to get reasonable verdicts was very small, compared with the chance of the injured workman in New York."

The memorandum of the home office to the Royal Commission of labor in 1893 (Common Parliamentary Papers, 1893–94, No. 39, Appendix to Minutes CLIX), which bore the approval of Sir Frederick Pollock, characterized it as "an unfair law operating oppressively against workmen as a class," and that under it negligence of the master is "next to impossible to prove."

That memorandum summarized the workings of the common law and the act of 1880 as follows:

"The doctrine (fellow-servant doctrine) is an exception to the general rule; is modern judge-made law; implies a contract founded on a legal fiction not in accordance with fact; has been pushed to extreme length by the judge forcing and straining the meaning of the term 'common employment'; and in practice leads to gross anomalies. The little master who does the work himself is responsible; the large employer by delegating authority escapes responsibility. The stranger who is injured by the employer's servant has his remedy; the workman has none. The law, therefore, is an unfair law, operating oppressively against workmen as a class. The general result is that under the common law a workman can but very seldom have a remedy against his master for negligence. True, the master is nominally responsible for his own negligence, but in all large undertakings his personal share in the work is slight or none at all. To succeed the workman must prove (1) that the machinery was defective, or that delinquent servant incompetent; (2) that the master had personally failed to take reasonable care that the machinery should be proper or his servants competent. And this it is next to impossible to prove. If the master can only show that he bought the machinery in the ordinary way, paying the ordinary price, or that he hired his servants in the ordinary way, there is an end to the charge of personal negligence."

And again:

"The truth is that to the workman litigation under the act has more than its usual terrors. It is not merely that litigation is expensive, and that he is a poor man and his employer comparatively a rich one; it is that when a workman goes to law with his employer he, as it were, declares war against the person on whom his future probably depends; he seeks to compel him by legal force to pay money, and his only mode of doing so is the odious one of proving that his employer or his agents—his own fellow workmen—have been guilty of negligence. Add to this that the legal proof of such negligence is often extremely difficult, the broad result is that a legal claim for damages only answers where the injury is very great and the workman is prepared to leave his master's service." (Lord Salisbury, speaking in the House of Lords on the 20th of July, 1897, is quoted as follows: "To my mind the great attraction of this bill is that it will turn out a great machinery for the saving of life. This is the real history of this law of compensation. The law of compensation at the beginning of the century was taken up by the juries, and instead of compensation for the real injury incurred being given, it was used by them as a punitive instrument to force these great owners and railway companies to strain their efforts to the utmost in avoiding and preventing the accidents, which at one time were so numerous. It has been very successful, as far as regards the ordinary passenger or ordinary citizen, but the law of common employment has damaged its efficacy as regards the workingman. We are now, by wise and general revision of the principle on which the law rests, applying it for the purpose for which it was originally destined, and for which it has been conveniently and most profitably employed, the purpose of forcing all who, by the process of industry or the accident of their position, have the lives of their fellow men in their power—forcing them to spare neither labor nor ingenuity nor money in making our industries as safe as possible to those by whom they are carried on."—Hansard, Parliamentary Debates, 1897, vol. 51, p. 555.)

WHAT OBJECTIONS CAN BE URGED AGAINST THE CONSTITUTIONALITY OF A RESTRICTED FEDERAL COMPENSATION ACT FOR WORKMEN?

The standard objections are that such an act would be (*a*) deprivation of private property without due process of law, (*b*) that it would deprive the employer of liberty of contract, (*c*) that it would deprive the employee of the liberty of contract and a resort to the courts of law.

They who contend that such an act can be sustained rely on four propositions: 1, the commerce power; 2, the post roads clause; 3, the power of taxation; 4, the legislative power of combining any of the above.

Objection No. 1: Due process of law.

The fifth amendment in part reads as follows:

"Nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation."

This amendment, adopted in the closing years of the eighteenth century (1791), is by some supposed to be an insurmountable barrier to effecting changes. It is resorted to by those anxious to preserve property rights at all costs, as a reason why rules of the common law can not be changed. Those who maintain that proposition are forced to the acceptance, in this connection, of this syllogism: Although the constitution of 1787 was adopted principally to regulate commerce, and paramount power to do so was lodged in Congress, yet the fifth amendment, adopted in 1791, limits that power to the extent that a rule of construction of the relation between master and servant (based on convenience and public policy) of State courts in South Carolina and Massachusetts as late as 1845 relates back to the fifth amendment, has become a rule of property so sacred and immutable that legislative power is unavailing against it.

To state the proposition in another form, those who contend that a compensation act is bound to violate the fifth amendment must show that a rule of law evolved by State court, when adopted by United States courts as "general law" is beyond the legislative action of Congress.

Resolving the term of this proposition, it means that a standard of care, or the deviation from that standard (negligence) when applied by the courts to actions for the recovery of damages in personal-injury cases, is immutable. Thus in the words (see p. 525, *infra*) of the New York Court of Appeals in Ives *v.* South Buffalo Railway Co. such an act "writes into the contract between the employer and employee, without the consent of the former, a liability on his part which never existed before and to which he is permitted to interpose practically no defense, for he can only escape liability when the employee is injured through his own willful misconduct."

LIABILITIES.

Reserving the obvious contention that the courts, without the consent of the workmen, wrote into the contract of employment an exemption from liability that had not existed against any other class of the community, we will first address ourselves to the rule of care.

Due care, the care of a prudent man about his own affairs, may have logical consistence in that rule of the civil law applied by Chief Justice Holt to bailments. Bailments were handled by natural persons impressed by the law with a public duty. The courts applied these standards to public-service corporations where the personal element of supervision or selection was wanting. Thus the standards applied to individuals in fact became a fiction. The writings of all who have studied the matter condemn the logic, as well as the justifications resorted to by the courts, because it is, as a matter of fact, not negligence in any degree that causes the killing or maiming of men in modern industries.

Those who studied the matter with an open mind find that in all enterprises where high-powered machinery is used, or where natural forces are worked or subjugated by man, there is a regularly recurring statistical ratio of killed and injured. Assuming that laborers have as much care for their lives, if not the integrity of their limbs, as do those of more favored economic classes, it would seem that the recurring number of deaths in mining, lumbering, and railroading are capable of explanation by some other cause than deviation from the standard of action of "a reasonably prudent man." The students of that subject claim that those killed and injured are maimed by the incidence of the law of professional risk. That is, that there inheres in all machinery the capacity of steady effort continued indefinitely at the same pitch and force. But human energy is a varying factor, even with a man beginning work. That human psychology and steel machinery have no factor in common except the energy of use. That the capacity of using human energy in controlling machinery flags from time to time, not from negligence, but from too much care or attention given an instant before or rather stored up for the event usual to happen at the next curve or the next station. But if in that interval an unlooked for event takes place, it is not lack of care on the part of the prudent man, but an event that the prudent man never could successfully grapple with, that instead of having hours of discussion as to what should be done, those killed or injured have seconds or fractions of seconds in which to act, and have no chance for reconsideration. That this habit of facing danger begets standards of action, used by the masters to move commerce expeditiously, and encourages the servants to exertions wherein results only count and where the standards of care of the meticulously prudent man are relegated to those of less virile activity.

That the economic factors which forced this activity beget a group standard of courage and energy, encouraged by the masters in doing public work. That it is not giving heed to facts of life where there is applied a standard of care, of watchfulness, of consideration, to factors that are nonexistent in the day's work, and that after disaster are invoked to deny the men a remedy.

By a process of exclusion which is found that there is a factor of danger inherent in the enterprise itself. Statistics demonstrate this fact. Professional risk alone explains the recurring factor of the deaths of those at risk.

The courts, bound by the duty of stare decisis, can not undo the rules evolved by former judges. They are not at liberty to permit the plaintiff to show the inherent danger of the work, but Congress has the power of changing the rule of evidence.

"Evidence—

It was said by Bentham (Rationale of Judicial Evidence, book 9, Pt. III, ch. 1)—

—is the basis of justice; exclude evidence and you exclude justice."

In place of deciding master and servant cases by a rule in which deviation from an inapplicable standard of care is the criterion of recovery, it is contended that Congress, having plenary power of abolishing inferior Federal courts, has power to regulate the procedure therein; that since evidence is part of the procedure, it does not play part of the judicial power with which Federal courts, once called into being, are invested, and that therefore the requirement of giving force to procedure whereby such courts shall take into account inherent or professional risk, would not violate the due-process clause.

Due process of law.—The New York Court of Appeals (in Ives *v.* So. Buffalo Ry. Co., 201 N. Y., 271), the only court that so far has passed on the constitutionality of a modern compensation act, found no difficulty in declaring that the act violated the due-process clause, as we would say; that is, that it took property by not affording the proprietor that standard of protection that the courts seem to think is sacred and taboo. Says the court (p. 14): "If it is competent to impose upon an employer who has omitted no legal duty and has committed no wrong a liability based solely upon a legislative fiat that his business is inherently dangerous, it is equally competent to visit upon him a special tax for the support of hospitals and other charitable institutions," etc., and in support of this view quotes Wynehamer *v.* People (13 N. Y., 378), where it was said, "These constitutional safeguards in all cases require a judicial investigation, not to be governed by a law specially enacted to take away and destroy existing rights, but confined to the question whether, under the preexisting rule of conduct, the right in controversy has been lawfully acquired and is lawfully possessed."

The case relied by that court (Wynehamer case, 13 N. Y.) contains a mass of barbaric dicta, long ago exploded by the Supreme Court of the United States. In that case the court of appeals said (p. 397):

"The statute under consideration * * * by force of its prohibitions alone, sweeps them (intoxicating liquors) from the commerce of the State, and thus annihilates the quality of sale, which makes them valuable to the owner. This is destructive of the notion of property. * * * It is certain that the legislature can not totally annihilate commerce in any species of property, and so condemn the property itself to extinction (p. 399). There is no offense except the misfortune of being the owner (p. 404)."

All this based on the theory stated on page 387:

"In a Government like ours, theories of public good or public necessity may be so plausible, or even so truthful, as to command popular majorities. But whether truthful or plausible merely, and by whatever numbers they are assented to, there are some absolute private rights beyond their reach, and among these the Constitution places the rights of property."

On page 454 we find this gem of the sociologic insight of the New York Court of Appeals:

"The Constitution surrounds liquor as property, with the same inviolability as any other species of property. There can be no room, I think, for difference of opinion as to the meaning of the phrase "due process of law," as used in the Constitution. It means an ordinary judicial proceeding. * * * It is not pretended, nor can it be, that property which is not per se a nuisance can be annihilated by force of a statute alone, or by a proceeding in rem for the punishment of a personal offense. Liquor is not a nuisance per se, nor can it be made so by a simple legislative declaration."

This venerable decision of March, 1856, was not regarded as law by the Supreme Court, which, in the Mugler case (123 U. S., 623), Harlan, J., writing, said:

"The entire scheme of prohibition as embodied in the constitution and laws of Kansas might fail if the right of each citizen to manufacture intoxicating liquors for his own use or as a beverage were recognized. Such a right does not inhere in citizenship."

And so there may be enough sociologic insight in the Supreme Court to see to it that due process of law does not require us to bound, perpetually, by what the Kansas Supreme Court has aptly termed "with the discredited common-law manacles." (Caspar *v.* Lewin et al., 109 Pac., 667.)

Again, there is the same power in Congress to change the rules of the incidence of loss as there is in State legislatures to change the rules of property. On this point Soper *v.* Lawrence Bros. Co. (201 U. S., 367, 368) is instructive. There Holmes, J., said:

"The distinction between trespass and disseizin may be modified by statute as properly as it may be established by common law. Also statutes of limitations may be passed where formerly there were none. So far as the fourteenth amendment is concerned, there is nothing to hinder a State from enacting that in future the doing of such overt acts of ownership as are possible on wild land * * * shall bar an action for the land."

The fourteenth amendment goes no further than the fifth amendment limits the Congress, and thus the changing of the rule of incidence of loss is merely a legislative question.

The civil-rights cases (109 U. S., 3) do not negative the right of Congress to pass legislation of a character such as is proposed here. In that line of cases the Supreme Court held that the primary object of those cases was to contract that what the States had a sole or subsidiary power to do, viz, to regulate the conduct of their citizens, and that the thirteenth and fourteenth amendments were not intended to oust them of that right. But here a new relation has been created in respect of the Federal control of master and servant, where the paramount authority of Congress makes the rule and where therefore the State legislation heretofore enacted for the protection of the servants is ousted by Federal legislation. In such circumstances there must be the same power of Congress as have the States, to award new remedies under the fourteenth amendment. And the two amendments, the fifth and the fourteenth, must be reconciled.

But, it is urged, a compensation act does not require a suit at law; it aims at ousting the courts of their functions.

It has been held in Hammond Packing Co. *v.* Arkansas (212 U. S., 350):

"We must trace the power to its true source, and if, from doing so, it results that the authority exerted flows from a reservoir of unquestioned power, it must follow that the action below was not unlawful, albeit in some narrower aspect that action might be considered as unlawful. The essential basis for the exercise of power, and not a mere incidental result arising from its exertion, is the criterion by which its validity is to be measured (per White, jr.)."

In other words, the source of power, not the incidental use of it, determines its constitutionality.

If there is power in Congress of obliterating one defense after another, as has been enacted by the eighth section of the safety appliance act (originally drafted by Senator White, of Louisiana, now Chief Justice), whereby assumption of risk was removed in those cases, and in the new employers' liability acts, approved April 2, 1908, and April 5, 1910, Congress may deprive the carriers of any defenses, based on a standard, objectionable to public policy, "held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare" (Noble State Bank case, 219 U. S., 104), so long as the carriers are given a right to a judicial or administrative hearing. (Hurtado case, 110 U. S., 516.)

The due-process clause could not make immutable the rules of State courts, adopted by Federal courts, to any such extent that it ousts the power of Congress to reexamine the reason for its adoption, and to reject it if found contrary to the actualities of industrial life.

But in the words of Mr. Justice Moody (Twining *v.* New Jersey, 211 U. S., 101): "It does not follow, however, that a procedure settled in English law at the time of the emigration and brought to this country and practiced by our ancestors is an essential element of due process of law. If that were so, the procedure of the first half of the seventeenth century would be fastened upon American jurisprudence like a straitjacket, only to be unloosened by constitutional amendment.

"That," said Mr. Justice Mathews, in the Hurtado case (110 U. S., 516, 529), "would be to deny every quality of the law but its age, and to render it incapable of progress or improvement."

The judicial power of adopting the standard of care, evolved 50 years after the adoption of the fifth amendment, can be no greater than the legislative power of Congress to reject it if found inharmonious with national well-being.

The Supreme Court has shown a harmonious and consistent desire to approve well-considered changes in procedure affecting Federal needs. (Oceanic Co. case, 214 U. S., 320.) There is an apparent exception in the New York Bakers' case (Lochner *v.* N. Y., 198 U. S., 45), but this is overcome by the decisions in the Oregon Laundry case (Muller *v.* Oregon, 208 U. S., 412) and the Tennessee Coal Miners' case (183 U. S., 13), and more directly in the Oceanic case (cited above), where Federal power of regulation of excluding aliens and enforcing it by what the steamship company claimed was violation of due process of law, was upheld.

In Juillard *v.* Greenman it was said: "A constitution establishing a frame of government, declaring fundamental principles, and creating a national sovereignty, and intended to endure for ages and to be adapted to the various crises of human affairs, is not to be interpreted with the strictness of a private contract. (110 U. S., 421, 1883.)"

In Noble State Bank *v.* Haskell (219 U. S., 104), Holmes, J., said: "In answering that question we must be cautious about pressing the broad words of the fourteenth amendment to a dryly logical extreme. Many laws, which it would be vain to ask the court to overthrow, could be shown easily enough to transgress a scholastic interpretation of one or another of the great guaranties of the Bill of Rights. They more or less limit the liberty of the individual or they diminish property to a certain extent. We have few certain criteria of legislation, and as it often is difficult to mark the line where what is called the police power of the States is limited by the Constitution of the United States, judges should be slow to read into the latter a nolumus mutare as against the lawmaker."

The Supreme Court of the United States on May 18, 1908, handed down its decision in St. Louis, Iron Mountain & Southern Railway Co. *v.* May Taylor, as administratrix of George W. Taylor (210 U. S., 24, 281).

The case had been tried twice in the State courts, and eight years after Taylor's death the Supreme Court reversed the judgment obtained against the carrier; but the court laid down in its opinion a salutary rule, which is applicable to the principle of my compensation bill—H. R. 9831. Here is what the court said in that case which, with Holden *v.* Hardy (169 U. S., 366), gives my bill H. R. 9831 its constitutional justification:

"In deciding the questions thus raised, upon which the courts have differed (158 Fed., 931), we need not enter into the wilderness of cases upon the common-law duty of the employer to use a reasonable care to furnish his employee reasonably safe tools, machinery, and appliances, or consider when and how far that duty may be performed by delegating it to suitable persons for whose default the employer is not responsible. In the case before us the liability of the defendant does not grow out of the common-law duty of master to servant. The Congress, not satisfied with the common-law duty and its resulting liability, has prescribed and defined the duty by statute. We have nothing to do but to ascertain and declare the meaning of a few simple words in which the duty is described. It is enacted that "no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard." There is no escape from the meaning of these words. Explanation can not clarify them and ought not to be employed to confuse them or lessen their significance. The obvious purpose of the legislature was to supplant the qualified duty of the common law with an absolute duty deemed by it more just. If the railroad does, in point of fact, use cars which do not comply with the standard, it violates the plain prohibitions of the law, and there arises from that violation the liability to make compensation to one who is injured by it. It is urged that this is a harsh construction.

"To this we reply that, if it be the true construction, its harshness is no concern of the courts. They have no responsibility for the justice or wisdom of legislation, and no duty except to enforce the law as it is written, unless it is clearly beyond the constitutional power of the lawmaking body. It is said that the liability under the statute, as thus construed, imposes so great a hardship upon the railroads that it ought not to be supposed that Congress intended it. Certainly the statute ought not to be given an absurd or utterly unreasonable interpretation leading to hardship and injustice, if any other interpretation is reasonably possible. But this argument is a dangerous one, and never should be heeded where the hardship would be occasional and exceptional. It would be better, it was once said by Lord Eldon, to look hardship in the face rather than break down the rules of law. But when applied to the case at bar the argument of hardship is plausible only when the attention is directed to the material interest of the employer to the exclusion of the interests of the employee and of the public. Where an injury happens through the absence of a safe drawbar there must be hardship. Such an injury must be an irreparable misfortune to some one. If it must be borne entirely by him who suffers it, that is a hardship to him. If its burden is transferred, as far as it is capable of transfer, to the employer, it is a hardship to him. It is quite conceivable that Congress, contemplating the inevitable hardship of such injuries, and hoping to diminish the economic loss to the community resulting from them, should deem it wise to impose their burdens upon those who could measurably control their causes, instead of upon those who are in the main helpless in that regard. Such a policy would be intelligible, and, to say the least, not so unreasonable as to require us to doubt that it was intended and to seek some unnatural interpretation of common words. We see no error in this part of the case." * * *

This opinion has been reaffirmed on May 15, 1911, in Ch., B. & Q. Ry. Co. *v.* U. S., per Harlan, J. (220 U. S., 559).

In Butler *v.* Frazee (211 U. S., at p. 466) Mr. Justice Moody said:

"The rule of assumption of risk has been thought by many a hard one when applied to the complicated conditions of modern industry, so largely conducted by the aid of machinery propelled by irresistible and merciless mechanical power, and the criticism frequently has been made that the imperative need of employment leaves to the workman no real freedom of choice, such as the rule assumes. That these considerations have had an influence is shown by the notorious unwillingness of juries to apply the rule and by the legislative modifications of it, which, from time to time, have been made, as, for instance, by Congress in the safety-appliance law." (Schlemmer *v.* B. R. & P. R. Co., 205 U. S., 1.)

So that we have a line of judicial thought not opposed to the exclusion of standards derived from the State judiciary. There must be some standards, not objectionable to the due process of law clause, which can be set up by Congress when liability based on an impossible standard is set aside as no longer of use in Federal legislation.

This standard may be established by Congress by the adoption of the rules basing on professional risk or hazard inhering in certain occupations, and excluding all other standards for the measuring of liability save only fraud.

The power of Congress, on grounds of public policy, to adopt as a standard the inclusion, admission, and presentation of questions of professional risk, is as great as was that of the courts of borrowing

from State courts that of negligence, fellow service, and assumption of risk, etc., which on final analysis base on what Lord Abinger thought "convenient." The attitude of Congress toward this question of professional risk may be said to represent the "prevailing morality or strong and preponderating opinion to be greatly and immediately necessary for the public welfare." (Noble Bank case, 219 U. S., 104.)

Professional risk takes into account everyday facts recognized and acted on by millions of men at risk, on whose behalf this legislation seeks recognition at the hands of the courts. It bases on a power as intensive, though not as extensive, as is the police power of the States. So that whatever is found in the reports on the fourteenth amendment in upholding State power may be urged in support of the commerce power when questioned under the fifth amendment. The Noble Bank case permitted legislation to stand because "an ulterior public advantage may justify a comparatively insignificant taking of private property for what in its immediate purpose is a private use."

A Federal compensation act allowing the carriers to shift the cost of its operation on the public service and the consumers in no manner even attempted to reduce the earnings of the carriers. It merely adjusts by public intervention a state of affairs that has become a national scandal, benefiting in the last instance not even those who resist the progress of human interrelations in complex modern industrial affairs.

"The principles of the common law" are the standard of what is due process of law. (Hurtado *v.* Cal., 110 U. S., 516.) The law of deodands was and has been common law, save where changed by statute, since Angevin justices in eyre condemned wagon and oxen for the accidental death of a freeman and amerced against either the late owner or the hundred for fiscal dues. The lawyers of 1791 could have intended to preserve remedies based on the application of that law, while the rule of the Priestley case or that of the Farwell case could not have been in their minds.

Federal courts have in criminal cases refused to subdivide the property committing a violation against the Elkins Act and have held the trainload as the unit of violation. (Standard Oil Co. case, 164 Fed., 376.) Congress could then, by following the reasoning of the courts and without violating the fifth amendment, declare subject to condemnation and public sale the trainload of freight killing any human being while used on a Federal highway and could apply proceedings in rem against the guilty thing itself for its violation of the peace of the United States declared to exist in Re Neagle (135 U. S., 1). Such a proceeding for forfeiture would be due process of law, and the proceedings from such sale could be turned into the Treasury directly or paid over to the injured person's representatives. The railroad company would have no cause of complaint. (Humes case, 115 U. S., 512.) All this could be done by resorting to methods of law only a trifle more archaic than that flowing from the consequences of the Priestley and the Farwell cases, and no one could say that it would not be due process of law. Then it would seem to follow that any less qualified degree of absolute liability, based on this theory, would, in the last instance, be due process of law. But in addition hereto my bill, annexed hereto—H. R. 9813—permits, from a superabundance of caution, a hearing before the Federal courts on all pertinent questions, so that, it is submitted, no violation of due process can be found in such a bill.

STATUS.

Due process of law as applied to the regulation of public service admits of different treatment than does that of purely private service. (Harlan, J., in Atkins *v.* Kansas, 191 U. S., 207.)

The mere fact that the corporation is created by a State does not affect the question, since under Hale *v.* Henkel (201 U. S., 43) in respect of its Federal work it is as much subject to Federal legislation as though it had been chartered by the United States; nor are its property rights, only incidentally affected as we shall see, of such a paramount character as to subordinate its public character of a carrier engaging voluntarily in interstate commerce to its private rights of earning dividends at all costs. By submitting to Federal regulation, under the Hale *v.* Henkel case (201 U. S., 43), its property is affected with a Federal use, and the quantum of Federal imposition for a public purpose becomes a matter of bargain and of sale with the United States, not a constitutional right to exemption. But in addition thereto the United States may protect their peace, established under the doctrine of Re Neagle (135 U. S., 1), and may require the carrier or its property causing deaths and injuries to stand amercements as old as the Norman and Angevin laws, and thus due process of law, if our reasoning above is valid. But as the corporation is subject to Federal power of control, so are its servants public servants. Whenever the courts have found occasion to regulate the activities of railroad men, it was based on the recognition of their public service and their duties to the public, the ultimate beneficiaries in their social activities. Although engaged and paid by private State corporations, the activities of the men were held subject to the regulations of the courts, flowing from the judicial power. So that, even without statutory declaration, their work would be regarded as public service. And if it is public service, made so by the act of Congress, it is within the power of that body to annex thereto such conditions as seem reasonable to Congress. It may then shift as far as is feasible—shift the economic loss—from the men to the corporation, in the memorable words of Moody, J., in the Taylor case, set forth above.

But there is another phase to the relation of these workmen to their masters which may be properly covered by such a compensation act without violating due process of law. The exclusion of relevant factors of testimony heretofore has made for diminution of their status. By reason of maintaining a fiction, evidence of the actual conditions of railroad hazards were excluded; for it is a cruel fiction to maintain as a standard of care for railroading such care as the reasonable, prudent man, a meticulous, cowardly person uses. It is as though grain in an elevator were to be measured by areas or land measures because it originally came from the land, or as though opposition to the use of the bushel or cubic liters were resisted because the Normans measured land by the team's work. The exclusion of evidence of actual danger, the suppression of necessary evidentiary facts enforced a diminished status quite as effectively as though a political disqualification had been enforced after the railway men's evidence, such as preferring that of native-born Americans over those naturalized or aliens. The latter disqualification could have been removed by Congress. The candid mind should be reluctant to admit that the identical results can not be arrived at by due process under the compensation act; for in each case the aim of Congress would be to restore to these workers that measure of equality before the law enjoyed by all who are not servants.

Examination and analysis of the statistics of railways demonstrate that no part of railway men's wages is paid for danger or for the risk inherent in the service. Every cent for increased wages means increased tonnage moved with heavier trains under such exacting hours of service that Congress intervened. This act was sustained by the Supreme Court in Baltimore & Ohio Railroad *v.* Interstate Commerce Commission, May 29, 1911, Mr. Justice Hughes delivering the opinion.

Since then demonstration has been made that the logic, the economic, and the sociologic doctrines of the Farwell case and all its ramifications are untenable, and that the State courts erred in adopting it, the legal disadvantage of the servants under Federal jurisdictions is manifest, if Congress can not reform the debased status of laboring men and place them on economic equality with all others, at least before Federal courts. The workmen are not given absolute equality with the rest of the community under a compensation act. Such an act merely diminishes economic and legal disability they now suffer. It temporizes with a great principle in order to afford just and prompt, even if inadequate, compensation, and that is not violating due process of law.

FREEDOM OF CONTRACT.

Nevertheless the above, it may be urged, merely loads the laborer with new disabilities while claiming to enlarge his status. These disabilities may become as onerous as those he is struggling against. Compensation acts do not confer on him identical rights with those enjoyed by the passenger. Absolute liability to pay damages is tending to become the self-imposed rule for settling losses in the case of any railway company having a decent financial standing. This right is not sought to be conferred on the railway employee, and, therefore, these servants are worse off under a compensation act than under the employers' liability act where unlimited damages may be recovered. Besides this such a compensation act bars the employee of his common-law right to a jury trial guaranteed by the Constitution.

To these and to untold similar arguments to those who oppose compensation acts two answers may be made; first, that if no one should be permitted to adjudge one's own claim, still less should they who urge liberty of contract for the workmen be his economic opponents when by his injuries his service relation with them have ceased; and, second, to quote Brown, J., in Holden *v.* Hardy (169 U. S., p. 387), where it is said:

"They are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future, and that while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation, and that the Constitution of the United States, which is necessarily and to a large extent inflexible and exceedingly difficult of amendment, should not be so construed as to deprive the States of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare, without bringing them into conflict with the supreme law of the land.

"Of course it is impossible to forecast the character or extent of these changes, but in view of the fact that from the day Magna Charta was signed to the present moment amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to new conditions of society, and particularly to the new relations between employers and employees, as they arise. And, on page 397, the court again said: The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are to a certain extent conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may promptly interpose its authority.

"It may not be proper to suggest in this connection that although the prosecution in this case was against the employer of labor, who apparently under the statute is the only one liable, his defense is not so much that his right to contract has been infringed upon but that the act works as a peculiar hardship to his employees, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality or where the public health demands that one party to the contract shall be protected against himself. The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected the State must suffer."

The other phase of liberty of contract, viz, that arising between the corporation, as master, and the United States, in enforcing such a compensation act is more specious than difficult.

Even if in the premises we have shown the basis of Federal power for legislatively bringing about a change of status of the servant, by overturning the rule of excluding evidence of inherent danger, and by basing the new status on the reformed rule, there still remains to consider the question of regulating that liberty of contract alleged to be safeguarded by the fifth amendment.

The Supreme Court, however, looks at substance. It can be demonstrated that none but corporations are the masters of railway servant. (Although we had started by discussing the general features of a compensation act for the purpose of the brief the discussion would be limited to the employees of railroads solely engaged in interstate commerce or subject to the Federal power while at work and injured on a Federal highway.) Corporations are not endowed with a capacity to contract themselves or their acts beyond the pale of the law, but are subject, on the contrary, to regulation by law in cases where an individual might be heard on the academic rights of freedom of contract. In response to such an argument the opinion by Lurton, J., in Atlantic Coast Line Railroad Co. *v.* Riverside Mills (219 U. S., 186), is in point:

"It is obvious, from the many decisions of this court, that there is no such thing as absolute freedom of contract. Contracts which contravene public policy can not be lawfully made at all; and the power to make contracts may in all cases be regulated as to form, evidence, and validity as to third persons. The power of government extends to the denial of liberty of contract to the extent of forbidding or regulating every contract which is reasonably calculated to injuriously affect the public interests. Undoubtedly the United States is a government of limited and delegated powers, but in respect to those powers which have been expressly delegated, the power to regulate commerce between the

States being one of them, the power is absolute, except as limited by other provisions of the Constitution itself.

"Having the express power to make rules for the conduct of commerce among the States, the range of congressional discretion as to the regulation best adapted to remedy a practice found inefficient or hurtful is a wide one. If the regulating act be one directly applicable to such commerce, not obnoxious to any other provision of the Constitution, and reasonably adapted to the purpose by reason of legitimate relation between such commerce and the rule provided, the question of power is foreclosed. 'The test of power,' said Mr. Justice White, speaking for this court in the employers' liability cases, cited above, 'is not merely the matter regulated, but whether the regulation is directly one of interstate commerce or is embraced within the grant (of power) conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate commerce.'"

Before applying that well-considered case to the subject matter of a compensation act let us examine what liberty of contract really means. The Constitution does not confer liberty of contract. The bill of rights denies Congress in the fifth amendment power to deprive "life, liberty, or property without due process of law." The difference between "the rights of man," the natural rights, namely, equality, freedom, self-preservation, and property, or the right that inheres in man to things proper to his enjoyment, and between the guarantee of the fifth amendment is the difference between two schools of thought. The rights of man based on the bill of rights, especially those of Virginia. The French form and the sharp accentuation of jural equality before the law is based on the influence of Rousseau. The idea of rights inherent, perpetual, and born with individual and not as a citizen of a State, have different consequences and a different source than the civic rights based on a social contract. The American theory of human rights bases on religious and not political origin, and is consequently a fruit of the Reformation and its contests. The New England colonies, Pilgrims and Puritans, carried the idea of a contract such as a religious community represented into the theory of the State. But the State never is and never was founded upon consent or contract. And the courts in many cases have transferred this mistaken political argument derived from theology into a field of economics. As shown above, the Supreme Court is beginning to reject consequences based on this false analogy of an academic freedom to the actualities of economic existence.

Therefore it would seem that Congress may impose as an absolute duty of requital for injuries on the carrier maiming its servants that of standing liable for the initial mishap to freight, no matter who actually caused the damage. In the Riverside Mills case (219 U. S., 186) the Supreme Court sustained the principle that the right of action against the actual tort feasor by the initial carrier paying the loss did not violate liberty of contract. In a compensation act, safeguarding the rights of the carrier to charge the Government for hauling the mail or increase its rates in a similar manner safeguards its rights.

Still less support is found for this academic freedom of contract under the theory of the Oklahoma Bank cases (219 U. S., 104, 121). above explained, no more need be said.

"In answering that question we must be cautious about pressing the broad words of the fourteenth amendment to a dryly logical extreme. Many laws which it would be vain to ask the court to overthrow could be shown easily enough to transgress a scholastic interpretation of one or another of the great guaranties in the Bill of Rights. They more or less limit the liberty of the individual or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it is often difficult to mark the line where what is called the police power of the States is limited by the Constitution of the United States, judges should be slow to read into the latter a nolumus mutere as against the law-making power. * * * Nevertheless, notwithstanding the logical form of the objection, there are more powerful objections on the other side. In the first place, it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what in its immediate purpose is a private use (citing cases). And in the next it would seem that there may be other cases besides the every-day one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume (citing cases). At least, if we have a case within the reasonable exercise of the police power, as above explained, no more need be said.

"It may be said in a general way that the police power extends to all the great public needs (citing case). It may be put forth in aid of what is sanctioned by usage or held by the prevailing morality or strong and preponderating opinion to be greatly and immediately necessary to the public welfare. Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. * * * It has been held, we do not doubt correctly, that inspections may be required and the cost thrown on the bank (citing case). The power to compel, beforehand, cooperation, and thus, it is believed, to make failure unlikely and a general panic almost impossible must be recognized if government is to do its proper work, unless we can say that the means have no reasonable relation to the end (citing case)."

In spite of the opinion of the New York Court of Appeals, which claimed that these bank cases had no weight in deciding the question of the power of changing the law, we contend that these cases support the contention of those who claim that if a State can require all banks to contribute toward a fund to safeguard in anticipation the property of its creditors Congress must have the same power under the commerce power to require as a condition that carriers shall pay compensation to those killed and injured in the every-day's work of the railroad service. Again, the power of changing the status of the railroad men can not be denied, and there can be annexed thereto such conditions of contracting for service in respect of interstate commerce as shall seem proper to the Congress. And such a condition of requiring requital at the hands of those that maim men can be required of those carrying on a public function quite as properly as can the duty be attached to those who handle the funds of the community. If the various States have the power to call on those, blameless, without fault, or negligence or deviation from the standard of the conduct of the most prudent man about his own affairs (where the standard of negligence has some juristic and sociologic basis) to stand a loss "to compel beforehand cooperation," the Supreme Court is apt to sustain legislation by Congress whose object it is to safeguard human life. As Lord Salisbury, in often-quoted language, well said, speaking in the House of Lords on July 20, 1897:

"To my mind, the great attraction of this bill is that I believe it will turn out a great machinery for the saving of life. This is the real history of this law of compensation. The law of compensation at the beginning of the century was taken up by the juries, and instead of compensation for the real injury incurred being given, it was used by them as a punitive instrument to force these great owners and railway companies to strain their efforts to the utmost in avoiding and preventing the accidents, which at one time were so numerous. It has been very successful so far as regards the ordinary passenger or ordinary citizen, but the law of common employment has damaged its efficacy as regards the workingman. We are now, by wise and general revision of the principle on which the law rests, applying it for the purpose for which it was originally destined, and for which it has been conveniently and most profitably employed, the purpose of forcing all who, by the process of industry or the accident of their position, have the lives of their fellow men in their power—forcing them to spare neither labor nor ingenuity nor money in making our industries as safe as possible to those by whom they are carried on." (Hansard, Parliamentary Debates, 1897, vol. 51, p. 555.)

There is power to change the status of those working on railroads, even if not directly connected with the interstate carriage of traffic, conferred by the first clause of the fifteenth amendment. It is certainly as sound in reason and policy to argue that there is power under that amendment to impose on those killing and maiming over a million men since 1887 the absolute duty of repairing in part the economic loss sustained by the whole community as there is in the argument that the fifth amendment precludes Congress from having power of changing the imported un-American standard of negligence. The status of the servant is not so fixed by the fifth amendment that Congress has not the power to change it under the commerce power supported by the fifteenth amendment.

To effect the change in the status it may be necessary to bring about incidental takings of property, but only incidental, because as soon as it becomes of value to the carriers to have to become careful of the lives of their servants, as they now are required to be of cattle and freight intrusted to their care, the self-interest affecting their surplus will take heed of their social duties. The courts can and will help the change, for up to now they have always placed the blame for existing conditions upon the legislative branch of the Government. The courts can then give heed to the changed condition of evidence, a proper consequence of the changed condition of the status of the servants, for the diminished status or denial of the right to compensation has been justified and brought about only by the exclusion of what really determined the injury, viz, professional risk, the most material matter in the case. By requiring the exclusion of what by the mass of those best informed is considered a subsidiary matter, the so-called negligence, and by substituting for the consideration of the courts (if a suit is required) the actual conditions based on professional risk, the status of the workers is enchanced, and if our reasoning has been correct, by due process of law. The prevailing morality of the best minds in the community (neither corporation lawyers, nor yet servants, as both are parties in interest, but dissenting judges, or those overruled in hard cases by those courts standing by the old decisions, or the conservatism of past courts, publicists, and authors, and all those with capacity to appreciate the force of the feeling of social unrest and injustice propagated by the administration of the archaic system of the law of man—master and servant—heretofore patiently borne), all agree as a political necessity that a compensation act must be established.

They do not believe that the Supreme Court will interpose a nolumus mutare to preserve life and limb, by arguments based on the preponderating sanctity of property, because the logic of events that upheld the safety-appliance acts as absolute standards of obligation, that upheld the principles of the employers' liability act and the Carmack amendment case, show that there is enough insight into the science of human interrelations in that body to justify the hopes of mankind that they will not blindly interpose a rule of property to justify the holders of public franchise to kill and maim without requital. Such sociologic insight was recently shown in the opinions sustaining the Oregon women's laundry acts (208 U. S., 412), the Federal hours of service act, and the Tennessee miners' law (183 U. S., 13) that the danger of a resort to the liberty of contract whereby blacklisting was legalized in the Adair case (208 U. S., 161) will probably never again be resorted to by that court.

RESORT TO A COURT OF LAW.

If in the premises it has been shown that neither due process of law nor liberty of contract would of necessity be violated by an act which in principle displaces the standard of care, heretofore set up by the courts, by one of unqualified and absolute duty of safeguarding life and limb, resort to the courts can not be required, save on such terms as are called for to permit the rights of the parties to determine the application of the act.

LEGISLATIVE POWER.

The contract of railroad employees with interstate carriers for service is protected by the same power as is the contract of the shipper with the same carrier for freight service. And the fact that it affects and indeed overrides State rate regulations is indifferent, since the paramount authority governs. But Congress has changed the rule for liability for damages to freight in the Carmack amendment case (Atlantic Coast Line R. R. Co. *v.* Riverside Mills, 219 U. S., 186), in which Lurton, J., said:

"In the employers' liability cases, Howard *v.* Illinois Central Railroad Co. (207 U. S., 463), power to pass an act which regulated the relation of master and servant so as to impose on the carrier, while engaged in interstate commerce, liability for the negligence of a fellow servant for which at common law there was no liability, and depriving such carrier of the common-law defense of contributory negligence, save by way of reduction of damages, was upheld. In Addyston, etc., Co. *v.* United States (175 U. S., 211) and Northern Securities Co. *v.* United States (193 U. S., 197) it was held that this regulation extended to and embraced contracts in restraint of trade between the States. It is obvious from the many decisions of this court that there is no such thing as absolute freedom of contract. Contracts which contravene public policy can not be made at all; and the power to make contracts may in all cases be regulated as to form, evidence, and validity as to third parties. The power of government extends to the denial of liberty of contract to the extent of forbidding or regulating every contract which is reasonably calculated to injuriously affect the public interests. Undoubtedly the United States is a Government of limited and delegated powers, but in respect of those powers which have been expressly delegated—the power to regulate commerce between the States being one of them—the power is absolute, except as limited by other provisions of the Constitution itself.

"Having the express power to make rules for the conduct of commerce among the States, the range of congressional discretion as to the regulation best adapted to remedy a practice found inefficient or hurtful is a wide one. If the regulating act be one directly applicable to such commerce, not obnoxious to any other provision of the Constitu-

tion, and reasonably adapted to the purpose by reason of legitimate relation between such commerce and the rule provided, the question of power is foreclosed.

"The test of power," said Mr. Justice White, speaking for this court in the Employers' Liability cases, cited above, "is not merely the matter regulated, but whether the regulation is directly one of interstate commerce or is embraced within the grant (of power) conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate commerce." * * *

If the power existed and the regulation is adapted to the purpose in view, the public advantage justifies the discretion exercised and upholds the legislation as within the limit of the grant conferred upon Congress. Touching the range of legislative discretion of the States in respect to occupations and trades which are affected by a public use, this court, in Gundling *v.* Chicago (177 U. S., 183), said:

"Unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizen are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the State to pass, and they form no subject for Federal interference. As stated in Crowley *v.* Christensen (137 U. S., 86):

"'The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, good order, and morals of the community.'"

LEGISLATIVE POWER.

In the reargued and amended opinion in Noble State Bank *v.* Haskell (219 U. S., 575) Holmes, J., said:

"We fully understand the practical importance of the question, and the very powerful argument that can be made against the wisdom of the legislation, but on that point we have nothing to say, as it is not our concern. * * * For in this case there is no out-and-out taking at all. The payment can be avoided by going out of the banking business, and is required only as a condition for keeping on from corporations created by the State."

While in the original case (219 U. S., 104) Holmes, J., had said:

"In answering that question (viz, unless that statute deprives the plaintiff bank of liberty or property without due process of law) we must be careful about pressing the broad words of the fourteenth amendment to a dryly logical extreme. Many laws which it would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guaranties in the Bill of Rights. They more or less limit the liberty of the individual, or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it is often difficult to mark the line where what is called the police power of the States is limited by the Constitution of the United States, judges should be slow to read into the latter a nolumus mutare as against the law-making power.

"In the first place, it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use. (Citing cases.) And in the next it would seem that there may be other cases besides the everyday one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume. (See Ohio Oil Co. *v.* Indiana, 177 U. S., 190.) At least, if we have a case within the reasonable exercise of the police power, as above explained, no more need be said.

"It may be said in a general way that the police power 'extends to all the great public needs.' (Camfield *v.* U. S., 167 U. S., 518.) It may be put forth in aid of what is sanctioned by usage or held by the prevailing morality or strong and preponderating opinion to be greatly and immediately necessary to the public welfare. Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. The power to restrict liberty by fixing a minimum of capital required of those who would engage in banking is not denied. The power to restrict investments to securities regarded as relatively sage seems equally plain. It has been held, we do not doubt, rightly that inspections may be required and the cost thrown on the bank. (Charlotte, etc., Railway Co. *v.* Gibbes, 142 U. S., 386.) The power to compel beforehand cooperation, and thus it is believed to make a failure unlikely and a general panic almost impossible, must be recognized if Government is to do its proper work, unless we can say that the means have no reasonable relation to the end. (Gundling *v.* Chicago, 177 U. S., 188.) So far is that from being the case that the device is a familiar one. It was adopted by some States the better part of a century ago and seems never to have been questioned until now. From the above it may be concluded that Congress has the same power to require railroads to submit to taxation for the sake of relieving those killed and injured in their work as the States have to get up an insurance fund to pay insolvent banks from the contributions of the solvent ones."

Veazie Bank *v.* Fenno (75 U. S., 548). Opinion of the court:

"It is insisted, however, that the tax in the case before us is excessive, and so excessive as to indicate a purpose on the part of Congress to destroy the franchise of the bank, and is therefore beyond the constitutional power of Congress.

"The first answer to this is that the judicial can not prescribe to the legislative departments of the Government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. So if a particular tax bears heavily upon a corporation or a class of corporations it can not for that reason only be pronounced contrary to the Constitution."

LEGISLATIVE POWER NOT TO BE LIGHTLY DISTURBED BY COURTS.

In M., K. & T. Ry. Co. *v.* May (194 U. S., 270), Holmes, J., said:

"It may be that the neglected strips occupied by railroads afford a ground where noxious weeds specially flourish, and that whereas self-interest leads the owners of farms to keep down pests, the railroad companies have done nothing in a matter which concerns their neighbors only. Other reasons may be imagined. Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts."

Wisconsin Supreme Court held that—

"The weight of authority is in favor of leaving the party injured without remedy when the damage inflicted is for the public good and is remote and inconsequential." (Pumpelly *v.* Canal Co., 13 Wall., 186.)

DUE PROCESS OF LAW—CHANGE OF REMEDY.

In Bronson *v.* Kinzie (1 How., 315) it was said:

"It must reside in every State to enable it to secure its citizens from unjust and oppressive litigation, and to protect them in those pursuits which are necessary to the existence and well-being of every community."

LEGISLATIVE POWER.

In the Legal Tender cases (12 Wall., 457, p. 309) it was said:

"Is it our province to decide that the means selected were beyond the constitutional power of Congress, because we may think that other means to the same end would have been more appropriate and equally efficient? That would be to assume legislative power and to disregard the accepted rules for construing the Constitution. The degree of the necessity for any congressional enactment, or the relative degree of its appropriateness, is for the consideration of Congress, not here."

Said Chief Justice Marshall in McCulloch *v.* Maryland, as already stated:

"When the law is not prohibited, and is really calculated to effect any of the objects intrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground."

LEGISLATIVE POWER AND DUE PROCESS OF LAW.

In the Commodities Clause case (U. S. *v.* D. & H. R. R. Co., 213 U. S., 407) White, J., thus stated the case (on which they finally upheld the clause):

"And involved in the determination of the foregoing questions we shall necessarily be called on to decide: (*a*) Did the adoption of the Constitution and the grant of power to Congress to regulate commerce have the effect of depriving the States of the authority to endow a carrier with the attribute of producing as well as transporting particular commodities—a power which the States from the beginning have freely exercised, and by the exertion of which governmental power the resources of the several States have been developed, their enterprises fostered, and vast investments of capital have been made possible? (*b*) Although the Government of the United States, both within its spheres of national and local legislative power, has in the past for public purposes, either expressly or impliedly, authorized the manufacture, mining, production, and carriage of commodities by one and the same railway corporation, was the exertion of such power beyond the scope of the authority of Congress or, what is equivalent thereto, was its exercise but a mere license, subject at any time to be revoked and completely destroyed by means of a regulation of commerce?"

And on page 416:

"* * * That it (the act) merely and unequivocally is confined to a regulation which Congress had the power to adopt and to which all preexisting rights of the railroad companies are subordinated. We think it unnecessary to consider at length the contention based upon the due-process clause of the fifth amendment. In form of statement these contentions apparently rest upon the ruinous consequence which it assumed would be operated upon the property rights of the carriers by the enforcement of the clause, interpreted as the Government construed it.

"For the purpose of our consideration of the subject it may be conceded, as insisted on behalf of the United States, that these contentions proceed upon the mistaken and baleful conception that inconvenience, not power, is the criterion by which to test the constitutionality of legislation."

LEGISLATIVE DISCRETION.

Field, J., said in Missouri Pacific Railway Co. *v.* Humes (115 U. S., 512):

"If the laws enacted by a State be within the legitimate sphere of legislative power and their enforcement be attended with the observance of those general rules which our system of jurisprudence prescribes for the security of private rights, the harshness, injustice, and oppressive character of such laws will not invalidate them as affecting life, liberty, or property without due process of law. * * * And it often happens that heavy and oppressive burdens are imposed by statute upon residents of cities and counties, not merely to meet the necessary expenses of government, but for buildings and improvements of doubtful advantage, which sometimes, as in changing the grade of streets, seriously depreciate the value of property. Yet if no rule of justice is violated in the provisions for the enforcement of such a statute, its operation, in lessening the value of the property affected, does not bring it under the objection of depriving a person of property without due process of law. It is hardly necessary to say that the hardship, impolicy, or injustice of State laws is not necessarily an objection to their constitutional validity, and that the remedy for evils of that character is to be sought from the State legislatures.

"In few instances could the power be more wisely and beneficently exercised than in compelling railroad companies to inclose their roads with fences, having gates at crossings, and cattle guards. The speed and momentum of the locomotive render such protection against accident in thickly settled portions of the country absolutely essential, the omission to erect and maintain such fences and cattle guards in the face of the law would justly be deemed gross negligence, and if, in such cases where injuries to property are committed, something beyond compensatory damages may be awarded to the owner by way of punishment for the company's negligence, the legislature may fix amount or prescribe the limit within which the jury may exercise their discretion. The additional damages being by way of punishment, it is clear that the amount may be thus fixed; and it is not a valid objection that the sufferer instead of the State receives them. That is a matter on which the company has nothing to say. And there can be no rational ground for contending that the statute deprives it of property without due process of law. The statute only fixes the amount of the penalty in damages proportionate to the injury inflicted. The power of the State to impose fines and penalties for a violation of its statutory requirements is coeval with government; and the mode in which they shall be enforced, whether at the suit of a private party or at the suit of the public, and what disposition shall be made of the amounts collected, are merely matters of legislative discretion. * * * And experience favors this legislation as the most efficient mode of preventing, with the least inconvenience, the commission of injuries."

In Gundling *v.* Chicago (117 U. S.), at page 189, it was said:

"It is not a valid objection to the ordinance that it partakes of both the character of a regulation and also that of an excise or privilege tax. The business (in this case, dealing in cigarettes) is more easily subjected to the power to regulate where a license is imposed for following the same, while the revenue obtained on account of the license is none the less legal, because the ordinance which authorized it fulfills the two functions, one a regulating one and the other a revenue function. So

long as the State law authorizes both regulation and taxation it is enough, and the enforcement of the ordinance violates no provision of the Federal Constitution."

In Hammond Packing Co. *v.* Arkansas (212 U. S., 322), at page 350, White, J., said:

"The fundamental guaranty of due process is absolute and not merely relative. * * * Indeed, in Hovey *v.* Elliott (167 U. S., 409) the impotency of the legislative department to endow the judicial with the capacity to disregard the Constitution was emphasized. * * * To determine this question, we must take into view the authority below, exerted not from a merely formal point of view but in its most fundamental aspect. That is to say, we must trace the power to its true source, and if from doing so it results that the authority exerted flows from a reservoir of unquestioned power, it must follow that the action below was not unlawful, albeit in some narrower aspect that action might be considered as unlawful. The essential basis for the exercise of power, and not a mere incidental result, is the criterion by which its validity is to be measured. The want of power in the one case and its existence in the other are essential to due process—to preserve in the one and to apply and enforce in the other."

POWER, DUAL LEGISLATIVE—CONGRESS SUPREME.

Hale *v.* Henkel (201 U. S., 43) was on appeal to review a discharge of habeas corpus to inquire into a commitment for contempt on refusal to testify and produce papers before the grand jury in the Tobacco Trust cases. (Affirmed.)

Brown, J., in the course of the opinion, said (on p. 75):

"It is true that the corporation in this case was chartered under the laws of New Jersey, and that it receives its franchise from the legislature of that State; but such franchises, so far as they involve questions of interstate commerce, must also be subordinated to the power of Congress to regulate such commerce, and in respect to this the General Government may also assert a sovereign authority to ascertain whether such franchises have been exercised in a lawful manner with a due regard to its own laws. Being subject to this dual sovereignty, the General Government possesses the same right to see that its own laws are respected as the State would have with respect to the special franchises vested in it by the laws of the State. The powers of the General Government in this particular, in the vindication of its own laws, are the same as if the corporation had been created by an act of Congress. It is not intended to intimate, however, that it has a general visitorial power over State corporations."

In United States *v.* Heinszen (206 U. S.), at page 385, White, J., said:

"But the proposition begs the question for decision by shutting out from view the potential fact that when the goods were brought into the Philippine Islands there was a tariff in existence under which duties were exacted in the name of the United States. Indeed, the contention goes even further than this, since it entirely disregards the important consideration that, although duties were illegally exacted, the illegality was not the result of an inherent want of power in the United States to have authorized the imposition of the duties, but simply arose from the failure to delegate to the official the authority essential to give immediate validity to his conduct in enforcing the payment of the duties."

In Hannibal & St. J. Railroad Co. *v.* Husen (95 U. S., 465) the court, speaking generally, said that the police power of a State extended to the making of regulations "promotive of domestic order, morals, health, and safety." It was there held, among other things, to be "within the range of legislative action to define the mode and manner in which everyone may so use his own as not to injure others," and that "the police powers of a State justified the adoption of precautionary measures against social evils," and the enactment of such laws as would have "immediate connection with the protection of persons and property against the noxious acts of others." (From a quotation of Supreme Court in Plumley *v.* Massachusetts in 155 U. S., at p. 478.) * * * "These and other like things having immediate connection with the health, morals, and safety of the people may be done by the States in the exercise of the right of self-defense."

In Juillard *v.* Greenman (110 U. S., 214–421) it was said:

"It appears to us to follow, as a logical and necessary consequence, that Congress has the power to issue the obligations of the United States in such form and to impress upon them such quality as currency for the purchase of merchandise and the payments of debts as accord with the usage of sovereign governments. * * * Congress, as the legislature of a sovereign Nation, being expressly empowered by the Constitution to lay and collect taxes to pay the debts and provide for the common defense and general welfare of the United States, * * * and the power to make the notes of the Government a legal tender in payment of private debts being one of the powers belonging to sovereignty in other civilized nations and not expressly withheld from Congress by the Constitution; we are irresistibly impelled to the conclusion that the impression upon the Treasury notes of the United States the quality of being a legal tender in payment of private debts is an appropriate means, conducive and plainly adapted to the execution of the undoubted powers of Congress, consistent with the letter and spirit of the Constitution, and, therefore, within the meaning of that instrument, 'necessary and proper for carrying into execution the powers vested by this Constitution in the Government of the United States.' * * * The question of expediency is a political one, 'to be determined by Congress when the question of exigency arises, and not a judicial question, to be afterwards passed on by the courts'. (quoting Marshall, C. J., in the McCulloch bank case, 4 Wheat., 423)."

POWER OF CONGRESS AND THE COURTS.

In United States *v.* Union Pacific Railroad Co. (91 U. S., 72–91) it was said:

"We can not go into an argument on the consequences which follow our decision. Consequences are not an element to be considered in the determination of the question whether an act of incorporation is less beneficial to the Government than was supposed. And whether an act of Congress be more or less politic and wise, it is not our province to determine. When we have declared the meaning of it, if there be power to pass it, our duty in connection with it is ended."

In the same case it was said:

"The loss of our Pacific possessions was feared; but even if this fear were groundless it was quite apparent that we were unable to furnish that degree of protection to the people occupying them which every government owes to its citizens.

"No argument can be drawn from the wisdom that comes after the fact.

"In construing an act of Congress we are not at liberty to recur to the views of individual Members in debate, nor to consider the motives which influenced them to vote for or against its passage. The act itself speaks the will of Congress, and this is to be ascertained from the language used."

Occupation, itself, is commerce (Crutcher *v.* Kentucky, 141 U. S., 47–62):

"If the subject was one which appertained to the jurisdiction of the State legislature it may be that the requirements and the conditions of doing business within the State would be promotive of the public good. It is clear, however, that it would be a regulation of interstate commerce in its application to corporations or associations engaged in that business; and that is a subject which belongs to the jurisdiction of the National, and not the State, legislature. Congress would undoubtedly have the right to exact from associations of that kind any guaranties it might deem necessary for the public security and for the faithful transaction of business; and as it is within the province of Congress it is to be presumed that Congress has done or will do all that is necessary and proper in that regard. Besides, it is not to be presumed that the State of origin has neglected to require from any such corporation proper guaranties as to capital and other securities necessary for the public safety. If a partnership firm of individuals should undertake to carry on the business of interstate commerce between Kentucky and other States, it would not be within the province of the State legislature to exact conditions on which they should carry on their business, nor to require them to take out a license therefor. To carry on interstate commerce is not a franchise or a privilege granted by the State; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities, as a matter of convenience in carrying on their business, can not have the effect of depriving them of such right unless Congress should see fit to interpose some contrary regulation on the subject.

"It has frequently been laid down by this court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce. Would anyone pretend that a State legislature could prohibit a foreign corporation—an English or a French transportation company, for example—from coming into its borders and landing goods and passengers at its wharves and soliciting goods and passengers for a return voyage without first obtaining a license from some State officer and filing a sworn statement as to the amount of its capital stock paid in? And why not? Evidently because the matter is not within the province of State legislation, but within that of national legislation. (Inman Steamship Co. *v.* Tinker, 94 U. S., 238, 24:118.) The prerogative, the responsibility, and the duty of providing for the security of the citizens and the people of the United States in relation to foreign corporate bodies or foreign individuals with whom they may have relations of foreign commerce belong to the Government of the United States, and not to the governments of the several States; and confidence in that regard may be reposed in the National Legislature without any anxiety or apprehension arising from the fact that the subject matter is not within the province or jurisdiction of the State legislatures. And the same thing is exactly true with regard to interstate commerce as it is with regard to foreign commerce. No difference is perceivable between the two."

In the draft bill, H. R. 831, provision for resort to Federal courts is permitted, and under the decision of the diseased-aliens restriction case, the Oceanic Steamship Co. *v.* Stranahan (214 U. S., 320), that is sufficient.

The following appears in Oceanic Steamship Navigation Co. *v.* Stranahan (214 U. S., 320): "Resting, as the statute does, upon the authority of Congress over foreign commerce and its right to control the coming of aliens into the United States, and to regulate that subject in the fullest degree, reserving for future consideration the particular contentions advanced at bar by the plaintiff in error, it may not be doubted that it is not open to discussion that the statute as thus construed was within the power of Congress to enact. In Buttfield *v.* Stranahan (192 U. S., 470), considering the subject, it was said (pp. 492, 493):

"'Whatever difference of opinion, if any, may have existed or does exist concerning the limitations of the power resulting from other provisions of the Constitution, so far as interstate commerce is concerned, it is not to be doubted that from the beginning Congress has exercised a plenary power in respect to the exclusion of merchandise brought from foreign countries; not alone directly by the enactments of embargo statutes, but indirectly as a necessary result of provisions contained in tariff legislation. It has also, in other than tariff legislation, exerted a police power over foreign commerce by provisions which in and of themselves amounted to the assertion of the right to exclude merchandise at discretion.

"'As a result of the complete power of Congress over foreign commerce, it necessarily follows that no individual has a vested right to trade with foreign nations, which is so broad in character as to limit and restrict the power of Congress to determine what articles of merchandise may be imported into this country and the terms upon which a right to import may be exercised. This being true, it results that a statute which restrains the introduction of particular goods into the United States from considerations of public policy does not violate the due-process clause of the Constitution.'

"In accord with this settled judicial construction, the legislation of Congress from the beginning, not only as to tariff, but as to internal revenue, taxation, and other subjects, has proceeded on the conception that it was within the competency of Congress, when legislating as to matters exclusively within its control, to impose appropriate obligations and sanction their enforcement by reasonable money penalties, giving to executive officers the power to enforce such penalties without the necessity of invoking the judicial power.

"It is insisted that the decisions just stated and the legislative practices referred to are inapposite here, because they all relate to subjects peculiarly within the authority of the legislative department of the Government and which, from the necessity of things, required the concession that administrative officers should have the authority to enforce designated penalties without resort to the courts. But over no conceivable subject is the legislative power of Congress more complete than it is over that which the act we are now considering deals. If the proposition implies that the right of Congress to enact legislation is to be determined not by the grant of power made by the Constitution, but by considering the particular emergency which has caused Congress to exert a specified power, then the proposition is obviously without foundation. This is apparent, since the contention then would proceed upon the assumption that it is within the competency of judicial authority to control legislative action as to subjects over which there is complete legislative authority, on the theory that there was no necessity calling for the exertion of legislative power.

"As the authority of Congress over the right to bring aliens into the United States embraces every conceivable aspect of that subject, it must follow that if Congress has deemed it necessary to impose particular

restrictions on the coming in of aliens, and to sanction such prohibitions by penalties enforceable by administrative authority, it follows that the constitutional right of Congress to enact such legislation is the sole measure by which its validity is to be determined by the courts. The suggestion that if this view be applied grave abuses may arise from the mistaken or wrongful exertion by the legislative department of its authority, but intimates that if the legislative power be permitted its full sway within its constitutional sphere harm and wrong will follow, and therefore it behooves the judiciary to apply a corrective by exceeding its own authority. But, as was pointed out in Cary *v.* Curtis (3 Hos., 236), and as has been often since emphasized by this court (McCray *v.* United States, 195 U. S., 27), the proposition but mistakenly assumes that the courts can alone be safely intrusted with power, and that hence it is their duty to unlawfully exercise prerogatives which they have no right to exert, upon the assumption that wrong must be done to prevent wrong being accomplished.

"3. It is urged that the fines which constituted the exactions were repugnant to the fifth amendment, because amounting to a taking of property without due process of law, since, as asserted, the fines were imposed in some cases without any previous notice and in all cases without any adequate notice or opportunity to defend.

"In view of the absolute power of Congress over the right to bring aliens into the United States, we think it may not be doubted that the act would be beyond all question constitutional if it forbade the introduction of aliens afflicted with contagious diseases, and as a condition to the right to bring in aliens imposed upon every vessel bringing them in, as a condition of the right to do so, a penalty for every alien brought to the United States afflicted with the prohibited disease, wholly without reference to when and where the disease originated. It must then follow that the provision contained in the statute is of course valid, since it only subjects the vessel to the exaction when, as the result of the medical examination for which the statute provides, it appears that the alien immigrant afflicted with the prohibited malady is in such a stage of the disease that it must, in the opinion of the medical officer, have existed and been susceptible of discovery at the point of embarkation.

"Indeed, it is not denied that there was full power in Congress to provide for the examination of the alien by medical officers and to attach conclusive effect to the result of that examination for the purposes of exclusion or deportation. But is is said the power to do so does not include the right to make the medical examination conclusive for the purpose of imposing a penalty upon the vessel for the negligent bringing in of an alien. We think the argument rests upon a distinction without a difference. It disregards the purpose which, as we have already pointed out, Congress had in view in the enactment of the provision; that is, the guarding against the danger to arise from the wrongful taking on board of an alien afflicted with a contagious malady, not only to other immigrant passengers, but ultimately, it might be, to the entire people of the United States, a danger arising from the possible admission of aliens who might contract the contagion during the voyage and yet be entitled to admission because apparently not afflicted with the prohibited disease, owing to the fact that the time has not elapsed for the manifestation of its presence.

"In effect all the contentions pressed in argument concerning the repugnancy of the statute to the due process clause really disregarded the complete and absolute power of Congress over the subject with which the statute deals. They mistakenly assume that mere form and not substance may be made by the courts the conclusive test as to the constitutional power of Congress to enact a statute. These conclusions are apparent, we think, since the plenary power of Congress as to the admission of aliens leaves no room for doubt as to its authority to impose the penalty, and its complete administrative control over the granting or refusal of a clearance also leaves no doubt of the right to endow administrative officers with discretion to refuse to perform the administrative act of granting a clearance as a means of enforcing the penalty which there was lawful authority to impose."

PART II.—BASES OF THE EXERCISE OF LEGISLATIVE POWER.

A compensation is constitutional which is based on the power to regulate commerce among the States, to establish post offices and post roads, to lay and collect taxes, duties, imposts, and excises, to * * * provide for the * * * general welfare, and to any combination of the above, not in other respects violating the constitutional safeguards.

IN GENERAL.

Under legislative power we propose to treat first of the subject in general and adduce the opinions of the court on that general phase of the question, and then to take up the specific points in particular and apply thereto the law as developed from the opinions of the Supreme Court.

The premises have shown that there is no valid constitutional objection to the enactment of a restricted Federal compensation act. That is, that in principle the fifth amendment does not in and of itself bar Congress from changing the rules heretofore enunciated by the courts and to substitute, in place of evidence of negligence, the standard of professional risk. Without discussing any particular draft or bill, let us see what has been said about legislative power in general.

SECTION 1. Railroad companies, though chartered by the States, are in respect of their interstate functions as completely subject to Federal regulation and domination as though originally of Federal creation. (Hale *v.* Henkel, 201 U. S., 43.)

SEC. 2. The power to regulate commerce is, when applied to the narrow scope of that power, or delegated grant, as ample as is the police power of the States. To state it in another way, the mere name or source of the power does not change or affect the new methods to be taken in applying the power. Whatever changes the States may effect under the police power are open to the United States in respect of such powers as directly affect the matters committed to the United States under the commerce power. Thus Lurton, J., said, in Atlantic Coast Line Co. *v.* Riverside Mills (219 U. S., 186), upholding the Carmack amendment to the twentieth section of the act to regulate commerce:

"It is obvious, from the many decisions of this court, that there is no such thing as absolute freedom of contract. Contracts which contravene public policy can not be lawfully made at all, and the power to make contracts may in all cases be regulated as to form, evidence, and validity as to third persons. The power of government extends to the denial of liberty of contracts to the extent of forbidding or regulating every contract which is reasonably calculated to injuriously affect the public interests. Undoubtedly the United States is a government of limited and delegated powers, but in respect of those powers which have been expressly delegated, the power to regulate commerce between the States being one of them, the power is absolute, except as limited by other provisions of the Constitution itself.

"Having express power to make rules for the conduct of commerce among the States, the range of congressional discretion as the regulation best adapted to remedy a practice found inefficient or hurtful is a wide one. If the regulating act be one directly applicable to such commerce, not obnoxious to any other provision of the Constitution, and reasonably adapted to the purpose by reason of legitimate relation between such commerce and the rule provided, the question of power is foreclosed. 'The test of power,' said Mr. Justice White, speaking for this court in the employers' liability cases, cited above, 'is not merely the matter regulated, but whether the regulation is directly one of interstate commerce, or is embraced within the grant (of power) conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate commerce.'

"That a situation had come about which demanded regulation in the public interest was the judgment of Congress. The requirement that carriers who undertook to engage in interstate transportation, and as a part of that business held themselves out as receiving packages destined to places beyond their own terminal, should be required, as a condition of continuing in that traffic, to obligate themselves to carry to the point of destination, using the lines of connecting carriers as their own agencies, was not beyond the scope of the power of regulation. The rule is adapted to secure the rights of the shipper by securing unity of transportation with unity of responsibility. The regulation is also one which facilitates the remedy of one who sustains a loss, by localizing the responsible carrier."

Section 3. The legislative power is as unlimited within its scope and applicable to conditions of service on land as to those of sea-borne commerce.

Section 4. Granted the plenary grant and source of power of legislation, details of its exercise are not matters for judicial reexamination, but of legislative discretion. (See cases in footnote.)

COMMERCE POWER.

In Rearick *v.* Penn. (203 U. S., 512), Holmes, J., quoted the following:

"'Commerce among the several States' is a practical conception, not drawn from the 'witty diversities' (Yaites *v.* Gough (Yelv., 33), of the laws of sales; Swift & Co. *v.* U. S., 196 U. S., 398, 399)."

In Lyng *v.* Michigan (135 U. S.) at 166 it was said:

"We have repeatedly held that no State has a right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transporation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, for the reason that such taxation is a burden on that commerce and amounts to a regulation of it, which belongs solely to Congress."

In McCall *v.* California, Lamar said (136 U. S., 104) at page 111:

"The test is, Was this business a part of the commerce of the road? Did it assist or was it carried on with the purpose to assist in increasing the amount of passenger traffic on the road? If it did, the power to tax it involves the lessening of the commerce of the road to an extent commensurate with the amount of business done by the agent."

In the employer's liability cases (207 U. S.) it was conceded by the majority that the regulation of the service of employees while engaged in any sphere of commerce subject to Federal control was subject to congressional regulation.

In the Drummer cases (cited in 204 U. S., 160) this line of thought had been carried to its logical extent, so that the relation of master and servant can be regulated by Congress while the servant of the interstate carrier is engaged in interstate commerce.

Details of what is and what is not interstate commerce are largely matters for Congress. (McNeill *v.* Southern Ry. Co., 202 U. S., 543.)

State laws may operate on some subject matters until displaced by paramount law. (Colasurdo *v.* Central R. R. of New Jersey, Fed. Rep.)

Then it would follow that the standard of care, etc., may be changed for interstate carriers and such servants as are solely engaged or maimed by interstate instrumentalities of commerce. (Sherlock *v.* Alling, 93 U. S., 99.)

POST ROADS.

I. In the Debs case (158 U. S., 564), it was said:

"Under the power vested in Congress to establish post offices and post roads Congress has, by a mass of legislation, established the great post-office system of the country, with all its detail of organization, its machinery for the transaction of business, defining what shall be carried and what not, and the prices of carriage, and also prescribing penalties for all offenses against it."

Obviously these powers given to the National Government over interstate commerce and in respect to the transportation of the mails were not dormant and unused. Congress had taken hold of these two matters, and by various and specific acts had assumed and exercised the powers given to it, and was in the full discharge of its duty to regulate interstate commerce and carry the mails. The validity of such exercise and the exclusiveness of its control had been again and again presented to this court for consideration. It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of State legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a State to legislate in such a manner as to obstruct interstate commerce. If a State with its recognized powers of sovereignty is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?

As, under the Constitution, power over interstate commerce and the transportation of the mails is vested in the National Government and Congress, by virtue of such grant, has assumed actual and direct control, it follows that the National Government may prevent any unlawful and forcible interference therewith. But how shall this be accomplished? Doubtless it is within the competency of Congress to prescribe by legislation that any interferences with these matters shall be offenses against the United States and prosecuted and punished by indictment in the proper courts.

It seems to follow that if Federal courts can preserve the peace of the United States in freight yards and cattle yards within a State, and can oust the State police power under the judicial power, that Congress must be assumed to have at least as great a power to safeguard the lives and limbs of all employees working or injured on post roads. There is reason for this in the uniformity cases, such as the Gloucester Ferry Co. case (114 U. S., 203), which are to be applied because of the facts of life railroads are operated as a unit.

II. Electric roads are subject to the same rule. The novelty of application is no answer to the exercise of power. Electric roads are less of a revolution than were steam railroads compared to wagons

and animals or to sloops, originally used to transport freight over postal routes.

Passenger traffic is, and of itself always has been, peculiarly considered postal traffic. The license by Congress to State-created corporations to haul passengers never was a specific grant and can be rescinded at any time. Conditions for carrying passengers on post roads may therefore be annexed to this exercise of power, practically limited only by the proposition that no absolute taking of the property devoted to public use take place. As long as the passenger traffic is allowed to earn something, the reasonableness of the amount is not a question of judicial but of legislative power. This is a proposition radically different from that of the Congress regulating rates as a legislative function. Rates primarily are made by the railroads under the tacit assent of Congress. The test of reasonableness prescribed by Congress is merely legislatively interpreting a preexisting duty. Not so in the case of passenger rates, where Congress exercises its plenary power over what in all parts of the world, as well as at common law, in the minds of the framers of the Constitution, had been postal traffic. Congress can forbid private corporations to haul passengers (except, perhaps, by the horse, mule, sloop, or post chaise) upon postal roads except on such conditions as it imposes. Congress might tax private carriers out of existence (see "Taxation" hereafter), and the duty of paying compensation for any person injured on such a post road may be annexed to the permission to haul passengers. If this were not so, it would follow that the courts derive from the grant of judicial power a more extensive power of superseding State police than has the Congress from the same Constitution under the post-roads clause.

Congress might impose such onerous taxes on carriers hauling passengers in interstate commerce as to render that occupation unprofitable if Congress wished to create a national passenger service as part of the postal establishment. (On taxing power, see cases cited in footnote.) If Congress can abolish, it can annex to the right of hauling of passengers conditions for rendering more safe the lives and limbs of the men at risk. If the power of taxation is less efficient in the hands of Congress in bringing relief for what it, by the prevalent morality, considers a public use than is the judicial power of superseding the police power of a State to preserve property of carriers and shippers (see Debs and other injunction cases) on a post road, it would seem that the courts would be giving greater protection to the claims of property interests than to human rights. But that sort of reasoning would show that the courts are the mechanism of domination of the property-owning classes, and that standpoint has not as yet been conceded. The courts claim to be acting for all the Nation, rich and poor alike, and where the source of power is undoubted the method of its exercise is purely a matter of legislative discretion. The congressional power of levying taxes on the carriers over postal roads, built though they are by private capital, is absolute. The carriers accepted the Federal statute (14 Stat., 66), haul mail cars over the route, and can not question the regulation by Congress of their postal functions. The power of taxation being public, the use of the proceeds of such tax is no concern of the carriers (Hume's case).

The argument may be made that the regulation of post roads confounds interstate and State employees. The answer is found in this, that no constitutional inhibition prevents Congress from joining in one act powers derived from various grants in the Constitution. Congress has exercised such an amalgamation of powers to justify the grants of vast principalities of public land to the railroads and taxed all the people for the benefit of those holding Pacific Railroad bonds. If it was lawful to join in one act powers derived from the grant of building military roads, postal roads, and the general-welfare clause, and to tax the country for a generation, benefiting those who built the Pacific Railroad, no logical reason can be found, but only political excuses, based on the relations of powerful groups, exist against the validity of enforcing justice for those killed and maimed on these same postal routes, for in principle all railroads are like those Pacific railroads to whom these grants were made.

TAXATION.

The power of taxation may be exercised for the general welfare. No person taxed can be made to see the propriety or justice of a tax. At all times taxes are the symbolic emblems of the political power of a governing class. The attempt to throw the burden of taxation on those politically unable to resist is overcome by the economic power of many economic groups to shift the incidence thereof on the consumer. So that in the last instance the equilibrium of political forces shown in a compromise or in legislation becomes an economic and political and not a legal question. And still more clearly is this seen in the case of taxing railroads. Every tax they are required to pay becomes a charge to operating expenses. Although ultimately this may affect dividends, it may bring about savings in other directions, such as claims for damages, before dividends are affected. But the right of the community to provide safeguards of every kind for those millions of men hourly risked is paramount to the right to dividends. (Covington Turnpike Co. case, 164 U. S., p. 578.) No stockholder has a right so intrenched in and to the unrequited loss of life and limbs of his fellow citizens that it becomes vested as against the power of taxation to relieve such a barbaric situation as now exists in this country. Taxation for such an end is not spoliation; it is salvation to the rest of the property interests of the country.

Taxation of carriages is a proper form of excise taxation specifically permitted by the Constitution as an excise and by the Supreme Court in the income-tax cases. (157 U. S., 430 et seq.)

THE POWER OF TAXATION.

The power of taxation is all pervasive and has, since the origin of the Government, been employed to help enrich a favored class. Indirect taxation has from the time of Hamilton been used by those in control of the Government to further their own ends. Except under spasms of reaction against excessive impositions levied, the people have for a century been forced to pay indirect taxes, enhancing their necessities on the plea of protecting American industries or, in other words, the capitalist class. No objection has been heard from the courts that such protective tariff was class legislation, and the internal-revenue laws, oppressive as they were and inquisitorial as they are, have always been sustained on the ground of legislative power being the test. Surely at this late day the courts can not set aside legislation taxing the instrumentality of commerce when for once legislation is to be exerted in behalf of humanity and the attempt made to make the owners of property bear a just share of those inevitable injuries inclosed in social service. The process of taxing instrumentalities of commerce is due process of law, in spite of what was said in the income-tax cases (Pollock *v.* Farmers' Loan & Trust Co., 157 U. S., p. 430 f. f.). The case of Veazie *v.* Fenno (75 U. S., p. 534 at p. 546) is still good law. In that case the following was said:

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

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

"Is it, then, a tax on a franchise granted by a State, which Congress, upon a principle exempting the reserve powers of the States from impairment by taxation, must be held to have no authority to lay and collect?

"We do not say that there may not be such a tax. It may be admitted that the reserved rights of the States, such as the right to pass laws, to give effect to laws through executive action, to administer justice through the courts, and to employ all necessary agencies for legitimate purposes of State government, are not proper subjects of the taxing power of Congress. But it can not be admitted that franchises granted by a State are necessarily exempt from taxation, for franchises are property—often very valuable and productive property—and when not conferred for the purpose of giving effect to some reserved power of a State seem to be as properly objects of taxation as any other property.

"But in the case before us the object of taxation is not the franchise of the bank, but property created, or contracts made and issued, under the franchise or power to issue bank bills. A railroad company in the exercise of its corporate franchises issues freight receipts, bills of lading, and passenger tickets, and it can not be doubted that the organization of railroads is quite as important to the State as the organization of banks.

"But it will hardly be questioned that these contracts of the company are objects of taxation within the powers of Congress, and not exempted by any relation to the State which granted the charter of the railroad. And it seems difficult to distinguish the taxation of notes issued for circulation from the taxation of these railroad contracts. Both descriptions of contracts are means of profit to the corporations which issue them; and both, as we think, may properly be made contributory to the public revenue.

"It is insisted, however, that the tax in the case before us is excessive, and so excessive as to indicate a purpose on the part of Congress to destroy the franchise of the bank, and is therefore beyond the constitutional power of Congress.

"The first answer to this is that the judicial can not prescribe to the legislative departments of the Government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. So if a particular tax bears heavily upon a corporation, or a class of corporations, it can not, for that reason only, be pronounced contrary to the Constitution."

The amount of taxation by an excise tax is a nonjudicial question. In the Veazie Bank case (8 Wall., 533) power to tax State banks out of existence was conceded. The question of power only was one for the consideration of the court. (Hager *v.* Reclamation Dist. No. 108, 110 U. S., 113.)

That clause of the fourteenth amendment is found, in almost identical language, in the several State constitutions and is intended as additional security against the arbitrary deprivation of life and liberty and the arbitrary spoliation of life and property. Neither can be taken without due process of law. What constitutes that process it may be difficult to define with precision so as to cover all cases. It is, no doubt, wiser, as stated by Mr. Justice Miller, in Davidson *v.* New Orleans, to arrive at its meaning "by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require, with the reasoning on which such decisions may be founded." (96 U. S., 104; XXIV, 619.) It is sufficient to observe here that by "due process" is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law and must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either, without the observance of those general rules established in our jurisprudence for the security of private rights. (Hurtado *v.* California; ante, 232.)

The appellant contends that this fundamental principle was violated in the assessment of his property, inasmuch as it was made without notice to him or without his being afforded any opportunity to be heard respecting it, the law authorizing it containing no provision for such notice or hearing. His contention is that notice and opportunity to be heard are essential to render any proceeding due process of law which may lead to the deprivation of life, liberty, or property. Undoubtedly, where life and liberty are involved, due process requires that there be a regular course of judicial proceedings, which imply that the party to be affected shall have notice and an opportunity to be heard; so, also, where title or possession of property is involved. But where the taking of property is in the enforcement of a tax, the proceeding is necessarily less formal, and whether notice to him is at all necessary may depend upon the character of the tax and the manner in which its amount is determinable. The necessity of revenue for the support of the Government does not admit of the delay attendant upon proceedings in a court of justice, and they are not required for the enforcement of taxes or assessments. As stated by Mr. Justice Bradley, in his concurring opinion in Davidson *v.* New Orleans:

"In judging what is 'due process of law' respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or some of these; and if found to be suitable or admissible in the special case, it will be adjudged to be 'due process of law,' but if found to be arbitrary, oppressive, and unjust, it may be declared to be not 'due process of law.'"

The power of taxation possessed by the State may be exercised upon any subject within its jurisdiction, and to any extent not prohibited by the Constitution of the United States. As said by this court:

"It may touch property in every shape, in its natural condition, in its manufactured form, and in its various transmutations. And the amount of the taxation may be determined by the value of the property or its use or its capacity or its productiveness. It may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the Federal Constitution, the power of the State, as to the mode, form, and extent of taxation, is unlimited, where the subjects to which it applies are within her jurisdiction." (State tax on foreign-held bonds, 15 Wall., 319; 82 U. S., XXI, 186.)

Of the different kinds of taxes which the State may impose, there is a vast number of which, from their nature, no notice can be given to the taxpayer, nor would notice be of any particular advantage to him, such as poll taxes, license taxes (not dependent upon the extent of his business), and, generally, specific taxes on things or persons or occupations. In such cases the legislature in authorizing the tax fixes its amount, and that is the end of the matter. If the tax be not paid the property of the delinquent may be sold and he be thus deprived of his property. Yet there can be no question that the proceeding is due process of law, as there is no inquiry into the weight of evidence, or other element of a judicial nature, and nothing could be changed by hearing the taxpayer. No right of his is, therefore, invaded. Thus, if the tax on animals be a fixed sum per head, or on articles a fixed sum per yard or bushel or gallon, there is nothing the owner can do which can affect the amount to be collected from him. So, if a person wishes a license to do business of a particular kind or at a particular place, such as keeping a hotel or restaurant, or selling liquors or cigars or clothes, he has only to pay the amount required by law and go into business. There is no need in such cases for notice or hearing. So, also, if taxes are imposed in the shape of licenses for privileges, such as those on foreign corporations for doing business in the State, or on domestic corporations for franchises, if the parties desire the privilege, they have only to pay the amount required. In such cases there is no necessity for notice or hearing. The amount of the tax would not be changed by it.

It will be difficult to see how the Supreme Court could deny power to Congress to tax carriers who do not accept the requirements of enlightened legislation safeguarding the lives and limbs of workmen, when it did permit one class of security holders to crush out of existence by the use of the taxing power another group of bankers. If the Veazie Bank case found its ultimate justification in the need of financial statesmanship and a market for United States securities, there can be no less justification in taxing the instrumentalities of carriers used on Federal postal routes as a last resort of bringing about a change in the status of those at risk. Taxation may be used to further any public end.

In Merchants' National Bank *v.* United States (101 U. S., 1–6) Waite, C. J., said:

"The tax is on the notes paid out; that is, made use of as a circulating medium. Such a use is against the public policy of the United States * * *. The taxation was no doubt intended to destroy the use; but that, as has just been seen, Congress has the power to do."

The object of an excise tax on the carriages of carriers on a postal route is to bring about the adoption of a principle of a compensation act. Just as the tax sustained by the Supreme Court in the Veazie Bank case was not intended to be used as a revenue measure, so taxation by an excise tax on railroad equipment may be used as a means of obtaining acquiescence in and obedience to the provisions of the compensation act. The object of the tax in each case is to require submission to a new law. It is of quite as much importance to preserves the lives of men at risk as it is to have uniform bank notes. As soon as the burden of paying either compensation (assumed as a contract with the Government) or taxes imposed when not so assumed becomes a vital question, the railroads will see to it that standards, rules, and regulations are obeyed and enough men employed to stop the reckless slaugher of brigades and armies of able-bodied Americans. The power of so taxing the railroads is not open to doubt, as even on the reargument of the income-tax cases the excise taxes in the Hylton Carriage case (3 Dall., 171) was sustained (158 U. S., 127).

Fuller, C. J., said:

"What was decided in the Hylton case was, then, that tax on carriages was an excise, and therefore an indirect tax."

In Veazie Bank *v.* Fenno (8 Wall., 533), Chase, C. J., said:

"It may safely be assumed, therefore, as the unanimous opinion of the court (in the Hylton case), that a tax on carriages is not a direct tax."

And Story, in his work on the Constitution (vol. 1, 705, sec. 956), said:

"Fifthly, that, accurately speaking, all taxes on expenses or consumption are indirect taxes, and a tax on carriages is of this kind."

The proceeds of the taxation derived from the excise tax when covered into the Treasury are public funds and may be distributed by Congress as it sees fit. Congress has granted bounties, public lands, vast estates, and tariff favors to those classes economically better situated than the workmen, so that the denial of the power of Congress to apportion the proceeds from an excise tax on cars among those killed or injured on railroads would be a subservience to domination of the property-holding class, since no logical method of reasoning could sustain it. The mere statement of a consequence flowing from the decision holding that Congress would not have the power of using the proceeds of an excise tax for the relief of those killed or injured on post roads would seem to show that no danger should be felt therefrom.

The power of regulating commerce among the States was held ample in the employer's liabilities cases (207 U. S.) to give Congress the power of regulating the relation of master and servant, and the same power must flow from the post-office and post-roads clause of the Constitution in respect of the men working on railroads, though not engaged in interstate commerce, but on or with instrumentalities used on post roads. There is no constitutional limitation in favor of property rights, when that property is devoted to commerce or postal traffic, preventing Congress from subjecting it to taxation, and the amount of taxation and the purpose of taxation is a matter of political discussion not reviewable by the courts so long as the taxation be uniform. The taxation proposed by House bill 9831 complies with every constitutional requirement, and the amount is a mere matter of congressional discretion. Since no other standards are called for, Congress may tax the instrumentalities of railway and telegraph companies and may require these enterprises enjoying Federal protection to award social justice to those killed or maimed, all the more so, as such legislation in every other country has made for the preservation of life and limb.

THE STATUS OF EMPLOYEES.

The person of normal capacity has normal rights and is said to enjoy full status.

Whatever disability one is placed under, either politically, juristically, or socially, to that extent diminishes the status in that respect.

Thus a criminal sentenced to imprisonment for life is, by the law, treated as civilly dead, though he may live for many years.

So an absentee for an established term of years leaves his wife free to remarry on the legal presumption of his death, thereby dissolving her marriage condition without affecting the issue previously born.

In all these and allied cases the rules of the law, based on declared public policy, by excluding accessible evidence to controvert authentic facts, affect the status of the individual involved, so that the exclusion of evidence may make for a changed condition of status, and when the exclusion of evidence and the imputations of fictions or nonexisting conditions of physical activity (as in assumption of risk) have been persisted in by the courts there is in consequence created a juristic class of abnormal beings in having less juristic capacity for obtaining redress for grievances than other persons—servants.

These servants, then, are treated by the law as having a lower status; that is, having a lesser right to that standard of justice meted out at the same time to all other persons in like conditions of danger not affected by the status relation.

Being thus deprived of the common justice, it becomes of need for the dominant group to justify, before the conscience of need for the dominant group to justify, before the conscience of its time, this exercise of power. So that by a necessary perversion of reasoning the very inaptitude in escaping from their status and its consequence is made a matter of reproach to them when they have been maimed and venture to seek redress. By asserting a fiction, and claiming that evidence must be directed to an indifferent matter, namely, the standard of care, and a reasonably safe place to work in, a reasonably careful selection of fellow servants, and the right to starve if conditions do not suit the ideally (meticulous) fault-finding workmen of the court's imagination, and excluding evidence of actual inherent danger of the work, the courts have created what, in fact, amounts to a status as against the workers, not only by excluding evidence in the light of actual conditions of labor, but far more disastrously by importing into the Constitution the theory that their dicta of public policy and convenience (for in the last analysis they are all following Abinger, C. B., and his famous dictum on the inconvenience of compensation) are now, and have been, hallowed by the term "due process of law" to such an extent that the legislature may not change the rule of the incidence of economic loss unless the master was to blame. In other words, they throw about the group theory of blame—negligence—such constitutional concepts, so taboo and sacred, that evidence to remove them is inadmissible, and deny power to legislatures to change them. Thus the courts maintain intact a status, or a presumption of law, not based on logic nor on evidence, but supported in the last instance by the brute power of the State, or of the dominant group. In doing this the courts disregard the very point at issue, namely, whether it is fault or negligence that causes the most serious disasters, or whether it is a danger inherent in the nature of the calling. By first imputing to the constitutional words "due process of law" a sacred and inclusive power, unchangeable by mere legislation, the courts then claim that it is part of the "due process of law" for the master class not to be made liable for compensation unless the injury happened through negligence or fault or words of such like import, although the standard of care of the prudent man has as much to do with the running of a factory or mill, or railroad, as has the binomial theorem.

In thus excluding evidence of the facts of danger, and reading a far-fetched theory of negligence and deviation from an impossible standard of care into the protection of the due process clause of the Constitution, the courts are preserving a status of inferiority of the laborers and a superior status of the master class. For the effect of status is one of economic superiority when, by the exclusion of evidence, those at risk are exploited without redress. The refusal of the courts to permit their views to be changed by the irrefutable evidence of statistics of the killed and wounded in the everyday work of modern industry shows such a deliberate exclusion of the facts of everyday life, when in other cases they undertake to apply the latest researches of science, that it must be presumed to be with the purpose of perpetuating the status of the oppressed and excluded in favor of those who benefit by the exploitation. In excluding evidence that it is not relaxation or deviation from the fictitious and impossible standard of care, but danger inherent in the work, the courts rivet firmer the status of the laborer. This is done by transmuting this exclusion of evidence into a principle of constitutional law, by casting about the erroneous conclusions of bygone courts a sacred protection of property rights, and conversely casting out any legislation attempted to remedy their errors of judgment and of polley, by treating that as a status which should be placed under the regulative power of the legislature.

The progress of the world has been shown in the advance from status to regulation by contract or legislative power. The maintenance or the extension of the relation of status is, and always was, a reactionary means of stifling reform. The attempts of the courts to perpetuate their errors by shifting onto the constitutional "due process of law," a rigidity and continuance of status called into being by their own misunderstanding of the effects of economic laws, is to be deplored, as it makes for instability and lack of harmony in the State.

If the Congress had power to grant public lands and issue and loan the public credit of the United States to any railroads because of the public service—whether as mail or as military routes is indifferent—of the carriers engaging in the work, by a parity of reasoning there must exist power derivable from the same source to change the status of the men at risk on these same roads. If there was power to tax these and other men, to pay interest and to redeem the bonds issued in aid of these railroads—and what applies to one applies to all in respect of their Federal character—there must be the same power to be able legislatively to change the consequences of the status in respect of their Federal service and to annex thereto whatever is held reasonable by the social conscience of the times. There is no Federal common law, as the Supreme Court has declared time and again, and therefore there can logically be no such consequences of the status of laboring men as the Federal courts have by a false analogy imported into their decisions. And there must, logically at least, be the same power of Congress to legislatively declare the consequences of the Federal status of labor as there was in the courts to apply the decisions of State judges to the Federal relation of laboring men working on a Federal highway.

STATUS OF SERVANTS.

Under the provisions of H. R. 9831 the relation heretofore existing between master and servant has been legislatively changed. Service on mail routes and post roads and interstate and foreign commerce has

been declared to be "public service" and the employees of a carrier are by the bill declared to be "public servants," thus enacting into law the relation construed by the courts, when in labor disturbances they held the men to be public servants and not allowed to either quit or to strike until such rulings were set aside.

This bill applies to occupations that are of a public character, if the standards heretofore advanced by the courts hold. The railroads are all carried on by corporations, subject in respect of their interstate and mail carriage to Federal regulation as fully as though they had been chartered by the United States (Hale *v.* Henkel case). The carriage of the mail is part of the public business, and never was anything else. This was used by the courts in the Debs case, when the mail routes and post roads clause was dragged in to justify the judicial power to clear obstructions from its path by using the equity powers of Federal courts to enforce the criminal law. If there is judicial power to declare the men's service, for the purpose of putting them into jail without a jury trial, a public service, there must be legislative power in the Congress deriving its power from the same Constitution to declare their service to be a "public service" for the purpose of safeguarding their lives and limbs from the dangers of that service.

The consent of the master is not necessary: In declaring unconstitutional the New York compensation act the New York Court of Appeals said:

"It (the act) does not affect the status at all, but writes into the contract between the employer and employee, without the consent of the former, a liability on his part which never existed before and to which he is permitted to interpose practically no defense, for he can only escape liability when the employee is injured through his own willful misconduct. That is a defense which needs no legislative sanction, since it would be abhorrent to the most primitive notions of justice to permit one to impose liability for his willfully self-inflicted injuries upon another who is wholly free from responsibility for them."

The attitude of the New York Court of Appeals is shown in the complete incapacity to see modern conditions of labor. It believes it has shown the absurdity of the modern ideas whereby relief is sought to be conferred from the stupid judge made rules of the common law when it states that a law would be declared unconstitutional by it "which would compel the industrial employers to give each employee a vacation on full pay during two months of every year." Why can not the modern legislature, as well as the old Babylonian exploiters of their brick-making slaves (the originators of that socialistic scheme of a sabbath), make an annual holiday with pay as valid as the courts can import into a contract of labor the unrequited throwing in of life and limbs? It just reduces itself to Abinger's, C. B., ruling that it would be "inconvenient"; that is, that it would decrease dividends and cut profits.

To return to the principal objection of that court, the railroad employees or any other laborers were not consulted about the doctrine of fellow servant or assumption of risk which the courts, on behalf of the master class, wrote into the contract of employment and which the Federal courts adopted, without leave of Congress, as the rule of awarding justice. There must be as much power in Congress to "write into the contract between employer and employee, without the consent of the master," a condition favoring the employee when, admittedly, conditions changed, as even the most reactionary courts admit, as there was for the courts to misinterpret economic conditions and to impose untold hardships and injustice on the laborers. Whenever the legislature happens to confirm some standard laid down by the courts—"no legislative sanction is needed"—the courts set their face against any change whereby the legislature attempts to undo some of the startling outrages against the social conscience of the times by setting up as taboo and unchangeable the dicta and the reasonings of courts which are illogical and have no foundation on anything save the arbitrary power of the last word. There is nothing apparently wrong in the courts writing into the contract of service the absurd and mendacious assumption of risk as a fiction to justify their exploitation of the men at risk, but it becomes a singularly mischievous attempt on the part of the legislature to shift the burden from the employee to the master. On this point it may be well to quote the Supreme Court in the famous Taylor case (210 U. S., at 296), where Moody, J., well said:

"Where an injury happens through the absence of a safe drawbar there must be hardship. Such an injury must be an irreparable misfortune to some one. If it must be borne entirely by him who suffers it, that is a hardship to him. If its burden is transferred, as far as it is capable of transfer, to the employer, it is a hardship to him. It is quite conceivable that Congress, contemplating the inevitable hardship of such injuries and hoping to diminish the economic loss to the community resulting from them, should deem it wise to impose their burdens upon those who could measurably control their causes instead of upon those who are, in the main, helpless in that regard. Such a policy would be intelligible." * * *

Applying this method of Mr. Justice Moody's reasoning to the changed condition of master and servant, when carried on (1) by corporations (subject to legislative control in respect of their contracts with any of their employees), (2) carrying on a public business (on a Federal mail route protected against violence and therefore subject to Federal regulation when operating over it), (3) for gain, paid for from public funds (in being permitted to haul passengers and express parcels and the mail, all of which might be carried by the United States under the post-roads clause of the Constitution), it is certainly within the power of Congress to classify the service as public and to thereby change the status or the relation of employees to their masters and to annex to the relation those modern concepts of equity which the courts have refused to import into the relation, for it follows that if the courts had power to declare the railroad man's service public service, to put him into jail for violating an agreement for personal service because of the character of his work, and, in the Arago case, to keep sailors in jail because of the peculiar character of the sailor's service with his ship and the public necessity of working the ship, then the Congress has the same power to classify the men as public servants and to impose liability on those corporations who voluntarily engage in mail carriage and commerce on mail routes. That must be conceded as a logical sequence under our system of division of powers.

If the character of the men's work is public service, there can be annexed to it whatever conditions Congress sees fit, so long as the conditions really are parts of that service, and the killing and maiming of men can be statistically demonstrated to be consequences of that service, and it must be as fully within the power of Congress to impose conditions, onerous though they be, against the waste of human lives as it was for that same Congress to grant away public lands in the aid of the same carriers. If the power of conferring benefits on a class and their use of these lands and taxes (for that is what, under the income-tax cases, the gifts of bonds amounts to) does not impose liabilities, there is no logic in the law. In this bill this reciprocal duty is sought to be imposed on the theory that, taking the benefit of Federal exemption from State legislation and claiming the protection of Federal justice for the protection of their bonds in receivership cases and in cases of labor disturbances, gives the right to the Congress to impose liabilities in respect of a more modern attitude toward their employees. In the Hale *v.* Henkel case it was held that there is a dual relationship of corporations engaged in interstate commerce. The United States, then, have the same right to change the status of the servant of these corporations as have the courts to administer what they claim is a general law of master and servant. The power of changing the status of the servant flows from his subjection to Federal law and the paramount legislative power of Congress over that subject; but in the employers' liability cases it was conceded by the majority that the relation of master and servant was, in the limited respects set forth therein, subject to congressional regulation, so that it merely reduces itself to the question whether the Supreme Court will state that changing the rule of decision is beyond congressional power when it legislatively declares a change in the status of the servant to be a public service and annexes to that changed status certain changed relations of liability.

The power of changing rules of evidence is inherent in Congress, so long as it does not upset the basic principle of "due process of law." The courts have for over 80 years misapplied the rules of evidence in construing into the relation of service the "assumption of risk and common employment" doctrine. These rules of law perpetuated fictions not found in fact, and excluded facts from the everyday life of the servants. And this exclusion of evidence is what every class does that has power and no social conscience.

The power of changing the rules of evidence must certainly be lodged in Congress, for the Federal courts have no intrinsic power of making that evidence what Congress declares shall not be evidence. The inferior Federal courts have only such power as Congress chooses to intrust them with in carrying out their granted powers. Evidence is a matter of procedure, and this is and always has been within the power of congressional regulation. The power of declaring what evidence shall be received and what facts shall be admitted are parts of the power of establishing inferior courts. And therefore Congress has the power of removing fictions imported by the courts and substituting modern concepts of professional risk, and these must be accepted by the courts if once written into an act.

There is nothing in the Federal Constitution to hinder the Congress from pursuing its own policy in regulating the social and civil condition of such persons as are, within the classes, given Federal citizenship by the fourteenth amendment, and are, within the classes, actually engaged in interstate and foreign commerce, and are within the jurisdictional limits of the United States, or that enjoins on the Congress the duty of maintaining the status of inferiority, or requires that those engaged in such commerce shall be held to be subjected to the rule of law whereby negligence is made a standard and whereby danger as a factor of causing injury is to be excluded.

The due-process clause of the Constitution, if in conflict with the later enacted fourteenth amendment, must give way, on the analogy of repeal or inconsistency of the two in the same subject matter. But there is no need of so arguing, as due process never was intended to prohibit the change of rules of evidence, and the exclusion of the rules of negligence from master and servant's cases and the substitution therefor of the actual facts by the rule of the danger or hazard is only changing the rules of what testimony shall in future be regarded as admissible evidence. That is certainly a purely legislative function, and to this change the courts must submit.

In the Lemmon case (20 N. Y.), on page 623, it is said:

"In incorporating the fugitive slave provision in the Constitution the Convention was careful not to do anything which should imply its sanction of slavery as legal. The provision as originally reported read 'legally held to service,' and it was amended by striking out the words 'legally held to service' and made to read 'held to service or labor in one State, under the laws thereof.' (See Journal, 384; Madison's Works, 1558, 1559.)

"So also the word 'service' was substituted for 'servitude' on motion of a delegate from Virginia, the latter being (624) descriptive of slaves. (3 Madison's Works, 1569.) The Federal Constitution treats slaves as persons and not as property, and it acts upon them as persons and not as property, though the latter character may be given to them by the laws of the States in which slavery is tolerated."

The fourteenth amendment went no further than to endow all persons within the subjection of the United States with a new status, leaving to Congress the details of elaborating the details thereof by adequate legislation based on the general powers of carrying into effect those granted powers. There can be no doubt that if the Constitution had not violated (and in law there is no fiction stronger than that of disregarding war or its incidents) the due-process clause of the original Constitution in breaking up the political status of black men, and in conferring on all nationals a new Federal citizenship, that then there must be power in that same Congress to changes the rules of evidence in actions brought for injuries on Federal highways, and to regulate the status of free men as parts of their national citzenship, and to require the courts in the future to disregard negligence as a criterion and to substitute therefor the more enlightened rule of the professional risk.

In the Lemmon case (20 N. Y.), at page 629, Wright, J., said:

"But, in 1841, the State, by actual legislation, abrogated the permission accorded to slavery during transit, and declared it to be her will that under all circumstances a slave voluntarily brought into the State should be free, and that the status should not be tolerated within her borders. It is for the State to establish the rule, * * * and not the courts in her behalf, and she may or may not as she chooses exercise it (comity). * * * It is the status, the unjust and unnatural relation, which the policy of the State aims to suppress, and her policy fails, at least in part, if the status be upheld at all. * * * The State deems that the public peace, her internal safety, and domestic interests require the total suppression of a social condition that violates the law of nature (Virginia Bill of Rights, 1, 15); a status declared by Lord Mansfield in Somerset's case to be 'of such a nature that it is incapable of being introduced on any reasons, moral or political': that originates in the predominance of physical force, and is continued by the mere predominance of social force." * * *

The United States have the right to determine the status or social and civil condition of their citizens, and of every condition of persons within their territory. This power of regulation of such a status is, it may be argued, derivable from the fourteenth amendment, whose opening words are:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

If the Congress has no power under this direct political attribution of power to bring about a changed result from the status heretofore evolved by the courts, we have the curious result that the fourteenth amendment was potent to exempt corporations and aggregations of wealth from State regulations and laws meant to benefit laboring men as a class, and that the courts will say that Congress can not use the power from the same source to overcome the status impinged on laborers, and that due process of law means one thing for labor and another thing for the corporations. As was said in the Lemmon case (20 N. Y., at 617):

"It can not affect the question that at some time in her history as a colony or State she (New York) has tolerated slavery on her soil, or that the status has ever had a legal cognition; for without regard to time and circumstances, the State may at her will change the civil condition of her inhabitants and her domestic policy, and proscribe and prohibit that which before had existed."

From the brief of W. M. Evarts in the case of Lemmon v. People, in the court of appeals (20 N. Y., at 597), we copy the following on status:

"The status of slavery is not a natural relation, but contrary to nature, and at every moment it subsists it is an ever new and active violation of the law of nature. (Citing cases.)

"It originates in mere predominance of physical force, and is continued by mere predominance of social force or municipal law.

"Whenever and wherever the physical force in one stage, or the social force or municipal law in the other stage, fails, the status falls, for it has nothing to rest on.

"To continue and defend the status, then, within our territory, the stranger must appeal to some municipal force." * * *

Charles O'Conner had on behalf of the respondent to the habeas corpus proceedings well stated the reason for exploitation. In his brief (p. 575) he said:

"Who shall deny the claim of the intellectual white race to its compensation for the mental toil of governing and guiding the negro laborer? The learned and skillful statesman, soldier, physician, preacher, or other expert in any great department of human exertion where mind holds dominion over matter, is clothed with power and surrounded with materials for the enjoyment of mental and physical luxuries in proportion to the measure of his capacity and attainments. And all this at the cost of the mechanical and agricultural laborer, to whom such enjoyments are denied. If the social order, founded in the different natural capacities of individuals in the same family, which produces these inequalities is not unjust, who can rightfully say of the like inequality in condition between races differing in capacity that it is contrary to a law of nature, or that the governing race who conform to it are guilty of fraud and rapine, or that they commit a violence to right reason which is forbidden by morality?"

Denio, C. J., in the opinion state (p. 603):

"So that whatever opinion we might entertain as to the reasonableness or policy, or even the moral obligation, of the nonslave-holding States to establish provisions similar to those stricken out of the Revised Statutes, it is not in our power, while administering the laws of this State in one of its tribunals of justice, to act at all upon these sentiments, when we see, as we can not fail to do, that the legislature has deliberately repudiated them."

SOCIOLOGICAL ARGUMENT.

In this connection we maintain that there can be demonstrated from numerous authors that the received views about "consent of the governed," "freedom of choice of occupation," and "freedom of contract," and the allied "assumption of risk," are historically unsound, and that, so far as they have been used against workmen, they are, to quote one court, "heartless mockery," or else are simply means of justifying class domination in the class state in perpetual contradiction to the theory upheld by the court, when they are using the sharp edge of the sword of state against the workers, as in the Debs case (158 U. S., 581).

Let us begin with simple concepts, such as the State. This is and always has been a political device of the ruling class or group, having for its object the economic exploitation of a subject class or group. (Gumplowiz, Die soziologische Staatsidee, etc.)

Second. The constitution of the State (whether written or traditional) or form of political domination which the ruling class or group imposes on the subject, class, or group varies with the self-restraint exercised by the subject, class, or group.

(And this is true, although the economically or politically exploited class or group have acquired certain political rights, such as liberty of movement or, in advanced economic States, even certain political rights, but no property worth mentioning, when, as a matter of fact, it is property that it is the principal care of the dominant group to safeguard.)

Third. The self-restraint of the subject, class, or group depends upon or is determined by the collective intelligence of such group or class and its consequent ability to understand the character of the characteristics of the State and the motives of the dominant class in its constitution.

Fourth. The laws enforced by the ruling group or class through the instrumentalities of the State (by whatever formalism these may be obscured) will be determined by the character of the self-restraint of the subject, group, or class and by the ability of the ruling class to justify its scheme of economic exploitation by group conclusion concerning its class interests.

Point one.—Since, then, under our system of government the workmen have to be consulted about the character of the persons in the Congress or the Presidency and do not have any voice in the selection of those placed on the Federal bench, save by a very indirect method of shifted responsibility, the governing group, in this age of bond-holding and bankers' class, quite as apparently as in the last generation, the slavocracy will and can enforce their desire to have the benefits of the unrequited loss of life and limb of those at risk. Heretofore they have had quite as efficient aid from the Supreme Court in this generation, and the same flimsy justification was advanced in their behalf as was more boldly stated by the Supreme Court in the line of cases beginning with the Antelope (10 Wheat., 66) and ending with the Dred Scott case (19 How., 393). Marshall, Chief Justice, in the Antelope (10 Wheat., at p. 114) used the following language:

"In examining claims of this momentous importance, claims in which the sacred rights of liberty and property come in conflict with each other, * * * this court must not yield to feelings which might seduce it from the path of duty and must obey the mandate of the law. However abhorrent this (slave) traffic may be to a mind whose * * * feelings are not blunted by familiarity with the practice, it has been sanctioned in modern times by the laws of all nations who possess distant colonies, each of whom has engaged in it as a common commercial business which no other could rightfully interrupt. It has claimed all the sanction which could be derived from long usage and general acquiescence."

Again, on page 121, he says:

"Among the most enlightened nations of antiquity one of these (rules) was that the victor might enslave the vanquished. This, which was the usage of all, could not be pronounced repugnant to the law of nations, which is certainly to be tried by the test of general usage. That which has received the assent of all must be the law of all.

"Slavery, then, has its origin in force; but as the world has agreed that it is a legitimate result of force, the state of things which is thus produced by general consent can not be pronounced unlawful."

So this great expositor of the Constitution! For his generation and for all who believed in the exploitation of black men, the very incarnation of wisdom and good policy. In what does the standpoint advocated by him, and since the economic futility of his arguments has been demonstrated, it has become fashionable to cavil with his logic, differ from that still maintained by the advocates of the maintenance of the barbaric, inept, and antisocial rules of the law of master and servant?

There is no possible excuse for slavery that does not with precisely the same inexorable logic make for their retention. The rules advocated and enforced by the courts in master and servants law are of quite as much historical, juristic, and we may add, political, probative force, as had the wise theory of justification enunciated by the great Chief Justice. Historically, servants of all classes, were until comparatively recently, either the actual property, or else so dependent economically and socially upon their bread masters that they had few, if any, rights that these were bound to respect. And this was portrayed in the decisions of the courts. The political element—that is, the conscious intent to continue the unrequited exploitation, as far as it would permit such exploitation to go on—has been supplied by the American courts as the residuum of arbitrary power, which arbitrary power, here as elsewhere, is wielded in behalf of those groups who have dominance in economic power, or, in other words, are the de facto state.

There is a pathetic and ghastly element in our situation brought about by the mockery of the putative freedom which these same courts use to mock the victims of the industrial disasters. Because the political rights of freedom of locomotion, and because of the economic needs of factory life have made the workmen participants in the ordinary exemptions of police regulations used elsewhere to cow the laborers, we have blindly allowed the courts to impute a liberty that which does not exist, to maintain a disastrous fiction of freedom of choice, whereby we either stupidly or criminally excuse the exploitation of the laborers, in the interests of the stockholders and their allies.

That there is a point of difference between the capacity of containing this modern exploitation by the courts and that formerly justified before the conscience of the slave owners in this: That the workmen are persons who have before them other ideals and have knowledge of the remedies worked out elsewhere for their relief. Those mistake the temper of our times if they think that the continued acquiescence of the victims of judicial inept rules will continue to remain silent and will permit a game of battledore and shuttlecock of courts blaming legislatures and legislatures pointing out how the courts whittle away relief sought to be conferred upon the victims of modern industry. The American workmen are growing weary of protestations, and their widows are increasing, their orphans are being degraded in life's handicap. Relief must be brought soon and should be had without economic or social upheavals.

In the last instance, it is merely a question of dividends of the railroads and all fictitious anxiety about the constitutionality of the proposed legislation can well await the final decision of the Supreme Court, which will take whatever measure of placating the most potent influence. That what it must in the order of things do, and, being a part of the political mechanism of domination, it is quite as much subject to those influences of the spirit of the time as is any Member of the Congress or any other person in political life.

When certain fundamental rules of century-old constitutional law can be upset by the voice of one man (and the dissenting opinions of the judges in the income-tax cases show how bitterly they themselves stated the radical judicial legislation exercised by the majority in those cases)—argument against socialism is not reason per se. In dissenting from the majority in the income tax cases, Harlan, J., said (158 U. S., at 674): "This court has been urged to stand in the breach for the protection of the just rights of property against the advancing hosts of socialism. With the policy of legislation of this character, this court has nothing to do. That is for the legislative branch of the Government. It is for Congress to determine whether the necessities of the Government are to be met, or the interests of the people subserved, by the taxation of incomes. With that determination, so far as it rests upon grounds of expediency or public policy, the courts can have no rightful concern. The safety and permanency of our institutions demand that each department of government shall keep within its legitimate sphere as defined by the supreme law of the land." And again on page 679: "Is the judiciary to supervise the action of the legislative branch of the Government upon questions of public policy? Are they to override the will of the people, as expressed by their chosen servants, because in their judgment, the particular means employed by Congress in execution of the powers conferred by the Constitution are not the best that could have been devised, or are not absolutely necessary to accomplish the objects for which the Government was established?"—our duty becomes lighter by so much as we endeavor to remedy the evils that the courts brought into being and apply justice that they have refused to award because in cases of employees they could not overturn their own precedents, even though the ablest of them recognized their want of logic or elementary justice.

The same court that has upheld assumption of risk, in cases of a switchman stepping into an unblocked frog, as a simple device of relieving a powerful railroad company from paying damages, by a showing of lack of logic that would have disgraced a schoolboy (Seley case, 152 U. S., 145), had in the previous generation, when under the economic domination of the slave lords, spoken of the acquiescence of the slaves (The *Antelope*, 10 Wheaton, 114) as a reason for their position, and had then earned quite the same applause that the opinions in the Employers' Liability cases (207 U. S.), in our day were received at the hands of those who had to gain from the continuance of the exploitation of the railroad men. Let us examine whether the term exploitation, as applied to the rules of the common law as evolved, administered, and justified and distinguished by the courts in each such case, is properly called exploitation.

There are two forms of labor, and only two—political and economic. Economic labor is the work done and the exchange thereof for the labor of others, by economic desires and hopes of satisfying wants.

Political labor is the result of force, which, at the moment, is irresistible, and which must be submitted to by the victim, and which force or power the person in power can exert. The limitation, which the controlling group exercises may extend from absolute slavery (such as accompanied the development of the State, in its sorrowful progress through the ages), down to unjust class rules. In principle, however, it is always the same. There is an ever-advancing line of delimination, below which man will not be pushed back. Economics bring about the need of extra exploitation, and then there comes a crash. Such were the Jacqueries in France, in Lombardy, in England, and in the great Peasants' War of 1522, and those of the Russian peasants at the time of the French Revolution, and our War of 1861—then the Mexican revolution of to-day. The principle in each and every case was identical; there was a little too much exploitation; that is, unrequited labor, enforced by the mechanism of the dominant group.

In modern industrial conditions laboring men and women must work with machinery not owned by them. They, as a matter of fact, have nothing to say about their fellow employees. Nor have they the right or capacity to order machinery owned by their masters to be either repaired, improved, or in case of need discarded, and yet, when by a perfectly mathematical, ever-recurring statistical ratio one or the other is killed or maimed, they are met by the juristic twaddle about the assumption of risk as a heartless mockery of their sufferings, and told that this is American justice to its workers. One actual tale of recent wrong: Brinkmeier, who, after years of litigation was nonsuited and whose case was finally written by the Kansas Supreme Court, had lost his leg (105 Pac., 221; 93 Pac., 621), because it was cheaper for the Missouri Pacific Railway Co. to escape damages or compensation than to maintain its couplers in operative condition of safety; after the loss of his leg Brinkmeier entered a planing mill.

On the very morning on which counsel for the railroad company were trying (and succeeding) in keeping him from obtaining any damages, while the courts were again wrangling with his case, he lost his four fingers of his right hand in that planing mill. What does this man with a family of small children care about what reason is given for the exploitation of his efforts in life? In any walk of life open to him he meets the same dangers, and the courts claim such a man voluntarily assumes the risk of his calling. That is plainly exploiting his humanity for the benefit of those who placed in power the judges. Nothing can alter nor displace the ultimate verdict of unbiased thought in such a relation. The State, by its courts, claim that laboring men, as they are politically able to do for their services, are by the courts coerced, through a fiction created and fostered by them, to throw in for good measure their lives and limbs or else starve. This is cold-blooded coercion far more odious than the slavery of the blacks, for that slavery rested on the facts of force of a strong race over its barbaric subjects, imported like cattle, for the very purpose of being exploited without let or hindrance, while exploitation, for 80 years patiently borne by American workmen, is justified by unfairness and false logic, and thus is antisocial in its effects upon all who partake of the exploitation, for whatever purpose created or maintained.

Exploitation, then, is the unrequited labor of those under the political domination of a superior group. And to those who are damnified by the process of exploitation it matters not whether they are called "fellow citizens" about election time and cast upon the scrap heap of the industrial unfit after an accident, or whether they are, in name as well as in fact, slaves. The method of justifying the exploitation may differ, but the fact of the unrequited labor being used for the benefit of those owning the industries is the same, and no mere label of "common employment" or of "assumption of risk" can change this fact. The money that should be spent, as it is spent in every other industrial country having railroads, in taking care of the dependents of those killed or injured, is handed over to the stockholders, who thus claim a vested right to the blood money. Since thereby the standard of human life becomes a factor of lessening values, the management is encouraged in killing and maiming, because the only cost which the stockholders must pay is repair to rolling stock, while the railroad employees "assume the risk of their occupation," and if this is too dangerous for them all they have to do is to quit, only to be mangled in some other enterprise. This is certainly exploitation, and when courts of justice justify, it becomes nothing less than a cruel mockery.

In the Insular cases (182 U. S., 274), Brown, J., spoke ironically of the attempt of the Supreme Court in the Dred Scott case to definitely set at rest the questions based on economic differences of slavery. And there is no doubt that some future Supreme Court will treat with the same lack of respect the false reasoning and brutal class justification shown in the Lochner New York bakers case or in the Adair case. It is our function to fashion statutes as best we may, to follow the past rules of the Supreme Court as the great and final board of review of our political activities, as we might that of a coordinate body, if you will, but there is a limit where legislative independence ceases when we do not enact a bill because, forsooth, the Supreme Court may declare our work unconstitutional. They may do so at any time, and that is no reason for this body to abdicate its functions to the court.

Point two: The Constitution of the United States has ever since the Civil War become the mechanism of enhancing the power of those whom it is convenient to speak of as the bond-holding class. The amendments designed to give political power and freedom to the enfranchised blacks were used to batter down State legislation designed to benefit the working classes, and in so doing previous rules about noninterference with State legislation were set at naught, and the same courts that could find no warrant for sustaining the enlightened legislation for workmen in the employer's liability cases found in the word "persons" in the fourteenth amendment authority to extend the power of corporations to such an extent that in Hale *v.* Henkel they were forced to call a halt to corporate lawlessness, after having in Smith *v.* L. S. & M. S. R. R. Co. (173 U. S., 694) held that the creature of the State, a mere railroad company, could of its own free will do what the legislature could not force it to do.

The steady desire of State after State to pass laws to exempt their inhabitants from the domination of Federal courts shows a general unrest and distrust of the fairness of these courts, which, from its universality, must be capable of generalization. And that this feeling is not without its economic foundation in the cases where workmen are involved is shown by the fact that it was the Senate that inserted into the amendment to the second employers' liability act (H. R. 17263, approved Apr. 5, 1910) the rule that cases begun in a State court under that act should not be removable into the Federal court. Had there not been a strong feeling about this matter, it could not have been put through so easily as it was.

Wherever there is exploitation there is—there is bound to be—resentment; and this is a force of evil in the State. Wise statesmen, and to the extent that the courts are participants of political power, protecting property as their first aim (see Harlan's (J.) dictum in Monongahela Bridge Co. *v.* United States, 216 U. S., 177, and compare it with Story's dictum "that government can scarcely be deemed to be free where the rights of property are left solely dependent upon the will of a legislative body without any restraint" in Wilkinson *v.* Leland, 2 Peters, 627, 70 years ago), give heed to these rumblings so as not to place themselves in a position where retreat with dignity is cut off. For no man anxious of his posthumous reputation, as is any judge whose opinions will be read by each generation of lawyers, cares to be classed among those who, having eyes, see not the things that are obviously manifest in the spirit of the times.

And then there is a force in suppressed resentment when workmen come to realize, as they must, that all improvements of learning are applied to every phase of legal inquiry, and only when their bodily injuries and the measure of toll to be paid for their lives are involved, that then alone they are met with a series of sophisms and precedents, while when property interests are involved, as they were in the income-tax cases, no precedents could keep the court from overturning century-old law and decision to read into the Constitution a specially exempted class of property. It must surely have struck all thoughtful students of the law as a very remarkable coincidence that we legislators, whether in State or National legislatures, never show greater ineptitude than in drafting legislation designed to take off the backs of those exploited some grievous wrong, as is all so-called labor legislation when viewed from an enlarged standpoint. And Bulletin No. 91 (Nov., 1910) of the Bureau of Labor shows quite an amazing mass of labor legislation declared unconstitutional, and always justified by a string of dicta and extracts from the opinions of the Supreme Court.

If, then, we must come to understand that there stands a body opposed to letting us relieve the fair name of our civilization from the reproach of being far behind cultured and civilized States in industrial legislation, and if we refuse or fail to act there will inevitably arise an aggregation of men soon powerful enough to demand a change.

Point three. There is abroad in the land to-day an all but universal recognition that we must get rid of the archaic class laws enunciated by the courts in the defense of property rights even though the lives and limbs of the men at risk suffered. This is shown in the autocratically organized trades. Where either the trust is absolute, economically, or where for the sake of holding upright its character as a benevolent feudalism, as in the case of some industries like the Harvesters or the Electric Trust or the Steel Trust mills, it concedes, as a matter of grace, to those injured in its employ that there is no justice in the law as enforced in American courts between master and servant. And yet sociology, or science of human interrelations, has been read to little account if this sort of paternal kindness at the breaking point of the laborers' endurance ever helped a tottering cause or delayed the unavoidable day of reckoning for the exploiters. As State legislature after State legislature passes ameliorative laws, and the courts in their blind incapacity to fathom the spirit of their times, save from the viewpoint of Moody's Manual, declares such legislation unconstitutional because not in harmony with Hamilton's Constitution of 1787, does it not begin to dawn upon the mentality that sooner or later others will take our places and carry out the needed reforms?

For it is economic needs and interests and not fine phrases that bring about political differences and groupings, and those that can not see beyond their day and generation should not be in the position of inflicting harm upon future generations by making for a smash instead of for a gradual change for betterments. So long as the dominant idea of protecting property rights at all hazards as cynically outspoken as the dictum of Harlan, J., in Monongahela Bridge Co. *v.* The United States (217 U. S.), is the standard of judicial right-mindedness and is used at all times as a bat to knock out any attempted relief from archaic laws or abused powers, so surely there will crystallize the consciousness that there is no hope within the outworn Constitution and demagogues will find ready listeners. The courts that can justify protective tariff and bounties to capitalist groups and "reasonable" trusts stand aghast at the idea of tardily awarding justice to those maimed in industrial warfare, because it would be, to quote Lord Abinger, "inconvenient" to pay for the maimed employees. And yet the English have repudiated the logic and justification of the continuation of this grievous wrong. Surely no one imagines that the American worker, and least of all the highly organized and ever efficient railroad men, have less political capacity or knowledge of what their interests demand than the British workers.

There is breaking dawn in the minds of the worker that the courts are the cause of the efficient and most selfish group control, viz, a plutocracy, without traditions and organized under legal guises so well fitted to eliminate any personal responsibility, that they have taken the consequence of the power of electing judges to mean that they will have the power of recalling tools of corporation greed or ineffective followers of precedents when opposed to modern idcas. What has been spreading throughout the West will in due time become a desired scheme of reforming the Federal judiciary, and unless there is a timely house cleaning and brushing away of the mass of unholy mediæval class justification there is bound to come a strong call for that reform.

Point four. So long as the courts, the highest social forces of restraint in the State of our industrial democracy, had slaves of an alien race, in a political lack of status to deal with—the brutal truths of the civil law needed very little justification, because of the incapacity of the exploited beings to resent the iniquity and because they had no other standards. Not so with the modern workmen. Although they are beginning to recognize that they, too, are slaves, self-imported into the steel mills and mines and nests of tracks in railroad yards to replenish the hordes of laborers required to carry on the industrial development of our lands, and a State which must go through all the vicissitudes of all maritime States, and either import slaves or exploit those self-imported masses of men into a condition analogous to wage slavery and differing from political slavery only in indifferent matters, yet there is this distinction to be noted that they have political rights and are beginning to exert them to unify their class interests as opposed to the acquiescent attitude so long drilled into them as the ideal state of mind of the laborer.

The old method of justification is passing away, and even the liberty of contract, so dear to the heart of a court that it could legalize blacklisting in the Adair case and encourage overworking bakers in Lochners's case by false analogies and mistaken readings of medical reports about tuberculosis among them, will not again be used to batter down legislation sought to better men's condition. And as there is no decent reason for the courts to stand alone in upholding that as a standard of reasoning which the entire industrial civilized world

has discarded as inept, mendacious, and unfair, the chances are that any act that shows a decent attempt to comply with the mandates of constructive legislation, based on their rulings, will be allowed to pass muster.

Men with a decent regard for their future reputation do not care to be left in the position of saying that it is good law to perpetuate a state of things which could make Judge Caldwell in a minority opinion not approved of by the Supreme Court say, as he did say of his colleagues on the Circuit Court of Appeals (121 Fed., 16 Kilpatrick case): "Whenever it is made to appear to a railroad company that it costs more to pay the damages assessed against it by the verdicts of juries for maintaining a dangerous condition of its tracks or appliances than it would cost to substitute safe ones in their place the substitution is quickly made; but as long as courts hold as matter of law that what the witnesses in this case declare to be 'simply a death trap' may be maintained with impunity and without incurring any pecuniary liability, the death trap will remain and the slaughter go on. The decision of the majority of the court makes human life in this circuit a cheaper commodity than lumber." (Kilpatrick case, 121 Fed. Rep., 16.)

In that case the railroads won, but class interests that require such Pyrrhic victories are in a bad way. If this dictum of that great judge was bad law, the courts that affirmed the majority and not the dissenting judge are branded before posterity. That sort of justification can not stand the test of time. Nor can the cunning sophistry used in justifying the "assumption of risk," so elaborately worked out by Sanborn, C. J., in the Miller case (123 Fed.), in future stand. The disapprobation of the whole civilized world is a factor to be reckoned with, even when the men at risk are politically powerless, which they are not in these United States. And that is another and an important factor. But these cumulative factors are within the knowledge of the Supreme Court so keenly and appreciated so well that there is in my mind no doubt that the socialogical insight of the Supreme Court will prompt it to give potency to an act as carefully thought out and well worded as is my bill. On that point I have no hesitancy whatever. Your duty and mine ends when we have done what we constitutionally may. The factors of deciding and censoring our work is committed to others.

In the foregoing it has been shown that every argument which can be set forth against a limited compensation bill has been answered. It remains to consider how far the draft, known as H. R. 9831, introduced May 18, 1911, is constitutional. That bill provides for freedom of contract and for due process of law to both carrier and to employee; it taxes those carriers who do not accept its provisions, and permits reviews by the courts of such questions as are properly subjects of judicial cognizance.

It comprehensively states the amounts of compensation to be awarded, and is, it is submitted, the first exhaustive attempt to codify the whole law for the compensation of those hourly at risk in railroad service.

It does not attempt to do more than serve as a model for any legislation that may be hereafter enacted to extend its principle to other occupations subject to Federal control.

This I compiled because at that time every railroad attorney maintained that Congress had not jurisdiction to enact this legislation, while they also maintained that no bill providing for workmen's compensation could be drafted which would be constitutional. In my argument I believe I have demonstrated that Congress has the jurisdiction and that the bill I prepared and for which I have fought was so drafted that there could not have been any question of its constitutionality.

Lastly I wish to insert my arguments against the bill now under consideration, made before the Judiciary Committee on June 7, 1912, which were responsible for a great many amendments to the original commission bill as passed by the Senate:

STATEMENT OF HON. ADOLPH J. SABATH, MEMBER OF CONGRESS FROM THE STATE OF ILLINOIS.

Mr. SABATH. Mr. Chairman and gentlemen of the committee, being the originator of the workman-compensation discussions and also of the legislation which is pending before this committee at the present time, I deem it important to appear before this committee.

At the time I introduced my first workman-compensation bill I was inclined to believe that the railroads of this country did not look upon it with a great deal of favor. In fact, they have charged that this was a revolutionary step and that my bill was a revolutionary measure.

Therefore I was very much amused when I learned recently that all of the railroad attorneys are now favoring the commission-prepared workman-compensation bill. At the time I introduced my workman-compensation bill I did desire to provide real compensation to employees who were injured or killed, and their dependents, and not to relieve the railroads from any liabilities or large judgments, as this bill aims to do.

Mr. STERLING. Is your bill limited to railroads?

Mr. SABATH. My first bill was limited to railroads, but all my other bills that I have introduced applied to persons employed in any occupation subject to the regulative power of Congress, including mail routes.

I may as well say now that the first bill I introduced was on February 3, 1908, H. R. 6061; H. R. 16739 following on February 10, 1908; the third, H. R. 24339, being introduced by me on December 16, 1908; the next, January 6, 1909, H. R. 25408; the next, known as H. R. 1, on March 15, 1909, on which I received a hearing after many requests, which hearing brought about the introduction of a resolution and the appointment of a commission to investigate the principles of workman compensation. Subsequently, on May 3, 1910, I introduced another bill, H. R. 25334, which I thought was an improvement upon all the former bills. In the Sixty-second Congress I introduced, on April 10, 1911, H. R. 2972, and on May 18, 1911, H. R. 9831.

After the commission prepared its draft I redrafted my bill again and have introduced a bill, H. R. 21962. In none of these bills, however, did I attempt to take away from the employees any rights or privileges that they possessed. The last two bills are drafted on a principle which will leave to the employees the right to choose to receive their present rights under the common and statutory laws, or privileges which may be gained under my compensation act; in other words, it is elective.

I desire to say that at the time I introduced my first compensation bills all the defenses—such as fellow servant, assumed risk, and contributory negligence—were still in force in all of the actions in suits for personal injury by injured employees; and it was nearly impossible for anyone to recover. Since that time, however, as you know, nearly all of the defenses have been removed, and I agree with the statement, made by Senator SUTHERLAND and the other gentlemen of the commission, that under the present conditions over 50 per cent of the employees injured will be able to recover as against the former 20 per cent.

Some of the gentlemen who have preceded me stated that before the defenses had been removed it cost the railroads $10,000,000 annually and that under this bill it would cost them $15,000,000, or $5,000,000 more than before, tending to show how liberally they provided for those unfortunates in this bill; but, Mr. Chairman, if 150 per cent more injured employees will be able to recover than under the present laws, it would mean that the railroads would be obliged to pay about $25,000,000 annually for damages. They themselves, however, stated that under the proposed commission act that they are endeavoring to force through they will be obliged to pay about $15,000,000—an indirect admission that this benevolent bill would save them about $10,000,000 each and every year.

Mr. Chairman, that was not what I intended to do when I started to advocate workman-compensation legislation. My aim in securing workman compensation has been to aid legislation and assist those who are killed or injured by eliminating litigation and changing the risk and responsibility from employee to employer, he being in a better position to bear it. After I introduced my bill (H. R. 1), and even before that, I sent to all the railroad organizations and all other labor organizations and unions and to all the newspapers and labor magazines several statements and articles about my bill, in which I endeavored to show the great benefit that would accrue to the people injured and how many hardships eliminated if my bill and the principle underlying my bill be adopted.

I have continued to advocate workman-compensation legislation, and I am of the opinion, Mr. Chairman and gentlemen, that a great many organizations to-day and a great many people of this country are under the impression that the commission bill that has been reported, or the Senate bill that has been passed, is a bill that is drafted after my compensation bill, providing cumulative and elective remedy. I venture to say that many organizations and a good percentage of the laboring people of this country are under the impression that they will have in this bill such law as I have advocated, and which will provide compensation, eliminate litigation, and that they will in all cases, when injured, receive a fair compensation without years of delay and without litigation.

* * * Mr. Chairman, I shall now, with your kind indulgence, give my views on the bill and point out its defects and jokers and explain why I did not and do not now approve of the bill now before you. Mr. Chairman, I am in favor of the principle, but I am not in favor of this bill, because it takes away at one stroke from the people whom I aim to assist the present remedy, the present protection and relief which Congress gave them when the liability law of 1908 and 1910 was adopted.

We now know what law they have, as the Supreme Court only a few days ago declared the 1910 act constitutional, and do not know what they are receiving in this compensation bill, because no one can tell what the Supreme Court will hold. And for that reason we should not at one stroke eliminate all the present liability laws as they now stand. It took England over 20 years of litigation before they ascertained what some of the provisions in their workman-compensation law actually meant and how they should be construed, and no one can tell how long it will take our courts to do so. Furthermore, England never made its act exclusive, as is aimed to be done here.

I am in favor of a workman-compensation bill.

Mr. BRANTLEY. Do I understand you are in favor of the principle of compensation because under any negligence liability law there will be a large class that will not get any compensation unless you do have a compensation law?

Mr. SABATH. That was and is the main reason why I favor workman compensation. I have been on the bench for 12 years. During that time I had hundreds of cases before me of unfortunate people, and in a majority of the cases I investigated I found that the cause of the misery and trouble to be due to the fact that the breadwinner of the family had been killed or injured and that no provision had been made by him or the corporation in whose employ he was injured for those who were dependent upon him, and he or they were precluded and prevented from recovering any damages or securing any relief or obtaining any assistance from the employer or corporation which was responsible for such injury, as the law, as it was construed then by our judges under a judge-made law, placed all of the responsibility on the employee for the protection of the employer.

That was the reason which set me thinking about the injustice that prevailed in all these cases, and I came to the conclusion that there ought to be a change in our laws. I started to study the German and English liability laws and in that way I came very soon after I came to Congress to introduce the first workman-compensation bill. Notwithstanding that I am in favor of a workman-compensation bill, and notwithstanding that I believe such a bill would do a great deal of good and would take care of all those who are injured, I am of the opinion that this bill that has been recommended by the commission and passed by the Senate and is now being considered by you, is not just nor fair to these hundreds of thousands of employees nor to their dependents, as it does not provide for reasonable compensation. They now have a much better chance to recover than they did at the time I introduced my first bill and even better since I have introduced my last one, as the Supreme Court has since that time declared the 1910 act constitutional.

They have a chance now to recover, as has been stated, at least in 50 per cent of the cases, where formerly they could recover only in about 15 per cent of the cases. I agree with some gentlemen when they state that they did receive only about 40 per cent. Yes, I am of the opinion that they have not received more than 30 per cent of the actual amount that was expended in any litigated case.

Mr. HOWLAND. You mean not recovered?

Mr. SABATH. No; I mean of the amounts that were actually paid by the railroads in taking care of the litigated cases, namely, for the cost of their own lawyers and the cost of investigations and the cost of the defense and all other costs on the part of the railroad and such injured employees.

Mr. MORRIS. You mean, as I understand it, that for every dollar that it cost the railroad company, that the railroad company paid, the real injured person only got 30 cents?

Mr. SABATH. Yes; that is what I mean. And really, if we would have the true figures it would not even reach that percentage or that amount.

Mr. MORRIS. Do you think so?

Mr. SABATH. I am absolutely certain.

Mr. FLOYD. But you include the expense incurred by the railroad company?

Mr. SABATH. Yes, sir; I do.

Mr. MCCOY. In other words, you do not mean that out of the amount recovered because of a judgment only 30 per cent was received by the employee?

Mr. SABATH. Oh, no. I do not; because I believe the railroad companies have expended between 25 and 30 per cent, and perhaps up to 35 per cent, to investigate and defend these actions with a view of defeating them. The other 35 to 45 per cent were and are expended on the part of the plaintiff for attorneys' fees, court and witnesses' fees, etc.

Mr. NORRIS. But you put them all together when you show the burden that somebody has to bear?

Mr. SABATH. No; trying to show the amount of waste under the old law.

Mr. NORRIS. Absolutely.

Mr. SABATH. Another reason I am in favor of a compensation law, although I can not support this particular measure, as I have stated, is it is much easier now than formerly to recover, and recover much larger amounts in a much larger number of cases. The railroads know this, and for that reason settle cases that formerly they would not even consider, and agree to better settlements. But still we have more litgation than we should have. I believe that under this bill litigation will not be lessened, and, no doubt, will cost as much as it did under the old conditions, and the only thing which will be accomplished will be that an injured employee will, if successful, recover not more than is provided in the schedule, and the amounts in the schedule are so unreasonably low that if such injured employee be able to litigate, as he will be obliged to do in a great many instances, there will be nothing left to him, even if he succeeds.

Mr. NORRIS. Do you find objection to the bill outside of the fact that the schedule is too low?

Mr. SABATH. Yes; I do. I think the bill is badly—well, no; the bill is too cleverly drawn, and notwithstanding the great ability of the gentlemen who represented the House on the commission, I am obliged to say that the gentlemen who represented the other side of the House, with the gentlemen who were placed on the commission for the railroads, have outmaneuvered our members of the commission. The reason I say this is, there are so many defects in that bill, and each and every such defect in some way will operate against the injured employees and lessen their chances to recover, or be entitled to compensation.

Mr. NORRIS. That is what I would like to have you point out.

Mr. SABATH. I will try to do so to the best of my ability.

Mr. BRANTLEY. Without, of course, replying to your criticism of the bill, would it change the situation any if you knew that the representative of the railroads on the commission, Mr. Brown, was able to attend only three or four meetings of the commission?

Mr. SABATH. But he appointed a gentleman to take his place who was there, whenever even you could not be there, to look after the railroad interest; a man who has devoted a great deal of time and study to this proposition, and whom I consider the shrewdest of all the claim agents that the railroads have in this country.

Mr. BRANTLEY. You refer to Mr. Whiting?

Mr. SABATH. Yes, sir; to Mr. Whiting.

Mr. BRANTLEY. You think he rather overreached the balance of the commission?

Mr. SABATH. I believe he did. I think he took advantage of the fact that you sometimes were obliged to be away, or sometimes while studying some other section he slipped over a section which to you appeared to be perfectly proper and to which you did not have the time to object or did not really have the time to examine properly.

Mr. BRANTLEY. If you knew that the commission debated every word that went in that bill and wrote and rewrote and rewrote it, would that make any difference in your opinion about what Mr. Whiting did?

Mr. SABATH. If that is the case, then I am obliged to say that you have tried to draft a bill more favorable to the railroads than to the employees.

Mr. BRANTLEY. I just want to get it clear.

Mr. SABATH. I am trying to be as honest as I can.

Mr. NORRIS. Would that remark apply to the representatives of labor on the commission? Do you think they were looking after the railroads rather than the employees?

Mr. SABATH. Judge NORRIS, were you not here when Senator REED made his statement?

Mr. NORRIS. No; I did not hear Senator REED. I had to go away.

Mr. SABATH. If you had been here, you would not ask me the question, because he has so ably illustrated that proposition that I would be embarrassed to attempt to follow him and explain the reason why labor at the present time, or some of the labor organizations, are satisfied with the draft of the bill. I believe that he made it perfectly clear that the labor representative on the commission, not being a lawyer and having no experience in drafting bills, was no match for the clever Mr. Whiting.

Mr. NORRIS. As I understand, in referring to the House representative on that commission, Mr. BRANTLEY, you say first that he must not have been there, and if he was there and discussed it, then it must have been an attempt to help the railroads. I wanted to know if the same thing applied to the representative of organized labor who was on that commission?

Mr. SABATH. I think the organized-labor representative had been hypnotized or mesmerized in some way.

Mr. NORRIS. Of course, not being on the commission and only being on this committee with the desire of doing what is right, I have listened to Mr. Gompers, I have heard the labor men, those who have been for and those who have been against it; I heard Senator SMITH speak against it to-day, and it has never occurred to me, and it seems to me you are going quite far to charge here that those men are doing anything except their best.

Mr. SABATH. Oh, I do not say that they did not do the best they could.

Mr. NORRIS. I think you insinuated something to that effect.

Mr. SABATH. I regret that I am obliged to make these statements, but the bill is so drafted as to be in every important provision favorable and beneficial to the railroads.

Mr. NORRIS. Oh, yes; others have made that statement, and you have a right to make that remark as to them. But I do not believe anything has occurred to intimate that Mr. BRANTLEY, for instance, was there on that commission desiring to——

Mr. SABATH (interposing). I do not desire to charge Mr. BRANTLEY or any member of the commission.

Mr. NORRIS. We all have a right to our opinion, and I think it has been conceded thus far that all these men were doing the very best they could.

Mr. BRANTLEY. You are aware of the fact, Judge SABATH, that Mr. Stone and Mr. Garretson and Mr. Lee each one congratulated and thanked the members of the commission for the fairness that they had shown to labor in this matter. That is a matter of public record.

Mr. SABATH. When you say so, of course I take it for granted that they did so. But personally I am still of the opinion that they are not acquainted with all of the provisions of this bill. I am inclined to believe that if they would study the provisions of the bill and if they would understand each and every section of the bill, they could not recommend it to their organizations and be satisfied with it.

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Mr. HIGGINS. What provisions of the bill do you think the House members of the commission do not understand?

Mr. SABATH. I do not say they do not understand the provisions of the bill, but merely desire to say that the gentlemen who were there representing the railroads succeeded in convincing them and inserting provisions that are more favorable to the railroads than to the employees.

Mr. HIGGINS. What are they?

Mr. SABATH. I will try to give them to you. If you desire me to go over the bill, I will do so.

Mr. MCCOY. Which bill have you there?

Mr. SABATH. I have the Senate bill now in my hand which is now pending before this committee.

Mr. Chairman, in the first place, the bill provides for exclusive remedy, taking away from each and every injured or killed employee rights that he has under the present liability law and gives him a law of which we are not certain as to its constitutionality—taking away a certain for an uncertain remedy.

I have for several years in my humble way endeavored to prove and show to Congress, various committees, and to the people in general that it was within the power of Congress to pass a workman compensation bill that would be constitutional. The first two years, with only one exception, every railroad attorney thought I was wrong and that no bill could be drafted on the lines proposed by me and be constitutional. I was not wrong, although I was not a man who knew all about constitutional law; still I had an idea that a bill could be drafted that would be constitutional. I had not heard many of these gentlemen representing the railroads say that this bill is unconstitutional. On the contrary, they are satisfied with it and say nothing about its being unconstitutional. This makes me wonder why this sudden change on their part—have I convinced them or is this bill so favorable to them that they are willing to take it even if it is unconstitutional—which? I myself commence to doubt whether in its present form it is constitutional. I believe it would be a safer course to pursue to pass a bill which would be elective and cumulative, so that in case it should be declared unconstitutional that the thousands of injured employees or those dependent on those who are killed would have the present liability law as an alternative means of recovery.

That is the reason I believe it is a grave mistake to take away from them the law that now protects them, which formerly oppressed them, and merely make this bill a bill which provides for exclusive remedy and deprives them of the common law and statutory remedies.

Mr. BRANTLEY. You of course understand by that section to which you refer that the liability law is not repealed in terms, and that consequently if the compensation law should be held unconstitutional the liability law is still on the books.

Mr. SABATH. That may be true, but during that time look at the uncertainty and in what positions many of these unfortunate people may be placed.

Mr. MCCOY. Your point would be, as I understand it, that if this was made an elective law, some one test case could be picked out and carried to the Supreme Court. In the meanwhile the injured could proceed under their present rights, under the rights as they are now?

Mr. SABATH. Yes, sir.

Mr. NORRIS. Why would not that happen anyway?

Mr. SABATH. Because this takes away from them the right to proceed under the old law.

Mr. NORRIS. Exactly, but it would be like this case Mr. MCCOY has drawn. If that was held unconstitutional the other law would be in force.

Mr. SABATH. But in the meanwhile people are being killed and injured every day.

Mr. NORRIS. So it would be in the other case. People would still be being killed and injured every day.

Mr. SABATH. But why should we repeal something which is certain, for something which is uncertain?

Mr. NORRIS. It is not.

Mr. SABATH. We do not know how this act will operate, but we know what we have now, and that is the reason I believe we should make this elective.

Mr. MCCOY. Your point, as I understand it, is right here: While a case under this act was being tested up through the Supreme Court people would not know whether they had better proceed under this act or whether they had better proceed under the present practice. And in the meanwhile not wishing to sacrifice what they considered their greater rights under the law as at present, and not wanting to go in under this law, the statutory limitations might run.

Mr. SABATH. That is correct, in part. What I desire to state or the point I wish to make is this: This bill provides for exclusive remedy in cases of personal injuries between master and servant or employer and employee.

It provides that how and what such employee can recover, or to what he is entitled for his injuries, or his dependents for his death. Such employee or his dependents to be estopped to proceed under the present law, but would take and receive compensation under this law, and if, after two or three years, the Supreme Court should hold this act unconstitutional, the statutory limitations having run, it may be possible for untold thousands of such injured employees to be deprived of any and all rights for the reason that this law, being declared unconstitutional, under the present law they would be barred from recovery on account of the statutory limitations.

Mr. BRANTLEY. It is a two-year limitation, though. And during that two years if any serious question was raised about the constitutionality of this law, it would be a very simple matter to protect any existing rights that would be necessary in the two years. But does this bill protect the existing or pending rights? I admit that it would be a simple matter, so why not do it?

Mr. MCCOY. I was just trying to get at the point he makes.

Mr. SABATH. I take it that we desire to pass a law that will aid and assist those unfortunates who are crippled each and every day on our railroads, and that it is not the desire of anyone to take anything from them. If that is the aim, why not make this elective and leave them what they have, and find out whether this can take its place and whether it will be a good law? We do desire, and I feel confident that the majority of the members of the committee desire, to make it simpler, make it easier, and make it better, and to equitably and justly compensate such injured employees, and until we are sure that this bill will do what is claimed for it, or rather what others claim for it, I maintain we should not repeal any existing law.

This bill is restricted to employees who are injured on the railroad. My bill included all those who were injured while employed in interstate commerce, which includes the employees of the express companies, Pullman Co., telephone, telegraph, and, in fact, all employees over which Congress has jurisdiction, including employees on mail roads, under interstate commerce, and Government employees.

Mr. BRANTLEY. I might say in that connection—I don't know whether it was stated in your presence—I think I can speak for the commission that they are in favor of extending this law to all people engaged in interstate commerce. But inasmuch as this question is a new one under the limitation of the Federal Constitution, we thought it was better to confine ourselves to that class where the power of Congress has been made sufficiently clear by the Supreme Court. And if the principle is sustained, I do not think there will be any doubt about the law being extended to all these other classes.

Mr. SABATH. I shall now, with your kind indulgence, take up section 3. This is a dangerous section and I desire to call your attention to it. It provides:

"That except as provided herein no such employer shall be civilly liable for any personal injury to or death of any such employee resulting from any such accident."

I am not sure that we are covering all such employees in this bill, and if this bill does not cover all those who are injured or killed they will be excluded from recovering under this bill, and employers will not be liable as already shown, in any case not covered by this bill.

Mr. BRANTLEY. We thought the word "such" qualified it. It was put in there in order to do that.

Mr. SABATH. I do not know, Judge. I think it is a dangerous provision and may eliminate a great many thousands of people who are injured from recovering at all in any way, shape, or manner.

Mr. BRANTLEY. I may state in that connection that when we came to finally draft that particular section we called in a law writer, Mr. Beeman, of great experience in drafting particular phraseology, and that particular language was worked out after a long conference with him. We think—of course we may be mistaken—that it is sufficiently guarded.

Mr. SABATH. Why should that section be in there?

Mr. BRANTLEY. We say who should recover here, and we say that no one else can recover.

Mr. SABATH. Of course I understand that you state who shall and that no one else can recover; that is what I object to. Are you sure that the bill is covering all? I am inclined to believe that you do not cover all; yes—I am positive you don't, and then you say those who are not covered can not recover civilly.

Mr. BRANTLEY. "Such employer," "such employee," and "such accident" undoubtedly refers to the employer and employee that this bill covers.

Mr. SABATH. Well, I am not sure; I hope you will think that over, because such employees as are not included will be deprived of any and all rights and remedies, as the section clearly shows that no such employer shall be civilly liable except as provided under this bill.

As to the next section, section 4, I am not going to waste much time on that, because it is a section which provides that no employee shall receive compensation in the case of injury that does not last over 14 days. That has been covered by Senator REED, and also by Senator SMITH. I desire to call your attention to the fact that notwithstanding that the former English act provided for 14 days, after years of actual experience they have amended the law and have now provided for only 7 days. I believe 7 days in place of 14 should be substituted.

Mr. NORRIS. You think, then, do you, that there should be some limit in there?

Mr. SABATH. I myself always thought that there should be some limitation.

Mr. NORRIS. I know that was a provision that struck me at the time as being a little peculiar, and I have listened carefully to what has been said.

Mr. SABATH. But it should not be any longer period than seven days.

Section 5 provides that after the expiration of the 14 days mentioned in the foregoing section the employer shall continue to furnish such medical and surgical aid and assistance as may be reasonably required, including hospital services. There is nothing here that would give such injured employees the right to secure their own physician. Knowing what I do about certain railroad physicians, I doubt very much whether this provision is beneficial to such injured employees, and I am of the opinion that this section should be amended so that such injured employees would have the right and privilege to engage and secure their own family physician or some other doctor in whom they have confidence.

Section 6 provides that no compensation shall be allowed for the injury or death of any employee where it is proved that his injury or death was occasioned by his willful intention to bring about the injury or death of himself or another, or that the same resulted from his intoxication while on duty. Gentlemen, it is claimed for the workman-compensation bill that it will eliminate lawsuits. I was under the impression when I started to look into the question of workman-compensation laws that such law would eliminate lawsuits. I am still of the opinion that it will if we will not inject into it provisions that mean nothing else but lawsuits.

True, perhaps, in the State from which Senator SMITH comes people do not drink much, and they may not drink because they can not get it; but in the State where I live and in other States the railroad employees do drink. I do not say they drink to excess, but they do take a drink once in awhile. And from what I know of railroad claim agents and railroad lawyers I am confident that whenever they will be able to show that a man has taken a drink, whether even the day or week before, they are going to try to show that at the time he received the injury he was under the influence of liquor, or, in other words, will claim that the injury resulted from intoxication, and for that reason he is not entitled to recover. The result, litigation, a lawsuit, and chance and opportunity to the railroads to defeat large numbers of claims of such injured employees. This is a dangerous provision and should be eliminated. I am of the opinion that the railroads are in a position to engage men in whom they have confidence, who will not violate their rules, and who do not drink to excess. In fact, it is their duty to do so. They owe it to the public to eliminate drunkards from handling and operating trains.

Mr. NORRIS. Would you eliminate the whole provision, or just that part?

Mr. SABATH. No; just that part. The other is all right.

Mr. NORRIS. The other, as a matter of fact, would bring the same litigation, would it not, if you left it in? You are not escaping entirely from litigation?

Mr. SABATH. No; it must be willful intention.

Mr. NORRIS. But the question would arise whether he did it purposely or not.

Mr. SABATH. That would be very hard to prove, because there is not a man in a thousand—yes, not a man in ten thousand—who would willfully injure himself.

Mr. NORRIS. I am of the opinion that it ought to stay in—that part of it—but I am just calling your attention to the fact that we can not get away from some litigation. I think that must be conceded.

Mr. SABATH. I think there will be very little litigation under this section if it is amended as suggested by me, because it will be left to the railroad to prove that the injury was brought about willfully. I am in favor of that provision and think it is sound, with the exception of the clause about intoxication.

Mr. FLOYD. There would be practically no cases where a man would willfully injure himself.

Mr. SABATH. Not one in ten thousand.

Mr. BRANTLEY. It is a great improvement over the English law, which says if a man is guilty of serious willful misconduct, he can not recover. It is a great step beyond that.

Mr. SABATH. I did not follow the English law. I don't know whether you ever took the time to read my bill. My provision reads as follows:

"That no compensation shall be allowed where it is proved that his injury or death was occasioned by his willful, wanton, and premeditated intention to bring about injury or death of himself or another."

Mr. FLOYD. I would like to ask Judge BRANTLEY a question in regard to that one provision. The theory upon which you advocate paying the man who has caused the accident through his own gross neglect, without fault on the part of the railroad company, is that when he is killed he has left dependent a family, and it is to relieve the suffering of the family. What reason is there for not applying the principle to the man that may be drunk and is killed? His family will become a burden on the community.

Mr. BRANTLEY. The only thought the commission had with reference to that was to take care of the public. We thought we ought to penalize the railroad man who is inherently responsible for human life, and that if he deliberately gets drunk and runs a train and gets hurt he ought not to be compensated.

Mr. SABATH. Railroads should not employ drunkards. I will say this, however, frequently you have switchmen and brakemen working in the open where it is below zero. They have no chance to get a warm meal, but they have a chance and time to take a glass of whisky, believing that it will warm them up and stimulate them.

Mr. BRANTLEY. That does not exclude him from compensation. The language of the bill is that his injury must result from it. That is much better.

Mr. SABATH. "That the same resulted from his intoxication while on duty." He may be on duty, and he may take a drink. He might have taken a drink before he went on duty. And if the claim agent of the railroad comes there within a half hour or an hour after the accident has occurred, and he detects from the man's breath, if he is alive, that he had taken a drink, a little beer or some whisky, it will be set up as a defense, and it will be claimed that he was intoxicated at the time the accident occurred.

Mr. BRANTLEY. If you were the court, would you hold those facts as a defense?

Mr. SABATH. I would not; but what would these Federal judge-appointed adjusters hold?

Mr. BRANTLEY. Why do you assume anybody else would?

Mr. SABATH. Because I know the railroad claim agents and what they will do. They will stop at nothing and, as a rule, prove anything and everything needed to defeat a claim.

Mr. BRANTLEY. The claim agent can not adjust this matter.

Mr. SABATH. He will testify and arrange the defense so as to show that the injured employee was guilty of intoxication, and the burden will be on the employee to disprove.

Mr. BRANTLEY. Suppose he does. Suppose he does prove that the man takes a drink.

Mr. SABATH. It means a contention, it means litigation, it means a contest. The main thing in a compensation law is to eliminate litigation. This provision is an invitation to litigation, and it means really the defeat of many cases.

Mr. BRANTLEY. If the railroad litigates upon that point and fails to sustain its contention, it is penalized.

Mr. SABATH. That is an excellent provision inserted in that bill. I approve of that penalty, of that clause penalizing the railroads in case they do appeal and the judgment is not reduced, or the amount is found to be the same as recommended, they should be penalized; because if that were not so, they would be appealing every case. They have been doing it before, and they are not getting any better. But under this provision it would not be the railroad that would appeal. I am afraid that in the majority of cases the employee would be obliged to appeal.

I also notice that the bill gives only 30 days' time in which to give notice, and if the employee does not notify the railroad within 30 days, in some cases 90 days, he is precluded from recovery.

Mr. BRANTLEY. He is given 90 days.

Mr. SABATH. That should be at least in the first place 90 days, and in the second provision a year. Senator REED has called your attention to it, and I will hurry on.

Section 8 provides:

"In case of death it shall be lawful for the employer and any of the dependents of the deceased employee to settle by agreement in like manner and with the same effect the compensation payable to such dependents under this act."

That being the case, I am afraid that in a great many cases the railroad will force a settlement of these matters in a way that will not be favorable to the employee. That provision should be safeguarded, and there should be a provision that such settlement should be approved by a probate judge or the judge of a district or

circuit court and not until he has satisfied himself that it is for the best interest of such dependents.

This section, unless amended as I have suggested, would give them the right to force any kind of settlement. From what I know about these settlements I am satisfied that frequently and in a great many cases such injured employee would be scared by the claim agent of the railroad into a settlement which would be unfavorable, unfair, and unjust. The employees and those whom they leave behind them in case of death should be protected.

Mr. NORRIS. Would you take away from him the right to settle?

Mr. SABATH. No; but such settlement should first be approved by a judge of the probate, district, or circuit courts.

Mr. BRANTLEY. You know there are some safeguards, because in the first place any settlement that does not comply with the law, that gives a man less than this law entitles him to, is void; and then, secondly, if he makes a settlement thinking his injury only temporary, he can have it reopened and reheard and collect what he ought to have.

Mr. SABATH. That is in some cases only.

Mr. BRANTLEY. In all.

Mr. SABATH. But I think under this provision they would have a right to make any kind of a settlement that they desired. And a settlement will dispose of the matter and can not be reopened. Cases that can be reopened are those where the employee is receiving compensation and either party may within two years make application for increase or decrease of such compensation, as the case may be.

Mr. BRANTLEY. He can not do it in this bill.

Mr. SABATH. I am again obliged to differ with you, Judge.

Mr. FLOYD. Provided they do not agree to pay him more than the bill calls for, and if so, the contract would be void, the same as if it were less.

Mr. SABATH. Section 10 should be amended. It provides:

"That before any agreement or award has been made or after the making of any such agreement or award, and at any time before the expiration of two years from the date of the accident, it shall be the duty of the injured employee, if so requested by the employer, to submit himself one or more times, at reasonable times and places for examination," etc.

There may be, however, cases where it would be impossible for such injured employee to present himself or to go to a certain place for examination. There should be an amendment there saying, "if physically able." In its present form, if a demand was made upon him to present himself at a certain place and he was not able to do so, notwithstanding his physical inability he would be precluded from further remedy or compensation.

Mr. NORRIS. I agree that that ought to be perfectly safe, but would not the word "reasonable" which is there make it so? That is included in the language and would seem to cover all the ground that is necessary to cover.

Mr. SABATH. "Reasonable times." The words "reasonable times" mean that they should not demand him to present himself every week or every two weeks for reexamination. But if they should make a demand upon him in 60 days, and he would be unable to go to the place that they might designate, they could say that he had failed to make his appearance, and he would be precluded from recovery.

Mr. NORRIS. He ought not to be required to go any place. They ought to come to him if they want that examination.

Mr. SABATH. I am only pointing out some of the defects, because the gentleman of the committee, Mr. HIGGINS, insisted that I should point out some of the defects, if there were any, in the bill; and also because some one stated yesterday that gentlemen came here condemning the bill without aiding or assisting or enlightening the committee wherein it was defective.

Mr. BRANTLEY. The first examination referred to in section 10 is before there has been any agreement. Section 11 is after the agreement has been entered into.

Mr. SABATH. Look at line 19 in section 10.

"If the employee refuses to submit himself to any such examination, or in any way obstructs the same, his right to payment or compensation and his right to take or prosecute any proceeding under this act shall be suspended until he shall have submitted himself for such examination."

Mr. BRANTLEY. That is before there has been any settlement made with him whatever.

Mr. SABATH. But in the meanwhile he will be deprived of any such compensation, he will be deprived of any aid or assistance.

Mr. BRANTLEY. That is the provision that is in every compensation law I ever read, that the man after he is hurt can not come and say, "I am entitled to $50 a month," and refuse to say how he is hurt or submit himself to any examination.

Mr. SABATH. He will be at home, and anyone could examine him. I only say in case he would be physically unable to present himself. I admit that a railroad should have the right to examine the man and see whether he has been injured and whether he is really disabled. But I do not desire to place a man at a disadvantage, place him in a position where, if he is unable to make his appearance or go 5 or 10 or 20 or 50 miles to be examined, his compensation would be stopped.

Mr. BRANTLEY. The words "submit to examination" do not involve the idea of traveling and going to any particular place. The man can say any day, right on the flat of his back, "I am ready to submit to an examination," and he has complied with the law.

Mr. SABATH. I do not know. It is a question, and we should not leave any of these things where any question can arise.

Mr. NORRIS. I agree with that, but I submit this question to you. It says, "If so requested by the employer, to submit himself one or more times, at reasonable times and places." If a man were sick, injured so that he was not able to go out, and the railroad company asked him to come to some other town and submit to an examination, would anybody say that was a reasonable time or place?

Mr. SABATH. I do not know.

Mr. NORRIS. It seems to me it would be plain that that would be an unreasonable proposition.

Mr. SABATH. It would; but frequently the attorneys for defendants in a damage suit will bring forward unreasonable propositions, and still we find some judges that rule with them.

Mr. NORRIS. Yes; I am sorry to say that is sometimes true; but we can not eliminate that in any law we pass.

Mr. SABATH. But we should try and eliminate all provisions which are liable to create any doubt.

You have the Senate bill. I do not know whether it still retains this provision, although I was given to understand that it has been eliminated, namely, in section 10, page 11, line 5, this bill provides that—

"The United States court, upon application of the employer, may in any case of death, for good cause, order an autopsy at the expense of the employer."

Well, that has been changed so that it is now under the order of the court. The Senate must have amended it, but even as amended it is objectionable, as it will again give the railroads opportunity, through their skilled experts, to contest after a man has been killed and buried for months to prove that his death was brought about or due to some other cause.

Section 13 is objectionable because, I believe, it will be unfair to ask the laboring people of this country to be bound by an adjuster who is appointed by the Federal judge. I have been under the impression that the Interstate Commerce Commission is in a better position to enforce this act than any other body. We know that that body has been fair; that they are acquainted with the railroad conditions, with the employers and employees. It seems to me the people of this country have more confidence in that body than they have in our judges, who are appointed for life. I believe it would be simpler and better to give the execution of this law to the Interstate Commerce Commission and give them the right to appoint examiners or adjusters. I believe that they would appoint men who have more experience and who would be fairer than the men the judges of the courts would appoint.

Mr. NORRIS. How would that be in a geographical sense? You would have one for each judicial district?

Mr. SABATH. One for each judicial district where he is needed or where his services are required. Of course, it is true that some judicial districts would have to have two or three. They would know better than anyone else.

It would be less expensive, and I think they would have men who are more familiar with the conditions than any man a judge of the Federal court would appoint. I am very much opposed to giving the Federal judges the right to appoint these adjusters, because if they would do as their masters, if they would be men with the same views and the same ideas as the judges who appoint them, I regret to say we could not expect a great deal from them. Lawyers representing injured employees at all times dread to go before the Federal courts in these cases; now you propose to turn all of these cases over to their appointees.

Mr. NORRIS. Let me make this suggestion: Instead of limiting it by judicial districts, would it not be better to do it by States, and then upon the recommendation of the Attorney General appoint additional adjusters where the States require it?

Mr. SABATH. I would not even leave it to the Attorney General. In one of the first bills I introduced I provided that a commission be created consisting of the Secretary of Commerce and Labor, the chairman of the Interstate Commerce Commission, and the Commissioner of Labor, and be given jurisdiction in enforcing this act. I am of the opinion that such a commission would be a great deal better to administer this law than is provided for in this bill.

Sections 12 and 13 have been covered by Senator SMITH. There are some objections in them, but time will not permit me to take up these two sections.

On page 23, paragraph 3 of section 14, notwithstanding that the commission meant well, I think there is a dangerous provision. It provides:

"The adjuster shall allow either party to be represented by counsel, or an agent, who need not be a member of the bar."

In large centers we have a great many runners, or men who are often even below what we term ambulance chasers—shysters—a man who is not a lawyer, but who is in the employ of a lawyer, ex-constable or a claim collector, who cares not whom he serves, and who for a few dollars will do anything and everything.

I am under the impression if this would be permitted that in a great many cases these men would go out and represent or misrepresent such injured employee or such dependents, without having any ability, honesty, or conscience. Instead of looking after the employee's interest, they would be looking after the interest of the railroad by aiding their claim agent. I think that this provision should be amended and safeguarded.

Mr. NORRIS. How would you amend that?

Mr. SABATH. I would amend it in such manner as to eliminate all sharks or professional claim agents or go-betweens from being permitted to handle any of these cases, or unless he is a lawyer; or one who would receive no compensation for it from the employer or the employee, and aid in settlement as a friend. I have made a little memorandum, in a hurry, a clause which might be inserted, to read as follows:

"It should be unlawful for anyone to represent the employee in any case under this act receiving compensation from or being on the employers' pay roll. Any violation of which be punishable by a fine of not to exceed $1,000, or by imprisonment of not more than six months, or both."

Mr. NORRIS. That is to prevent the employee being taken advantage of?

Mr. SABATH. That is to prevent unscrupulous men and rascals from preying upon the unfortunate widow and orphans of people injured and killed.

Mr. NORRIS. In other words, pretending to represent them when they are in the employment of the railroad company?

Mr. SABATH. Yes, sir.

Mr. NORRIS. I think that is a very good suggestion. It certainly can not hurt anything.

Mr. SABATH. Indeed it can not, and we in the large centers know how much of such abuse exists.

Mr. NORRIS. Where do you suggest that amendment would come in?

Mr. SABATH. On page 23, in section 3, line 10, after the word "bar."

Another reason why this should be corrected is this: We are giving the right of appeal in these matters. How will such men, who do not know anything about the law, perfect his record or bring out such evidence that would protect such injured employee?

Mr. NORRIS. You would confine it to attorneys?

Mr. SABATH. I think it would be safer. I know it will be very hard for the people under this act to secure the services of any really good attorney because there is so little that they can receive under this bill that it will be very hard for them to secure the services of a good lawyer.

Mr. WEBB. Do you think the court ought to have the right to say what compensation counsel should have?

Mr. SABATH. I believe the bill should be amended also in that respect. In a great many States the attorney for the plaintiff is allowed by the court a certain compensation for his services. I think that in these cases where the employer forces the employee to appeal, or where through other unfair means will force him to appeal, provision should be made for compensation for the services of employee's attorney because otherwise it will be absolutely impossible for such injured employee to secure the services of a decent lawyer

Section 14, paragraph 4, provides, as to services in the case of notice of a trial and filing exceptions, only 5 days is given. It is absolutely unreasonable, and it should be made at least 30 days.

Also in that respect where trial by jury is demanded by the railroad filing exceptions, and after the service of exceptions, then the other party shall have the right for an additional five days to demand a jury. You see only five days are allowed.

I believe in protecting the injured employee, his widow, and his orphans to the best of our ability. Inasmuch as we are legislating, and it is our desire to enact legislation which is fair and just, let us pass an act, even if it should take a few days longer to perfect it, of which we all can be proud, and where we can truthfully say that we have done our work fairly, honestly, and that we have done it well.

Mr. NORRIS. So far as I am concerned, I welcome any man's criticism of the bill, because that is what I want to hear. I think we have heard a great deal of argument on the general proposition as to whether we ought to have compensation or not. As far as I am concerned, I do not care to hear any more on that, but I am interested in any suggestions of amendments or changes. If we pass a bill at all, I would like to have as good a one as possible.

Mr. SABATH. I am very glad to hear it.

Mr. NORRIS. As long as a man confines himself to the bill and does not devote too much to glittering generalities, I feel I am not wasting my time.

Mr. SABATH. No one has ever charged me with indulging in glittering generalities.

Mr. Chairman, I will now take up the compensation features of this bill. The most liberal provision in this bill is in the case of death, and in that provision this bill provides for a compensation of 50 per cent of such deceased employee's monthly wages for eight years, said wages not to exceed $100 a month. So, notwithstanding that this is the most liberal provision in the entire schedule, the most that can be recovered in case of death will be $4,800, and that only in a very few instances.

Mr. NORRIS. In case of total disability, it seems to me, that compensation is much more liberal. There it runs for life.

Mr. SABATH. I know; but in certain permanent-disability cases, if we will study all the provisions carefully we will find that it is not as liberal as some people try to make us believe, the bill again being so safeguarded that there will only be a few such cases that will be entitled to compensation for life.

Mr. BRANTLEY. You do not mean that $4,800 is the maximum amount for death to be recovered?

Mr. SABATH. That is the maximum, is it not? That is the way I read the bill.

Mr. BRANTLEY. No; the bill has been amended in the Senate and agreed to by Senator SUTHERLAND for the commission to continue those payments where there were minor children until they are 16 years of age, and if the child be a girl until 20, unless she is married before that time. So that if a man is killed, leaving a widow and two or three small children, his family might be paid anywhere from eight or ten to eleven thousand dollars.

Mr. SABATH. I am pleased that the Senate amended it and extended the payments, but I hardly believe that it would ever reach that amount, because the compensation would only run to that dependent's child, and inasmuch as in another section of the bill you provide that such dependent child shall be allowed only a certain percentage, namely, only 25 per cent, or, at most, $25 per month.

Mr. BRANTLEY. It must run for eight years. If he leaves an infant and a 2-year-old, a 4-year-old, and a 6-year-old child, they get their compensation until they reach the age of 16 and until the girls reach the age of 20, and it would go far beyond $4,800. The $4,800 must be paid anyhow.

Mr. SABATH. You are mistaken, sir.

Mr. FLOYD. Suppose he left only one child, and she was 19 years old when he was killed, and there was no mother. How long would the daughter's compensation last?

Mr. BRANTLEY. One year.

Mr. FLOYD. She would be absolutely cut off after that year?

Mr. BRANTLEY. If she was the only survivor.

Mr. FLOYD. Compensation is to be received by the parents. That is the theory, then, of compensation.

Mr. NORRIS. In that case the amount would not be paid as you specified awhile ago.

Mr. BRANTLEY. I am speaking of possibilities.

Mr. FLOYD. In any case he said $4,800 is paid. I cited the case of a girl, where there was no widow, and the daughter is 19 years old. I asked him if the compensation would not cease at the end of one year.

Mr. NORRIS. Suppose she was 20; would there be any compensation?

Mr. FLOYD. No.

Mr. WEBB. Where you get the eight-year period you do not contend that the railroad would actually pay $4,800. I have understood that, considering the interest on the money which would be reserved to the railroads during these periods, the railroad would actually pay out but $3,800, but it would have the use of the money until it was all paid over.

Mr. HARDWICK. That is a fair way of doing it; that is the way they do it in all courts of justice.

Mr. NORRIS. That is fair; but at the same time it seems to me that the payment of this sum in installments is vastly superior to paying it in a lump sum. I have seen so often where the widow got a large sum of money in insurance or otherwise, and it was dissipated or lost.

Mr. BRANTLEY. I do not think there were any representatives of labor who appeared before the commission that were not in favor of having this money paid over periodically.

Mr. SABATH. I have always advocated these annuities or installment payments, with the exception that where there is an extraordinary case which would permit a lump sum, and then only with the approval of a probate judge or such court having jurisdiction over minors. Conditions may arise where such a sum, if given to the dependent, it would do them more good than in case they received it in monthly installments. But such sum should not be given, except as I have stated. The probate judge of such county having jurisdiction would sanction such settlement as he believed, in his judgment, to be for the best interests of the dependents.

Mr. NORRIS. While it may not be exactly germane to this proposition, yet it is interesting and bears somewhat upon it. Several years ago, about 15, I had called to my attention a particular case of a man who had died leaving some life insurance. He left a widow. It was supposed that he was in very good circumstances. He was, as a matter of fact. His partners, however, after his death, with the consent of the widow, invested the property. They supposed it was going to be very profitable, but they lost it all, including his life insurance.

He was a prominent man in the town where he lived. The insurance was paid very promptly. As a matter of fact, the widow never saw the agent. The agent came to town within three or four days after the funeral and saw his partners. The dead man's partners wrote out a receipt for the widow to sign. It was taken up and the widow signed it, and the money was paid to the partners. They invested the money for the widow. It was all done honestly. There was nobody who was trying to get any financial profit out of it, and nobody did. But they lost every dollar, and that widow within two years from that time was milking a cow in a little home that her husband had left there, selling milk to her neighbors, baking bread, and supplying neighbors who were able to buy.

Mr. WEBB. That is an exceptional case.

Mr. NORRIS. I know it is. But that started me to thinking, and I have studied it off and on, watching things of that kind where insurance has been paid. I took it up with some insurance men. I had several life-insurance policies myself. But from that time I never took out one policy where the insurance was to be paid in a lump sum. I have taken out policies making it impossible for the beneficiary to do what this bill lets the beneficiary do, that they can not settle under the policy and have it paid in a lump sum. If the widow loses the first payment, she has not lost very much. She has suffered an experience and she will try again, and next time she will be more careful and will learn how to take care of her money. If she gets it all at once, it takes her some time before she develops the ability to take care of it, and in that time she may lose most or all of it.

I think that it is the better plan, and I should hesitate here to allow the railroads to pay a lump sum, even under certain provisions.

Mr. SABATH. Not without the consent of the courts, as it would often be an easy matter for the heartless railroad agent to persuade them to take much less than even they would be entitled to under the law.

The CHAIRMAN. I understood Judge NORRIS's idea is even with the approval of the court it is questionable.

Mr. SABATH. There may be some cases where is might be beneficial.

Mr. NORRIS. I presume there are.

Mr. SABATH. Where a lump sum may be of greater benefit.

Mr. NORRIS. But you know you have had experience in the courts. We all know orders of this kind are rather perfunctory. The advice comes from relatives and friends. They say "Yes, this is a good order to make," and the order is fixed. Ordinarily a probate judge who is acquainted with the people will say, "Let this widow have money," and they do not give it the consideration that ought to be given.

Mr. SABATH. I even safeguard that. I say with the approval of the probate court and the commission.

Mr. NORRIS. Of course the commission here in Washington could not give attention to things like that.

Mr. SABATH. They would have a deputy or agent in the district.

Mr. NORRIS. But he would have to take somebody else's word for it always.

Mr. SABATH. Still I believe it could be done with the utmost care and provide very careful investigation of conditions of such people.

Mr. BRANTLEY. We had it urged upon us, and we thought we did not want any provision made whatever for a commutation. We finally put in this language in section 29 that it could be commuted by court, the application for that purpose—" to be considered by the court sitting without a jury and can be granted where it is shown to the satisfaction of the court that the payment of a lump sum in lieu of future monthly payments will be for the best interests of the person or persons receiving or dependent upon such compensation, or that the continuance of monthly payments will, as compared with lump-sum payments, entail undue expense or undue hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States."

Mr. NORRIS. My objection to it is that this kind of an order made in the courts is merely a matter of form. I know from my own experience. In my State the county court and probate judge has no authority from the legislature to safeguard the rights of minors. It took away from them the right of property as well as of real estate, and you have to go up in the higher court, into the district court, to get that kind of an order. I have signed lots and lots of them myself when I was on the bench. I know as a rule I got very little information, and from my experience as an attorney when I was getting those kind of orders, it was easy to get them. It was mostly a matter of form. And lots of times money was lost in that way.

Mr. WEBB. Even though the lump sum be paid in a case where the deferred payments would amount to forty-eight hundred, the railroads would not agree to pay more than the present value, which is $3,800 in cash. It would settle the amount represented by $3,800.

Mr. NORRIS. If you do allow commutation, it seems proper that the actual payment should be less than would finally be paid if the payments were made in installments, deferred payments.

Mr. WEBB. It would be proper if your compensation law is fair and just.

Mr. NORRIS. Of course it is outside of that.

Mr. SABATH. In all of these cases the compensation is not nearly as high as it should be.

Mr. WEBB. You mean in this bill?

Mr. SABATH. Yes.

Mr. NORRIS. I want to ask you a question on that, the same question I asked of Senator SUTHERLAND, I think. Objection was made by Senator SMITH that this bill did not pay high enough compensation to men who were getting a large salary and had a large income; that it cut them down in order to pay something to the man who under the ordinary provisions of the law could not get anything. The idea is that the man who is not negligent does not get any more—or, if he is killed, his family do not get any more—than the man who is negligent. Would it be possible to put a provision in the law that would differentiate between the man who was negligent and the man who was not or between the widow of these two classes?

Mr. SABATH. That would be a dangerous provision. It would mean litigation, and furthermore the widow of a man that was negligent, as well as the widow and the children of a man who was not, would need to be supported and should be provided for.

Mr. NORRIS. That is true.

Mr. SABATH. This workmen compensation bill is drafted to take care of all those unfortunate people that, through no fault of theirs, are deprived of their support.

Mr. NORRIS. I understand. But to-day Senator SMITH made quite an argument, and there was a good deal of force in it, that by this law we propose here we give as much to the man who was negligent and careless as we do to the man who was careful and who was in no way to blame.

Mr. SABATH. I agree that the careless man will receive the same compensation as the one who is careful. But we know that in a great majority of cases where we charge negligence it is not. The railroad employees, as well as others working on or with machines, have no choice. It is speed, which they are obliged to maintain, and the dangerous and hazardous work they are obliged to perform that is responsible.

Mr. NORRIS. Yes.

Mr. SABATH. The speed, the machinery, the electricity, the steam that forces these men on is such that onlookers believe they are negligent. But they are not, for after they have been at the engine throttle or at coupling cars for some time they become used to the work, speed, and the danger, and do things without ever realizing how dangerous it is. But no fault is found or objection raised until such employee is injured, then it is brought forward as a defense. In fact, they are driven on by the conditions under which they work and the nature of their employment. In 95 per cent of these cases it is not negligence at all. It is due to the conditions—to the dangerous and hazardous occupation they are engaged in. It is the speed at which they are forced to go. It is an inherent risk.

Mr. NORRIS. I want to give you an actual occurrence. My neighbor at that time, and a very fine neighbor with a fine family, was a conductor on a railroad that ran into my town. Our homes were within 30 feet of each other, with no fence between. He was conductor on one of the passenger trains. A "head-on" collision happened near my town, where, I think, 17 people were killed and a large number injured. The wreck was caused, as I understood from the railroad officials with whom I have talked, on account of the neglect of this neighbor of mine to get the necessary orders before he started out with his train. The result was a head-on collision with another train and without the fault of any of the officials of the other train.

Mr. SABATH. Was he not perhaps obliged to make up time?

Mr. NORRIS. No.

Mr. SABATH. Was he not behind time?

Mr. NORRIS. In this case he was not. While he did not do it intentionally, it was an oversight. There was a certain meeting point for this other train, which was late that day. He had the orders for it that he did not observe or something of that kind; some technicality of that kind. If he had examined his orders carefully and followed them he would have avoided the wreck.

Mr. SABATH. Did he have time enough to examine the orders carefully?

Mr. NORRIS. Yes; I think he did. But the point I am making now is that the men on the other train who lost their lives were absolutely blameless. This man, who was to blame, as I understand, did not happen to be killed. But suppose he had been hurt and the other conductor on the other train, who was also a neighbor of mine, had been hurt; we would have paid them the same amount, and yet the carelessness of one of those men was to blame for the injury of the other one.

Now, I agree and I am in favor—I think I am in favor of this bill, although I want to amend it in some respects. But it seems to me if it were possible to differentiate we ought to do it. I do not know that it is. I ask you the question purely for information, and I asked it the same way of Senator SUTHERLAND.

Mr. WEBB. I remember a case similar to that outside of Washington a few years ago. There was a short train coming into Washington, and a heavy train was following it. Right out here at Takoma the red lights were set; the block was on the engineer. He had a very long train, 8 or 10 cars; very heavy. He came thundering along there at night, you might say recklessly and carelessly running, because he did not observe the red lights set there, which the rules and regulations required him to do. He went flashing by and crashed into the other and shorter train, killing and wounding a number of passengers, and was killed himself. He was operating his train very recklessly.

Mr. HARDWICK. If that be true, this sort of a system puts a premium on carelessness.

Mr. WEBB. I have argued that all along.

Mr. NORRIS. I do not believe that. This neighbor of mine was as honest a man as ever lived. He was not a careless man, but I understand he was to blame for this wreck. Somebody is to blame as a rule for almost all of the wrecks, and at the same time while I want to compensate him I want to compensate his family in case of his death——

Mr. SABATH (interposing). That is the thing.

Mr. NORRIS. Still I would like to make a difference, if I could, without endangering the principle.

Mr. SABATH. I hardly believe it is possible; at least I have not been able to think of a scheme under which it would be possible. I go upon this broad theory that when a man is killed, whether he has been careful or careless, he is dead, and if he has a wife and children they must eat and live, and for that reason they should be provided and cared for by those who are responsible, namely, the industry that crushes out one life every two hours and maims one employee every six minutes.

Why should this enormous sacrifice be exacted from railroad employees and others who are engaged in hazardous employments? Does the efficient operation of the Nation's transportation system require that this great burden should remain where it now unjustly lies? Suppose we admit that the terrible sacrifice of lives and limbs is necessary to railroad operation. Suppose we resign ourselves to the belief that our transportation must continue to crush out the lives of its operatives without abatement. Even then, can we excuse ourselves for saddling upon those operatives the financial burden of providing for the needs of their widows and orphans, made such by the very exigencies of the industry itself? Is it not more to the point and more akin to justice that this burden should be assumed by the transportation industry and, through it, by society as a whole? Commerce and industry should shoulder the burden of compensation for personal injuries to workmen, or to their widows or dependents, and it is but plain sense to say that this burden shall be made a fixed charge added to the cost of commerce and industry, which can easily and readily bear it. The maimed and crippled workmen or their widows and orphans can least afford to do so.

In Germany, in England, and other countries where this law prevails not one-eighth part of the accidents occur. Naturally it has been said that because of a liberal provision and compensation is allowed that the people will be reckless and careless because they can recover whether they are careless or not. The contrary is true, because in Germany not one-eighth part of the accidents occur where there is a fair compensation law in force.

Mr. NORRIS. That brings me to another point which I think illustrates just what you are saying and bears me out in the statement that I do not believe it is a premium on carelessness. The difficulty with a good many of these wrecks and accidents is this: A railroad company will want to get trains over the road; they will have certain rules and regulations that under certain conditions the conductor or engineer must not go faster than so much. But a train is late. They want that train to get through on time or to make up some time, or something. It can not be done without a violation of these rules and regulations.

Mr. SABATH. That is correct.

Mr. NORRIS. If the conductor and engineer violating the rules get through they praise them; if there is a wreck or an accident and the rules have been violated, they back up under the rules and they say, "We will not pay anything, because you have violated one of our plain rules."

Mr. SABATH. That is again correct.

Mr. NORRIS. I think that is true sometimes.

Mr. SABATH. And that occurs on nearly every trip where something goes wrong somewhere, and one man must aid and assist another, and if some accident does occur and a man is injured while performing some other work than that to which he was assigned he can not recover; he was not in the performance of his duty. That also is a provision in this bill, and in that respect this bill ought to be amended.

Mr. WEBB. I offered an amendment to the effect that employees should not recover if the injury were produced by his willful negligence.

Mr. SABATH. That is what I am endeavoring to get away from. The bill does not provide for willful negligence, but where the injury is brought about willfully by himself.

Mr. WEBB. That he willfully intended to bring about the injury?

Mr. SABATH. Yes.

Mr. WEBB. But that is quite different from willful negligence.

Mr. SABATH. Yes; the amendment you suggest of negligence will bring about a great deal of litigation which workman compensation law aims to eliminate.

Mr. WEBB. Yes, and you will have it under this bill; lots of it.

Mr. SABATH. Yes; but if the committee will carefully go over this bill, knowing the ability the members possess, I feel confident they can perfect this bill so that it really will eliminate litigation. But if it should be passed as it is it would invite litigation, it would provide for litigation, even more litigation than we have now. What the country demands is that law be passed that would take care of all who are injured, as well as the families of those who are killed, without years of delay and expensive and troublesome litigation and tremendous waste.

Mr. Chairman, I shall now call your attention to section 20. It provides the method of arriving on the monthly earnings of the employees, and then goes on to state, line 11, page 31:

"For the purpose of such calculation no employee's wages shall be considered to be more than $100 a month or less than $50 a month."

And then this exception, "that when in any case the monthly wages of the employee are less than $25 per month, payment for the first 24 months of disability shall not exceed the full amount of such monthly wages."

Here you will notice at a glance what solicitude, what care, is demonstrated that such unfortunate who may be earning $25 per month would not be overpaid and receive more than he would be capable of handling or using. And under the first part of this provision an employee can not be earning more than $100 per month. Of course, that provision is placed in this bill again for the interest of those who are left behind by such unfortunate employee, for fear that they may receive greater compensation than they would know how to expend and protecting them from becoming spendthrifts.

Mr. Chairman, it is rather late, and I am not going to detain you much longer; but I do desire to call your attention to section 21, paragraph A, which reads as follows:

"Where death results from any injury, except in the cases provided for in section 23, and except in the cases in which, in certain contingencies, a reduced period is hereinafter provided for, the following amounts shall be paid for a period of 8 years from the date of the death: *Provided, however*, That this limitation shall not apply to any child under the age of 16 years; but payments shall continue to such child until it shall have attained the age of 16 years."

You will notice that even the limited amount allowed him will stop after eight years, and what will then become of such widow, perhaps unable to work and provide for herself and children, or of his old father or mother who are totally dependent upon him, who have become too old and feeble to take their place in the workshop?

Section 21 continues:

"(1) If the deceased employee leaves a widow and no child under the age of 16, and no dependent child over the age of 16, there shall be paid to the widow 40 per cent of the monthly wage of the deceased.

"(2) If the deceased employee leaves a widow and any child under the age of 16 or any dependent child over the age of 16 there shall be paid to the widow for the benefit of herself and such child or children 50 per cent of the monthly wages of the deceased.

"(3) If the deceased employee leaves any child under the age of 16 or dependent child over the age of 16 but no widow there shall be paid, if one such child, 25 per cent of the monthly wages of the deceased to such child, and if more than one such child 10 per cent additional for each of such children, not to exceed a total of 50 per cent of the monthly wages of the deceased, divided among such children share and share alike: *Provided*, That if the number of children entitled to payment be subsequently reduced to less than four, the amount of the payments shall be correspondingly diminished."

So if there be only three children she will be entitled to only 40 per cent of his earnings, which may be about $50. She will then receive but $20 per month for the support of herself and three little ones. Oh, what liberality on the part of the commission!

"(4) In the event of the death or remarriage of a widow receiving payments under subdivision (2) of this clause, the amount stated in subdivision (3) shall thereafter be paid to the child or children of the deceased employee therein specified for the unexpired part of the period of eight years from the date of the employee's death, but to continue in any event until the youngest child shall have attained the age of 16 years, subject to the provisions of subdivision (9) of this clause (A).

"(5) If the deceased employee leave no widow or children entitled to any payment hereunder, but leave a parent or parents, there shall be paid, in case of partial dependency, 15 per cent of the monthly wages of the deceased to such parent or parents, and if both or either are wholly dependent upon the deceased there shall be paid in lieu of the 15 per cent, if only one parent, 25 per cent of the monthly wages of the deceased, or, if both parents, 40 per cent of the monthly wages of the deceased to such parents or parent.

"(6) If the deceased leave no widow or child or parent entitled to any payment hereunder, but leave any brother, sister, grandparent, or grandchild wholly dependent upon him for support, there shall be paid to such dependent relative, if but one, 20 per cent of the monthly wages of the deceased, or, if more than one, 30 per cent of the monthly wages

of the deceased, divided among them share and share alike. If none of such relatives is wholly dependent and the deceased leave any such relative or relatives partially dependent upon him for support, there shall be paid to such dependent relative or relatives 10 per cent of the monthly wages of the deceased, divided among them share and share alike."

You will notice how the amounts are reduced when and wherever possible. If we had at our disposal the statistical figures showing all those who leave only a widow or children above the age of 16 or only a parent or a brother and those that leave no dependents, you could easily see how unreasonably low is the compensation provided for in this bill.

We now come to paragraph 7 of section 21, which is the most objectionable feature of this bill and which should be amended or eliminated. It provides:

"The foregoing subdivisions of this clause (A) shall apply only to dependents who at the time of the death of the deceased employee are actual residents of the United States or contiguous countries, except (a) if the nonresident dependent be a widow and there be no resident child or children entitled to compensation under this act, there shall be paid to her a lump sum equal to one year's wages of the deceased employee, as hereinbefore defined and limited, for the benefit of herself and nonresident children, if any; (b) if the nonresident dependent be a child or children under the age of 16 years and there be no widow, resident or nonresident, and no resident children entitled to compensation under this act, there shall be paid to such nonresident child or children a like lump sum, to be divided among them share and share alike, it being the intention of the foregoing to exclude from the benefits of this act any such nonresident widow, child, or children, if there be any resident child or children entitled to compensation under this act, and to exclude from the benefits of this act all other resident dependents if there be any nonresident widow, child, or children entitled to take under the provision of this subdivision."

Gentlemen, this is another dangerous provision. By it you encourage and invite the railroads to employ and give preference to foreign labor by eliminating them from recovering or receiving even this meager compensation and thereby it will be cheaper to kill a foreigner than an American citizen. Yes; it will be still cheaper to kill those poor unfortunates. Think it over carefully.

Is not this paragraph cleverly drawn to relieve the railroads from paying even the small amounts provided for?

Now we come to paragraph 8, and see how liberal the commission was. They go so far as to provide the liberal sum of $75 for burial expenses of an employee who, in the performance of dangerous work for his employer, risked and lost his life. Paragraph 8 reads as follows:

"(8) If the monthly payments for a death hereunder are at the rate of not more than $15 per month there shall be paid by the employer a contribution of $75 toward the burial expenses: *Provided, however,* That where no compensation for death of an employee caused as defined by sections 1 and 2 of this act is payable hereunder there shall be furnished by the employer a reasonable burial expense not exceeding $150.

"(9) If compensation is being paid under this act to any dependent, such compensation, unless otherwise provided for herein, shall cease upon the death or marriage of such dependent, and in case the dependent be a child, shall cease upon such child reaching the age of 16, unless dependent, and then when such child shall cease to be dependent."

Section 21 B provides:

"(B) Where permanent total disability results from any injury, there shall be paid to the injured employee 50 per cent of the monthly wages of such employee during the remainder of his life"—

This would be fair and reasonable if it were not for the limitations in section 20—

"In the following cases it shall, for the purposes of this section, be conclusively presumed that the injury resulted in permanent total disability, to wit: The total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the legs or arms, and an injury to the skull resulting in incurable imbecility or insanity."

But these enumerated injuries are not sustained frequently on the railroads.

"(C) Where temporary total disability results from any injury there shall be paid 50 per cent of the monthly wages of the injured employee during the continuance of such temporary total disability.

"(D) Where permanent partial disability results from any injury—

"(1) An amount equal to 50 per cent of his wages shall be paid to the injured employee for the periods stated against such injuries, respectively, as follows: In case of—

"The loss by separation of one arm at or above the elbow joint, or the permanent and complete loss of the use of one arm, 72 months"—

I presume that after 72 months such arm will grow forth again and he will be able to provide for his family as before—

"The loss by separation of one hand at or above the wrist joint, or the permanent and complete loss of the use of one hand at or above the wrist joint, or the permanent and complete loss of the use of one hand, 57 months."

Here again they expect him to recover his hand, but allow a shorter allotment of time, only 57 months. And what will he do then?

"The loss by separation of one leg at or above the knee joint, or the permanent and complete loss of the use of one leg, 66 months.

"The loss by separation of one foot at or above the ankle joint, or the permanent and complete loss of the use of one foot, 48 months."

What will such an injured employee be able to do after 48 months?

Continuing:

"The permanent and complete hearing in both ears, 72 months.

"The permanent and complete loss of hearing in one ear, 36 months.

"The permanent and complete loss of the sight of one eye, 30 months."

In these cases they will pay him about one-quarter of his former wage in one case for 36 months; in the other case, the loss of one eye, 30 months.

"The loss by separation of a thumb, 13 months; a first finger, 9 months; a second finger, 7 months; a third finger, 6 months; a fourth finger, 5 months."

Oh, what extravagance. But what follows is still better:

"The loss of one phalanx of a thumb or two phalanges of a finger shall be considered equal to the loss of one-half of a thumb or of a finger, and compensation for one-half of the above periods shall be payable.

"The loss of more than one phalanx of a thumb and more than two phalanges of a finger shall be considered as the loss of an entire thumb or finger."

Kindly study the liberality for the loss of a finger. They are so magnanimous that they allow the payment for one-half of five months of one-quarter of his wages, which may amount to $125 with the highest allowance.

"The loss by separation of a great toe, nine months; any other toe, four months."

In this case, again, they believe the toes will sprout forth again.

"(2) In all other cases of injury resulting in permanent partial disability the compensation shall bear such relation to the periods stated in the subdivision 1 of this clause (D) as the disabilities bear to those produced by the injuries named therein, and payments shall be made for proportionate periods not in any case exceeding 72 months."

Why do they always name a maximum limit and not a minimum limit?

"(E) Where temporary partial disability results from an injury, the employee, if he is unable to secure work, shall receive 50 per cent of his wages during the continuance of such disability; but such payment shall not extend beyond the period fixed for payment for permanent partial disabilities of the same character; and if the employee refuses to work after suitable work is furnished or secured for him by the employer, he shall not be entitled to any compensation for such disability during the continuance of such refusal."

Why not state that if the employee is capable to perform such work?

"If the employee is at work at reduced wages, he shall receive compensation according to the method provided in section 22.

"SEC. 22. That, notwithstanding any agreement, award, finding, or judgment, as hereinbefore provided for, the employer may continue such injured employee in his service at suitable work, and if the employee accept such work and continue in his employer's service, compensation in any case of injury shall be suspended while the injured employee is at such work for which he receives wages he was receiving at the time of the accident. If his wages received fall below such 90 per cent, an amount of compensation shall be payable equal to the difference between said 90 per cent and such wages, not to exceed, however, 50 per cent of the monthly wages he was receiving at the time of the accident.

"The time during which the employee is at such work shall effect a reduction to that extent in the aggregate period for which payments would otherwise be paid."

Why that provision? Unless it be to provide such injured employees with work during the time the employer would be liable, and as soon as the liability ceased the employee would be discharged. It has been done before and is being done now in many cases where they are employed for a year or two, and as soon as the statutory time wherein he can file suit has expired, he is let out, his services not being needed any longer.

"SEC. 23. That should an employee who sustains an injury resulting in permanent total or permanent partial disability die from any cause at any time, or should an employee who sustains an injury resulting in temporary or total or temporary partial disability die as a result of such injury after 14 days of disability, the employer shall be liable for an amount to be ascertained as follows:

"First. By computing the amount which would have been payable under clause (A) of section 21, if death had immediately resulted from the accident."

And for fear that they have allowed excessive amounts here we come across relief.

"Second. By deducting from such amount a sum equal to the payments for the period between the accident and the death, which, if the accident had immediately resulted in death, the employer, by reason of the happening of any of the contingencies mentioned in clause (A) of section 21, would have been relieved from making.

"Third. By deducting from the remainder so ascertained the amount of the compensation paid up to the time of death under clause (B), (C), (D), or (E) of section 21 or under section 22."

I am inclined to believe that if there are a few other deductions provided for upon the death of such employee he will be called upon to make up a deficit due the railroad.

"The amounts so ascertained shall be paid to the dependents, if any (if not, nothing will be paid), of such employee, living at the time of his death, in the same amounts and subject to the same contingencies as if compensation had been payable to them under clause (A) of section 21 by reason of their having been dependent at the time of the accident: *Provided,* That should an employee who sustains an injury resulting in permanent partial disability die from cause other than the injury at any time, the liability of the employer shall not exceed the unpaid balance of the amount which, if the injured employee had lived, would have been paid under the terms of any agreement, award, findings, or judgment, or under clause (D), section 21, or under section 22."

Again protecting and safeguarding the railroad against the widow and orphan.

"SEC. 24. That if, in an accident, an employee receive an injury resulting in permanent partial disability and in the same accident receive additional injury which, by itself, entitles him to compensation, or if he be injured in the service of the same employer while entitled to or receiving payments for a previous injury, the amount of the monthly payment to him for such combined injuries shall be computed as for a single injury as provided for and limited by section 20 hereof, but in such case the periods of time prescribed for such injuries, severally, shall be added together; *Provided,* That where any such period is less than three months the same shall not be added, but shall be disregarded."

Additional discrimination, additional limitation, and subtraction.

"If an employee receive an injury which of itself would only cause permanent partial disability, but which combined with a previous injury does in fact cause permanent total disability, the employer shall only be liable as for the permanent partial disability, so far as the subsequent injury is concerned."

Thousands of railroad employees are injured twice, three times, and sometimes even a greater number of times. Again this provision discriminates against them, and, notwithstanding that in many cases under this provision he will be permanently disabled and thereby unable ever again to provide for his family, he will not be able to recover the compensation which he should receive.

Gentlemen, many of these provisions are dangerous, but paragraph 7 of section 21 is more dangerous than the rest, because in that provision you invite and encourage railroads to employ foreign labor because it will be cheaper to kill a foreigner than an American citizen. That section must be carefully studied, because there is no one here who is desirous of throwing the American laboring man out of employment.

Mr. FLOYD. Let me see if I understand your point. If a man is an American and he is employed on a railroad, then under the provisions of this bill you must take care of his dependent, under the terms of the bill.

Mr. SABATH. Yes, sir.

Mr. FLOYD. But if he is a foreigner, there is no provision in the bill for paying any compensation to his dependents?

Mr. SABATH. With the exception that if he has a widow or dependent child or children living abroad one year's salary is to be paid her or them.

Mr. FLOYD. Your point is it will encourage the railroads to employ foreigners instead of American citizens to work on the railroads?

Mr. SABATH. Yes, sir; as it will be cheaper to kill them.

Mr. HOWLAND. Is not this bill on all fours with Gov. Wilson's bill of New Jersey?

Mr. SABATH. I regret that I did not study Gov. Wilson's bill. My hands were full following the commission bill and my own bill.

Mr. HOWLAND. The reason why I asked that question is that I have received resolutions complaining that the bill of the New Jersey governor discriminated against the foreigner.

Mr. SABATH. If the New Jersey act has the same provision, I am not surprised that you are receiving protests and complaints, as the American people are fair and just and do not approve of discrimination. It is a provision which is unfair and unjust.

Mr. HARDWICK. This bill is not on all fours with the bill recommended in 1908 by President Roosevelt.

Mr. SABATH. No. President Roosevelt only recommended workman compensation after, as I have been informed, he had seen the draft of my bill [laughter] and before I had a chance and an opportunity to introduce it. But I was very glad that he did, and welcome aid and assistance from every quarter. I assure you I was not opposed to his approval of my bill, notwithstanding the fact that he sent the message the day before I had a chance to introduce the bill in the House. But that shows that he then possessed a great deal of energy, and some of it is still stored up to the present time. [Laughter.]

Mr. HOWLAND. How did he come to see your bill, which he recommended?

Mr. SABATH. I did not desire to go into that, but as long as you ask the question I will make that plain. When I arrived in Washington I started to look for some one to help me to go over my bill and inform me whether it was constitutional. I never claimed to be a constitutional lawyer, and no one ever charged me with it. Therefore I did not desire to introduce the very first bill that would appear on its face unconstitutional. I was recommended to a certain gentleman who has been for many years in the employ of the Interstate Commerce Commission, a man of ability, and a man who, it was claimed, knew how to draw bills. I sent for him and informed him that I was willing to pay him to aid and assist me in perfecting the bill so that it would be constitutional.

It was just a few months after the Supreme Court had declared the liability act of 1906 to be unconstitutional. I was requested by him to let him have my draft of the bill. He had it there for a few days. I wondered why he did not return it, and I called him up, and finally he informed me that he must consult with the Secretary as to whether or not he could do the work. That was after about 10 days. Finally I called him up again, and he informed me then that he had talked with the Secretary, and the Secretary had stated that it was not permissible for anyone in the department to aid in drafting this bill. Inasmuch as they were working on a similar bill, this, I believe, was for the purpose of being able to introduce it before I could introduce mine. I said, "Then bring me back the bill." "The Secretary has the bill," he said. Then I made a demand upon the Secretary for the bill. In the meanwhile I was informed that the chairman of the commission had the bill. From the chairman of the commission it traveled to President Roosevelt, as I understand. A few days thereafter I was pleased to note that President Roosevelt had sent a message to the House advocating workman compensation. But in the meanwhile, the day after I finally secured my draft back, I worked day and night with another gentleman whose services I had secured to help me to perfect my draft so as to be able to get it in before the so-called department bill or before the message reached the House, because they were coming fast—but, as usual, President Roosevelt was there before me [laughter], with a message, but not the bill.

Mr. MCCOY. You have heard of the Ananias Club. You are not looking for a membership there, are you?

Mr. SABATH. No; because after that I gave President Roosevelt a great deal of credit for what he had done in advocating workman compensation. He did advocate workman compensation, and has publicly commended me for the labor I put into the bill and into the speech that I inserted in the CONGRESSIONAL RECORD for the purpose of enlightening the American people on the principle of the workman-compensation bill, for my honesty in stating that I availed myself of the privilege of the House to insert remarks instead of trying to mislead the country that I had actually delivered the speech on the floor of the House. Right here I desire to state that I was obliged to insert it, not being able to secure enough time to enable me to deliver it on the floor.

In that way I have no complaint to make and feel satisfied that he himself did not know that I would be ready to introduce the bill as soon as I was, or he might perhaps have waited a few days with his message. What transpired soon thereafter forces me to the conclusion that he recognized my efforts, as in a short time he requested me to call on him for the purpose of discussing with me this legislation, and in that way has shown me more courtesy and placed in me more confidence than he did in the members of his own party of many years' service, and all this notwithstanding that I was only a new Member.

Mr. WEBB. You do not think he would have sent the message on this subject unless he had seen your bill?

Mr. SABATH. That I do not know. I would not charge him with it; but I hope that the draft which was submitted by me to the gentleman, and which traveled through the department and finally reached the White House, as I was informed, was instrumental in bringing out the message.

Mr. BRANTLEY. Is this bill, introduced in March, 1912, the last one which you introduced?

Mr. SABATH. That is the last one. And right here I desire to say, before you ask me anything more about it, that this last bill of mine includes some of the provisions that are embodied in the commission bill, the same as the commission bill contains many of my clauses and provisions; and the only ones that are really good are those taken from my bill.

Mr. BRANTLEY. Your schedule of compensation is higher than that in the commission bill?

Mr. SABATH. Yes, sir.

Mr. BRANTLEY. Under your bill no railroad in this country has to pay your schedule of compensation unless it voluntarily elects to come under the operation of your bill?

Mr. SABATH. Yes. I said my bill is so drafted. It is voluntary on the part of the employee as well as the employer.

Mr. BRANTLEY. Did you ever have a dream that if you put enormous amounts in the schedue of compensation and not make them compulsory any railroad in this country would ever adopt it?

Mr. SABATH. I do not think my amounts in this bill are enormous. They are fair. They are lower than are recovered under the present conditions. I make limitations. I admit in the first draft of my bill I did lesire to secure more than probably the railroads could reasonably pay, and that is the reason they assailed my bill and assailed me. But the last two bills are reasonable, and I maintain, Judge BRANTLEY and gentlemen of the committee, that even my bill, H. R. 1, would not increase the operating expenses 1 per cent and the cost would not be as great as many people imagine.

Mr. BRANTLEY. At the same time, under your bill it would be at the pleasure of the railroad whether it would come under its operation or not?

Mr. SABATH. Yes; but I have a few provisions in my bill, Judge, which I am positive would aid the railroads in coming to the conclusion that it would be better for them to adopt it and avail themselves of its benefits. I provide in my bill that if they do not accept it we should impose a certain tax on them; and I believe as Mr. Thom, of the Southern Railway, said, and as I have maintained, that we have that right and the power, especially under the ruling in the Oklahoma bank cases, to tax the railroad companies for this fund, and, where they would not accept, impose a certain tax upon them, and in that way we could get them to accept the provisions of my bill.

Mr. BRANTLEY. I want to ask you a further question. If the railroads do accept it, then under your bill it becomes practically an exclusive remedy, does it not?

Mr. SABATH. No; only to those who have accepted, and in certain cases it does not affect the present civil liability.

Mr. BRANTLEY. Read section 5 of your bill.

Mr. SABATH (reading)—

"SEC. 5. That no common-law or statutory right to recover damages for injury or death sustained by any such employee while engaged in any employment subject to the provisions of this act, other than the compensation herein provided, shall be available to any such employee who has accepted the provisions of this act nor to any such employee's dependents or his legal representatives: *Provided*, That where the injury to the employee was caused by the failure of the employer to furnish any safety appliance for use in said employment which is now or may hereafter be required by any act of Congress, nothing in this act shall affect the present civil liability of the employer."

As you notice, it provides that the employee may, at his option, accept or reject. There is a proviso in there which provides that where the injury of the employee was "caused by the failure of the employer to furnish any safety appliance for use in said employment which is now or may hereafter be required by any act of Congress, nothing in this act shall affect the present civil liability of the employer."

That was put in for the purpose of forcing the railroad companies to put in all the safety appliances and make travel as safe as possible.

Mr. BRANTLEY. Aside from the fact, if the railroad and the employee elect to go under your compensation law it becomes an exclusive remedy?

Mr. SABATH. If he accepts, yes. I admit that my aim has been, and is now, to eliminate litigation, and that where we give fair compensation under a bill that they should not also have the remedy under the present law. What I contend for is a fair remedy, a fair trial of the remedy which we are giving, and if it works out right, and if the law after it has been in operation a year or two will do what we claim for it, it will then be time enough to eliminate all of the present remedies. But until we are satisfied that this bill will do what is claimed for it I believe we should not deprive those injured and those dependent upon them of the rights that they have under the present liability law.

Mr. HOWLAND. Under this bill of yours you give the railroad company the right to elect whether it shall be under the liability law or under the compensation act, and you give the employee the right also to elect whether he shall come under the compensation act or the liability act?

Mr. SABATH. Yes, sir.

Mr. HOWLAND. Suppose the railroad company elects to come under the compensation law and the employee elects to insist on his common-law rights?

Mr. SABATH. He would be obliged to give notice. I am trying to eliminate that indirectly as much as I can. But he would have to give 30 days' notice that he does not avail himself of the compensation act.

Mr. HOWLAND. You can not give the right to both to elect different remedies because they might elect different remedies.

Mr. SABATH. They both have the right to elect. They could, because the railroad may elect——

Mr. HOWLAND (interposing). Suppose the railroad wants to come under the compensation bill and the employee wants to come under the liability bill; where are you?

Mr. MCCOY. That is not the way they do it.

Mr. SABATH. Then he would not be obliged to come under the workman compensation. I am satisfied that right from the start 95 per cent—yes, 98 per cent—of the employees would elect to come under a workman-compensation bill if compensation provided therein is as fair as in my bill. But of course if the bill does not provide reasonably fair compensation, naturally they would not elect the compensation law.

Mr. NORRIS. I would like on that point to ask you a question. Your theory is that both the employee and the railroad company must elect to accept the new law or else it is not effective.

Mr. SABATH. Yes, sir.

Mr. NORRIS. The railroad company of course would elect to go under the law that would be the most favorable to them and that would allow the smallest amount of damages. The employee would want to go under the law that would give the largest amount of damages. I think that is perfectly natural.

Mr. SABATH. There is no doubt about that.

Mr. NORRIS. How would you ever expect to get both of them to agree to the same law?

Mr. SABATH. In this way: By passing a fair compensation law which would provide for fair and reasonable compensation without delay. I feel confident that within a short space of time that 98 per cent—yes, perhaps 99 per cent—of the employees would elect to come under the workman compensation if they would be satisfied that it really provides fair compensation.

Mr. NORRIS. For the same reason that they would go under that law the railroad company would keep out from under it.

Mr. SABATH. Yes; but I make it effective for the reason that I was not quite sure that the Supreme Court would otherwise declare it constitutional as that tribunal may hold that we are taking property without due process of law. So I make it elective. But I have a clause or two in the bill which will coax the railroads to accept, namely, by providing for a taxation system upon those that do not accept, as Congress has the right to impose such tax. In that way we would coax them along and help them to accept the bill and elect to come under its provisions.

The CHAIRMAN. Have you that provision of the bill before you to which you are now referring?

Mr. SABATH. As to the taxation?

The CHAIRMAN. Yes; your coaxing provision, as you call it.

Mr. SABATH. You will pardon the expression.

The CHAIRMAN. I do not find any objection to the expression. But as a matter of information I wanted to know what particular provision in your bill provided for that, in all seriousness. I think in one sense that is not an inapt word for you to use.

Mr. SABATH. It is in section 31 of my bill. It provides:

"That 60 days after the passage of this act every common carrier subject to the regulative power of Congress shall be liable for the following excise taxes for the purpose of paying the administrative expenses of this act and for paying the compensation herein provided for, namely:

"First. There shall be levied, collected, and paid on every car or motor vehicle used in the transportation of persons or property on the lines of every common carrier subject to this act, whether steam or electric line, an excise tax of $6 per year.

"Second. There is hereby levied, and there shall be payable by every telegraph company operated along the line of or connected with any telegraph line built, constructed, or maintained along the line of any railroad and telegraph line to which the United States has granted subsidies, or which telegraph line shall have accepted the provisions of title 65 of the Revised Statutes, an excise tax of $50,000 for an in respect of its plant within the District of Columbia.

"Third. Every express company subject to this act shall pay an excise tax of $5 per year on every wagon or other vehicle used by it in the collection, distribution, and delivery of express matter, and on every car used exclusively by any express company on any line of railroad for the transportation of express matter a tax of $5 per year shall be levied and paid."

The CHAIRMAN. That was the inducement you held out for accepting the provisions of this act?

Mr. SABATH. Yes; there are some other inducements in my other bills.

Mr. NORRIS. You have a tax in there for the purpose of paying the compensation provided for in the act?

Mr. SABATH. Yes, sir.

Mr. NORRIS. And then you provide that if they accept the bill so that they will have to pay compensation, they do not need to pay the tax; and if they do not accept the bill, and therefore there will be no use for a fund to pay it, then they have to pay the tax?

Mr. SABATH. No; as that tax shall be used only for the purpose of paying this compensation and the cost of enforcing and carrying out of the act.

Mr. NORRIS. There will be none to pay.

Mr. SABATH. If they do not accept, then they pay the tax.

Mr. NORRIS. But that is for the purpose of raising a fund to comply with the provisions of the law?

Mr. SABATH. Yes.

Mr. NORRIS. If the bill is not enforced, if they do not accept it, they do not need that fund?

Mr. SABATH. No. The law would be the law of the land; they must accept or elect to come and avail themselves of all its provisions under that law. Then, in a case where they would refuse, we do that duty for them, providing for those who are injured and killed by imposing a tax, that tax to be collected by the Government and paid in a special fund, out of which fund these injured employees would be provided for and taken care of.

Mr. NORRIS. How do you provide that they should get the money out of that fund?

Mr. SABATH. I have a provision in the bill.

Mr. NORRIS. You have a provision for that?

Mr. SABATH. Yes, sir; I provide for that. I shall read the provision to you:

"Whenever the Interstate Commerce Commission shall have certified to the Secretary of the Treasury that any such common carrier has not complied with the orders of said commission in respect of paying any compensation due, it shall be the duty of said Secretary of the Treasury to collect the excise taxes hereby imposed during or for such time or times as said carrier is not complying with any lawful orders of said commission with respect to the matters contained in this act. Said excise taxes under the provisions of this act when collected and paid into the Treasury of the United States shall be, and they are hereby, specifically reappropriated, and shall constitute a permanent appropriation, to be called the "Federal compensation fund," to pay any compensation not paid by any carrier or person subject to this act, pursuant to any lawful order of said commission, and to meet the necessary expenses of administering this act; and all acts heretofore passed in aid of pensioners of the United States in respect of limitation of attorneys' fees, proof of claim, allowance, and payment and audit, are hereby, as far as applicable, extended to any funds exacted, collected, appropriated, and disbursed pursuant to this act."

Mr. SABATH. Mr. Chairman, Mr. Hardwick is here, and I know he is anxious to go on, but at this late hour it will be impossible, as I have transgressed on the goodness of the committee in taking up nearly three hours, and I do not desire to take up a great deal more time. But before I conclude I desire, however, to ask the privilege to embody in the hearing my last two bills.

The CHAIRMAN. You may do that.

Mr. SABATH. And the first speech that was made by me on workman compensation in the House.

The CHAIRMAN. Without objection that may be done.

Mr. NORRIS. You do not want to incorporate the CONGRESSIONAL RECORD in the hearing?

Mr. SABATH. No; not all that I have said on this subject.

Mr. NORRIS. The speech is already printed in it.

Mr. SABATH. I know; but I would like to incorporate it here, because it contains much information that those interested may read if in these hearings and may not in the CONGRESSIONAL RECORD. I am under the impression that some may read it and be benefited by it.

I have also with me communications from several labor organizations that are opposed to this bill, as well as from the lodge of the Brotherhood of Railroad Trainmen.

The CHAIRMAN. Are they opposed to it in its present form?

Mr. SABATH. Yes, sir. Also a communication of protest against the bill from Pennsylvania employees west of Pittsburgh, and they claim they are speaking for the majority of railroad employees. I shall read extracts from the communication and insert the others. [Reading:]

EXHIBIT 1.

Hon. ADOLPH J. SABATH,
Member of Congress.

DEAR SIR: We, the undersigned, members of the advisory board of the relief department of the Pennsylvania Lines West, who were elected by and represent the contributing members of the relief department, respectfully request that you hear our protest against a proposed law which has been introduced in Congress as bill S. 5382 and known as the employers liability and workmen's compensation law, and ask that you use your influence to defeat this measure for many reasons, a few of which we will endeavor to make clear to you.

We represent, on the lines west of Pittsburgh, about 48,000 members. The lines east of Pittsburgh have a membership of about 90,000. The Chicago, Burlington & Quincy Railway has a membership of about 26,000, and the Baltimore & Ohio system a membership in excess of 100,000. The aggregate, as you will see, makes a total which amounts to quite a large percentage of the total railway employees of the country.

The promoters and sponsors for this proposed legislation are undertaking to give out the impression that the employees want this law, and while it has been indorsed in some of the meetings of the organizations, this has been accomplished through an improper understanding of the proposition and through the willingness of certain classes of employees to take up anything which seems to be a fight against the employing company.

We are not in favor of fixing a price on the life or limb of a railway employee at a less figure than that which may be fixed for any other citizen. We believe that if an employing company is at fault in case of death or disablement it should pay as much to an employee as it is compelled to pay to a patron of the company.

We believe that this law if enforced will cause more contention on the part of employers for the purpose of avoiding the payment of damage claims than we now have. It is a mistaken idea to imagine that the employer will pay each claim under this law without a protest.

In the comments which we have read on the proposed law attention is frequently called to the fact that the proposition is indorsed and recommended by President Taft. We will say that in view of an approaching election it would be foolishness for him not to indorse it after having been induced to believe that the million or more voters who are interested in the proposition want it. We believe, however, that this is a mistake.

HERBERT E. CUNNINGHAM.
J. VAN ALLSBURG.
O. IRVIN.
JERRY A. CARROLLE.
F. G. HUNT.
M. J. PURCELL.
E. G. MCINTYRE.
JAS. C. BROWN.

Now I insert a communication from Mr. Callahan, representative of the Illinois Central Railway Brotherhood of Railroad Trainmen:

EXHIBIT 2.

Hon. A. J. SABATH, M. C.,
Washington, D. C.

DEAR SIR: After considerable discussion and debate with relation to the compensation act now pending before the House, it was decided by a number of railroad men that I write Mr. J. C. McShane, a lawyer of distinction and reputation, and who is regarded as a friend of the railroad men, for his opinion upon the compensation act passed by the Senate.

His reply is herewith attached.

Let me say briefly this measure does not meet with the approval of the rank and file of our organization.

Yours, truly,

M. D. CALLAHAN,
7349 Madison Avenue, Local Committeeman
Illinois Central Railway Brotherhood Railroad Trainmen.

And one from John Delano, vice chairman of the Local Chairman's Association of Chicago:

EXHIBIT 3.

BROTHERHOOD OF RAILROAD TRAINMEN, LODGE NO. 752.

GENTLEMEN: I am sending you herewith a copy of a resolution adopted by the above lodge at its last regular meeting, held April 28, 1912. I also desire to state that the Local Chairman's Association of the Brotherhood of Railroad Trainmen at its last regular meeting, held May 6, 1912, at the Hotel Sherman, Chicago, by a unanimous vote passed resolutions requesting that action looking to the passage of the "employers' liability and workmen's act" be withheld until such time as the employees affected can familiarize themselves with the provisions contained therein.

The above-mentioned association represents the many thousands of railroad trainment in and about Chicago.

JOHN DELANO,
1367 East Sixty-second Street,
Vice Chairman of the Local Chairman's Association of Chicago.

Also from a committee representing Division No. 175 of the Order of Railway Conductors of America.

EXHIBIT 4.

ORDER OF RAILWAY CONDUCTORS OF AMERICA,
DIVISION NO. 175,
Memphis, Tenn., June 16, 1912.

Hon. ADOLPH J. SABATH,
Washington, D. C.

DEAR SIR: By unanimous vote of the members present at several meetings of Division No. 175, O. R. C., and on June 2, 1912, the chief conductor appointed a special committee of three to file protest of this division against the employers' liability and workmen's compensation act which recently passed the United States Senate and is now pending before the House.

Yours, truly,

B. J. JACOWAY,
A. C. MULFORD,
W. G. BEANLAND,
Committee.

Mr. NORRIS. Who are those men who have signed it? Are they officials of different organizations?

Mr. SABATH. They are members of the executive board of the Pennsylvania lines and the Chicago, Burlington & Quincy, as well as the Baltimore & Ohio.

Mr. NORRIS. How are we to do if we are trying to find out what these railroad men want? Here are other men, who are recognized heads of these organizations, advocating this bill. Who are these men who are protesting against it? What official connection do they have with these railroad organizations?

Mr. SABATH. I am only giving the committee what I have, and I deem it my duty to do so.

Mr. NORRIS. I am not finding fault, Mr. SABATH. I am only asking for information. I would like to know who these people are.

Mr. SABATH. I am of this opinion, that the great majority of the railroad employees are not familiar with this bill and I feel satisfied if they would become acquainted with all the provisions of the bill the great majority of them would be here in opposition. That is my honest opinion. I have been in communication with many of these societies and orders and with nearly all of the bodies. I have sent out nearly 100,000 communications to various organizations on this question, and in all those communications I made them believe that workmen's compensation will provide actual compensation; that it will eliminate litigation; that it will eliminate all these drawn-out lawsuits and bring about a better feeling between the employee and the employer. A great many of these men were under the impression that this bill which the commission has drafted, which is before you to-day, will do all these things. For that reason many of the organizations went on record for this bill, believing, as I have stated, that it will do all I claimed for my bill.

I am sorry to say that the bill does not do so. Still, I am pleased that they have recognized the principle underlying my bill and the principle of workmen's compensation. It can be made a good bill by this committee if amended and the objectionable features I have pointed out are eliminated.

So you see I am by myself. I do not agree with the commission nor with the railroad men, nor do I agree with some of the gentlemen who are opposed to this bill on the principle that it takes care in the same way of those who have been negligent in the performance of their duties as of those who have not been so negligent.

Mr. Chairman, I have given a great deal of my time and study to this proposition, and I believe that if the laboring people of this country would be thoroughly familiar with the draft of the commission bill they would be opposed to it. They are, however, in favor of workmen's compensation that will provide compensation and eliminate litigation. This bill provides compensation in some cases; that compensation, however, is unreasonably low and does not eliminate litigation. I am afraid that under this bill, if it is passed as it is at present, you will find there will be more litigation than we have under the present law.

Mr. FLOYD. The effect of this bill will be to repeal the employers' liability act of 1908?

Mr. SABATH. Yes, sir.

Mr. FLOYD. Suppose we make it compulsory, and the Supreme Court, for any reason not discovered by the authors of the bill, should hold that this bill is unconstitutional; would we be without any remedy at all?

Mr. SABATH. The bill repeals the 1908 and 1910 acts by implication. I answered that question a few moments ago while you were out. I said then that it would be dangerous to make the remedy exclusive. My reason for making the statement is this: The bill provides an exclusive remedy. Section 3 provides that, "except as provided herein, no such employer shall be civilly liable for any personal injury to or death of any such employee resulting from any such accident," which means, in simple words, that such injured employee can not maintain any action under the present laws and is entitled only to the remedy given him in this bill. Then, if after two or three years the Supreme Court holds this law unconstitutional, I am inclined to believe that all these thousands of injured employees who have been maimed and crippled between the time this act goes into effect and the time the Supreme Court might hold the bill unconstitutional will be deprived of their present legal rights under the liability laws now in force.

Mr. HARDWICK. The Supreme Court would probably not declare the repealing clause unconstitutional, even if the balance of it was so declared. We can repeal a law even if we can not do anything else.

Mr. BRANTLEY. This law does not repeal the employers' liability act in terms, and consequently if this law should be declared unconstitutional the liability law will still be in force.

Mr. HARDWICK. I take the contrary position to that, and I would like to be heard on that point.

Mr. SABATH. My point is this: If they should come under this compensation act and would be deriving compensation under it for two or three years, and after that time the Supreme Court should say that the act was unconstitutional, would they not be deprived of proceeding under the present liability law?

Mr. BRANTLEY. Because they have two years in which to file the suit.

Mr. SABATH. In all probability they will take it for granted that it is constitutional and will not file a suit under the present law; in fact, they could not. And the result would be that their claims or rights would be outlawed.

Mr. BRANTLEY. Under the act they can still do it.

Mr. SABATH. I can't see how. I think they should not be deprived of any remedy that they now have until we will be satisfied with the working and constitutionality of the law, so if the law be declared unconstitutional they would not be deprived of their present rights.

Mr. Chairman and gentlemen of the committee, I realize that it is late and that I have taken up a great deal of your time, therefore I shall conclude my remarks; but before I do so I wish to express to you my appreciation of your kind indulgence and attention, and to assure you that, were it not for the fact that workman compensation is near and dear to me, I would not have imposed on your good nature as I have. But, having devoted a great deal of time, labor, and study to the subject, and seeing my efforts in behalf of the thousands upon thousands annually maimed—and by judge-made law disinherited—citizens rewarded, and the principle I have contended for adopted, I must be excused if in my anxiety to improve and perfect the bill I detained you as long as I did.

Mr. Chairman, under the permission granted me, I now desire to insert and wish that the following be made a part of the hearings: First, a copy of a letter dated February 15, 1908, sent out by me to all of the Members of Congress and to the newspapers and magazines of this country, as well as to all international unions; second, a letter of May, 1908, mailed to the above names; third, a letter mailed by me April 21, 1909, to all the governors, lieutenant governors, and members of the various State legislatures, labor organizations, etc.; fourth, communication of May 26, 1909; fifth, hearing of first statement made by me before the committee; sixth, a general letter dated May 28, 1910; and seventh, statement prepared and issued by me comparing my bill with the commission bill.

EXHIBIT 1 A.

FEBRUARY 15, 1908.

DEAR CONGRESSMAN: I am mailing you, under separate cover, H. R. 16739, introduced by me on the 3d, and reintroduced on the 10th instant. The bill provides for compensation and benefits to employees solely engaged in interstate commerce, including such as are subject to Federal navigation and shipping laws, who sustain injury or death; it further provides for a scale and condition of compensation, benefits, and injuries; creates a commission of injury awards, consisting of five commissioners to be appointed by the President, and gives the commission full power under the interstate-commerce act; prescribes method of procedure; and provides for an appropriation of $350,000 for the work of the commission.

This bill is modeled after laws which are in operation for many years in England, Germany, Austria, New Zealand, and other countries that are progressive in this direction, and give general satisfaction.

I trust that you will concur with me, in that the subject matter is of vital importance, and that you will find some spare moments to read this bill. If not asking too much, I would be pleased to have your views on the same.

Yours, very truly,

A. J. SABATH.

(Copy of bill and letter sent to all Congressmen and Senators, newspaper men, and international unions.)

EXHIBIT 2 A.

HOUSE OF REPRESENTATIVES,
Washington, May —, 1908.

DEAR SIR: Herewith inclosed I am sending you my amended copy of my compensation bill, which provides for compensation to all employees who may be injured while solely engaged in interstate commerce. It further provides for the creation of a commission of injury awards, granting it certain powers over all carriers who are subject to the regulative power of Congress. This bill has the approbation of many Senators, Representatives, and a great number of civic organizations, as well as that of President Roosevelt.

I am also sending you herewith a bill of the same nature which, however, is applicable to the States.

I would be pleased to have your views on these.

Very respectfully,

A. J. SABATH.

EXHIBIT 3 A.

COMMITTEE ON IMMIGRATION AND NATURALIZATION,
HOUSE OF REPRESENTATIVES, UNITED STATES,
Washington, D. C., April 21, 1909.

MY DEAR SIR: Herewith inclosed I am sending you a copy of my compensation bill (the first of its kind ever introduced in this country), which has been indorsed by President Roosevelt, who made it a subject for one of his special messages to the past Congress. This bill has the indorsement of labor unions throughout the United States, and it was the basis for the plank on workmen's compensation in the Democratic national platform of 1908.

I have reintroduced this bill with some slight modifications, and it is the first bill introduced in the Sixty-first Congress.

In order that you may obtain a more definite knowledge of its scope, I am sending you also a copy of my speech in support of this measure.

Very truly, yours,

A. J. SABATH.

EXHIBIT 4 A.

MAY 26, 1909.

DEAR SIR: The present method of requiring an injured employee to sue the employer is both antiquated, vicious, and produces strife and contention instead of rendering prompt, certain, and definite justice. My compensation bill, H. R. 1, is based upon the existing laws of England and Germany, and it ignores the ancient legal fictions of contributory negligence, assumption of risk, and fellow servants, defenses urged in all personal-injury suits by the employer. Statistics prove beyond the pale of doubt that on the vast systems of railroads in the United States one employee is killed or injured every time that seven minutes elapse. The compensation act would substitute for the bitterness engendered by the litigation a prompt payment of an amount which at first would be small, but after the principle is established would be increased. For one excessive verdict that is now allowed to stand, nine verdicts are set aside by the courts for one reason or another.

The bill proposes to establish a series of clauses in statutory form, and these must be accepted by the corporations sought to be regulated as a condition precedent for contracts by the United States with railroads engaged in carrying the mail. In respect of vessels they are absolutely subject to the jurisdiction of the Congress as long as they use navigable waters of the United States. The contract features of the bill have no application to them, as they are absolutely subject to Federal regulation—and the Congress from the earliest times has regulated the relations between the owners of vessels and their crews. The legality of this act can not be attacked; it is invulnerable to constitutional objections. And the reason why mail routes rather than interstate commerce is the basis of regulation is that Congress is absolutely supreme in respect of granting or withholding payments of money, and therefore can regulate the terms of service on these mail routes. The freedom of contract is in no way impaired. The entire act is one of contract which the carrier must accept as part consideration for the privilege of carrying or transporting the mail. The mail route as the basis of regulation becomes important, because, if adopted in this act, no question of (*a*) conflict with police power of the State can arise; and (*b*) to what extent intrastate commerce can not affect the contract.

Under the Sabath compensation bill millions of workmen will be benefited, such as railroad employees, street car employees, telephone and telegraph employees, seamen, and many others whose work is in connection with matters pertaining to mail routes.

Provision is made in the bill which permits the employee to elect or choose whether he desires to avail himself of the provisions of the bill, or if he should wish to enforce his rights in a court of law under the present method of procedure.

The scale of compensation embodied in the bill is based in the main on the United States Pension Office scale.

With reference to the cost of carrying out the provisions of the bill, it may be said that but 14 per cent of the moneys expended by the corporations in defending personal-injury claims ultimately reaches the injured workman or his legal representatives. Eighty-six per cent

of the moneys so expended are required to defray the attorney's fees, cost of investigating claims, preparation of cases for trial, witness fees, court costs, stenographers' charges, printing of appeal briefs, and other incidentals. These percentages therefore show conclusively that the injured workman is at a great disadvantage in the courts of the country when he seeks to recover for injuries sustained. The passage of this bill will give him relief in the premises.

A. J. SABATH.

EXHIBIT 5 A.

FIRST STATEMENT MADE BY MR. SABATH BEFORE JUDICIARY SUBCOMMITTEE, 1909.

The theory of American law is that the contract between the employer and his employee, known in the common law as "his servant," is ample to take care of the person who is injured by reason of the contract. The law furthermore proceeds on the theory that the damages may be sought primarily against the wrongdoer. As a matter of fact, strictly speaking, the injured person has no redress, because the person who primarily caused the wrong is financially unable to respond in damages. The law then allows an action against the master at common law on formal proof, with the burden upon the person injured to show negligence upon the part of the master, to sustain a cause of action. Justice to the injured employee or in the event of death resulting from the injury, then the widow or next of kin of the deceased, is practically lost sight of by reason of the amazing mass of legal jugglery and hair-splitting distinctions handed down by the judges. The administration of the law has become so refined, delicate, and neat, for the purpose of maintaining the rights of the defendants (usually corporations and therefore absolutely subject to the legislative power), that the more important questions, the questions of humanity and justice to the plaintiff, are utterly forgotten in the defense of vested rights.

The adherence to a rule of law which was harsh when it started, which has become unjust in its operation, which under the totally changed industrial conditions under which great operations of manufacturing, of commerce, and of interstate commerce must be carried on, becomes a pernicious and dangerous form, because under the guise of exercising the law it brings about a denial of justice and a consequent distrust for the courts. The method which has been pursued by the courts in enforcing the strict letter of the law has brought about a feeling that injustice is done to the employee in nearly every instance, which injustice is not due to the administration of the law, but to the inherent injustice of the theory and its perverse construction. The litigation which is necessary to enforce the rights of these persons at common law brings out the extreme of the law, which is always injustice.

The plaintiffs in these cases are our maimed fellow citizens, or, in the event of death, their widows or guardians ad litem for their orphans. In no case do they stand before the court equally prepared with a great corporation which defends the action. It is absurd on the part of any person who has ever practiced even a few years in any court to say that the poor man can hire a great lawyer. His social and economic condition, his lack of relation to the great leaders of the bar, his very maimed condition or the depressed position, occasioned through whatever loss it might be as the proximate result of the injury sustained, all prevent him from having access to any except the ordinary persons who take these cases on contingent fees. That is the average rule. But for argument's sake let us assume that the widow or injured person has the very best counsel; that although he has been defeated in one court, appeals and appeals, and follows his first victory from the lower courts to the supreme court, or even to the Supreme Court of the United States, until the law ultimately says that the defendant must pay damages. A careful investigation into the various State reports has convinced me that the pluckiest and quickest litigants never get a final determination under four years, and that cases have been in the circuit court of appeals (United States), Erie Railway Co. *v.* Kane, four times (118 Fed. Rep., 223; 142 F. R., 682; 155 F. R., 118), and the litigation has lasted 10 long and weary years. The accident to Kane occurred December 17, 1897; the circuit court of appeals handed down its opinion June 26, 1907. In cases of great historical importance, such as Johnson *v.* Southern Pacific Co., the injury took place within four days after the safety-appliance act took effect, in August, 1900. The action was finally decided by the Supreme Court on December 19, 1904 (196 U. S., 1), and finally in May, 1908, eight years after Johnson was injured, he received a slight sum by way of settlement with the company.

In the Schlemmer case the injury took place within a day or two after the safety-appliance act went into effect. The case was decided by the Supreme Court on March 4, 1907 (205 U. S., 1), in favor of Schlemmer's widow, who, upon the second trial, obtained not very long ago a verdict against the carrier, and the action is now on its indeterminable route of delay to the higher State courts, and possibly will again return to the Supreme Court of the United States. Now, what do you think becomes of the widow in the interim? What care is taken of the children, and what has the State done to relieve itself of the duty which it owes to Schlemmer and to Johnson and to thousands and thousands of railway employees similarly situated all over the country? The litigation which these people are forced to undertake under the process of our common law, even if successful, is inefficacious. The fruits of the litigations are wasted in attorney's fees, court reporters' fees, printing cases and costs, and to the repayment of debts necessary to maintain the families. The social standard of the survivors has been lowered or else the families have gone to pieces; the maimed man, if he has not died of his injuries, has become a pauper and an object of charity; the children have been taken from school; the families have been split up and separated, perhaps forever.

Or let us take the case of a woman who was injured through the violation of the master in not guarding his machinery. St. Louis Cordage Co. *v.* Miller (126 Fed. Rep., 495) is a case in which Walter Sanborn, circuit judge of the circuit court of appeals for the eighth circuit, wrote a very painstaking, carefully thought out, and exquisitely inhuman opinion. The woman, after having had her hand mashed in a cog, was thrown out of court. The judge writing the opinion of the court claimed that although the factory act of Missouri protected her, yet she assumed the risk of her employment and must go forth without damages. Now, what can a factory hand do who has had a right hand or arm mashed? The probabilities are that she is unfit for domestic employment; her tastes, her habits have been fixed; the court throws her out. If there is any method for that woman to earn her living except by throwing herself upon the tender mercies of human kind, it is not due to any care that the State has taken to protect her from the prospective evils; and surely the State owes these people some kind of a fair chance. These are our fellow citizens.

The courts will say that the laborer is free; that he chooses his occupation; that if he takes up a dangerous occupation he takes the risk—he does it with his eyes open; he is compensated for it, and that his wages in part may be used, if properly employed, toward buying insurance in some society or company to compensate him for the risk which he is bound to take. Is it not a truism, which must only be stated to be understood, that the choice or freedom of the laborers is entirely illusory; that they have no choice; that the fiction which claims to treat them as free agents is overcome by the actualities of their conditions, which make wage slaves of them all; that the wages are always so small and purchase so little that adequate self-insurance is impossible, and the very, very few of them have any insurance which will keep their families out of the poorhouse?

It is well known that employees in railroad train service are unable to procure insurance in any of the old-line companies except at rates that are practically prohibitive, while most of the companies and societies absolutely refuse to accept such risks under any consideration. Certain of the companies will write 5, 10, and 15 year endowment policies for switchmen—a small portion of the employees under consideration—at premiums based upon a 20-year advance in age; thus, for instance, a switchman aged 25 years may obtain such a policy by paying the 45-year endowment premium rate. Inasmuch as insurance premium rates are based upon broad observation and are always the result of careful and accurate consideration, this fact is vastly significant. It means that the man who embraces the occupation of railroad switchman thereby at once cuts 20 years off his reasonable expectancy of life. If there is any compensating advantage in this occupation to offset the horror of this grim fact I have failed to discover it in more than 10 years' close observation of the conditions of railway labor.

Being denied the benefits of ordinary insurance, railroad employees have been compelled to establish and maintain insurance societies of their own. Those societies are never called upon to pay death claims as a result of old age. Their payments, however, on account of railroad accidents are surprisingly large and in most of the organizations represent a major portion of the total claims paid. In 1908 the Brotherhood of Railroad Trainmen, with a membership of about 90,000, composed of conductors, brakemen, switchmen, and baggagemen, paid 1,512 claims, amounting to about $1,750,000.

Why should this enormous toll of life and treasure be exacted from these employees? If the efficient operation of the Nation's transportation system requires the terrible sacrifice of lives and limbs, it is more to the point and more akin to justice that this burden should be assumed by the transportation industry and through it by society as a whole. These employees, when injured through no fault of their own, through a regularly recurring risk which is an incident of their employment, are cast aside and no effort is required by law of the carriers to heal or repair them; these men are abandoned and are left without compensation. When broken in body, maimed, and injured they are forced, under the most disadvantageous circumstances imaginable, to combat the carriers whose commerce they have been pushing through the country.

THE PROFESSIONAL RISK.

The professional risk—that is, the inherent liability of any person employed in railway traffic being killed or injured—is a permanent and continuous risk. It is a risk which the man can not shift. In the case of death by a railroad accident no question of the employees' inattention, stupidity, carelessness, or similar defenses urged by the defendants can well be urged. It is as much a part of the business of the carrier to pay for the injury of the person who handles the traffic as it is to replace equipment retired from service.

The carriers maintain a fund for the replacement of wrecked or worn-out equipment. But the human being, our fellow citizen, of whom one risks being killed or injured every time seven minutes of the day or night elapse, if wrecked, as a consequence of his professional risk, so as to make him unfit for further service, is cast aside, and the carrier assumes no responsibility whatever for his condition. He must assume his own risk, must bear his own damage, as though it occurred by reason of his fault or his negligence, when, as a matter of fact, his damage is as much the result of the operation of the property as is the damage to locomotives and cars, bridges, and buildings, roadway and track, for all of which the carrier provides without question.

I do not care whether the railways recoup themselves for the additional expense involved in paying compensation to their employees by raising the rates or by charging extra passenger fares, or by decreasing the amount of free baggage that they haul. Directly this would affect a very small portion of the community. The freight charges might affect a still larger portion of the community, but at all events it is proper that the community which indirectly causes the railways to be so inhuman to the fellow citizens of us all should permit a recoupment, because in the last instance the people at large pay for the maimed and injured. They do this by taking care of those survivors of those thousands of railroad men whose families have fallen in the scale of life simply through the utterly inadequate protection afforded them in our law.

This bill provides for compensation and benefits to employees solely engaged in occupations or trades connected with such businesses which are subject to the regulative power of Congress, to be paid by persons carrying on such businesses to employees injured, and to change the general law for injuries received on mail routes, including such as are subject to the existing Federal navigation and shipping laws. It further provides for a scale and condition of compensation, benefits, and injuries; creates a commission of injury awards consisting of three commissioners to be appointed by the President, and granting said commission full power to carry out the provisions of this bill. It further prescribes a method of procedure and provides for an appropriation of $50,000,000 for the work of the commission.

With the exception of our country and Turkey, all other civilized nations having railroads have compensation acts. Under this bill persons who are injured have their choice of remedies. They can either sue in the courts as heretofore, bearing the burden of the proof, or else they can avail themselves of the compensation features provided in the bill.

EXHIBIT 6 A.

WASHINGTON, D. C., *May 28, 1910.*

MY DEAR SIR: The inclosed bill (H. R. 25334) is an amplification of H. R. 16061, which I introduced in the first session of the Sixtieth Congress, being the first bill introduced in Congress which embodied the principles of "workmen's compensation." In this Congress I introduced H. R. 1, upon which I secured hearings before the Judiciary Committee. The hearings developed a number of objections, which were pointed out by lawyers representing some of the railway companies as well as by some of the members of the committee. To meet these objections I redrafted the bill.

The object of my workmen's compensation law is to change the present unjust method of settling damages for the regularly recurring injuries to employees of railroads and other carriers and giving the injured employee, or in the event of his injuries resulting in death, then, to his surviving dependents, immediate and material relief in place of the uncertainty of a suit at law for damages.

With the exception of the United States and Turkey, every country on the Continent has in operation a system of "workmen's compensation," and the reports conclusively show that its operation meets with universal approval alike from employer and employee.

The tendency of a "workmen's compensation" law is to stop the strife existing between the employer and employee under the present status of industry and law.

It relieves the community from supporting hundreds of thousands of workmen who sustained injuries while engaged in hazardous occupations.

In the event the workman is killed in the pursuit of such employment, his family or dependents are provided for.

It provides for immediate relief and obviates the necessity now in vogue of bringing suit and waiting many years for its final determination in the courts, during which time the entire burden of responsibility rests upon the employee or his dependents—left to shift for themselves without any relief.

It prevents litigation, thus relieving the congestion of the courts.

It will prevent perjury, which is so prevalent in personal-injury suits, and the waste of money occasioned by excessive judgments.

My bill proposes the enactment of a certain and limited compensation not exceeding in any case $75 per month, and ceases with the death of the annuitant, the remarriage of the widow, as well as with the arrival at age 16 of the children of an employee who was killed.

The bill is strictly limited to employments subject to the regulative power of Congress.

It provides for the creation of a commission to carry out the provisions of the bill.

I am firmly convinced that its enactment into law will effect a material saving by reason of the decreased expense and cumulative interest charges, etc., resulting from the annual payment of a small annuity to many, rather than an exorbitant lump sum to few.

I am of the opinion that every constitutional objection which might be raised in the premises can be successfully overcome.

I bespeak your earnest and careful consideration for said bill.

Very truly, yours,

A. J. SABATH.

EXHIBIT 7 A.

[Addressed: "Dear Sir," to newspapers and magazine; "My Dear Colleague," to Members of House of Representatives; "My Dear Senator," to Members of Senate.]

Your attention is called to the inclosed bill, H. R. 21962, which provides real compensation for employees of common carriers subject to the regulative power of Congress when such employees are killed or injured from any cause arising out of and in the course of their employment.

The bill establishes an elective system of compensation and does not deprive either employers or employees of their rights of citizenship by confining them to an exclusive remedy. The scale of compensation proposed is fair, without being unduly liberal. It provides for the payment of such amounts as the disabled employee, or his dependents in case of his death, should be justly entitled to, and which are clearly in the interest of the public welfare. The administrative machinery provided is simple, logical, of proven efficiency, and calculated to operate at minimum expense to the public.

This bill was drawn and introduced by me expressly as a substitute for, and an improvement on, the bill presented by the Federal Compensation Commission, which bears the indorsement and approval of the President, and in order that the respective merits of these bills may be understood their salient features will be compared and contrasted, as follows:

1. APPLICATION.

(a) Commission bill: Applies only to common carriers engaged in interstate or foreign commerce by railroad.

(b) My bill: Applies to every common carrier subject to the regulative power of Congress, thus taking in employees of telegraph, telephone, express, and sleeping-car companies engaged in interstate commerce, as well as steamship lines and (inferentially) post roads and mail carriers whether engaged in interstate commerce or not. It also applies to the United States Government with respect to all its civil employees.

2. REMEDY.

(a) Commission bill: Provides an exclusive remedy, thus, in effect, repealing the Federal employers' liability law recently declared constitutional by the Supreme Court of the United States, which law was only obtained after years of effort and vast expense on the part of railroad employees and their friends.

(b) My bill: Provides an elective remedy. Neither employees nor employers are deprived of any of their existing statutory or common-law rights, as they are not required to accept the provisions of the bill unless they see fit.

3. SCALE OF COMPENSATION.

(a) Commission bill:

[1] Death: The greatest amount that can be obtained for death is $4,800, which is the sum that would be paid to a widow with children in case the deceased employee's wages amounted to $100 per month or over. This sum would be paid in monthly installments of $50 per month for eight years. The minimum would be just half that amount, paid in the same way. For purposes of calculation no employee's wages are considered to be over $100 nor less than $50 per month. A widow without children would receive 40 per cent of such monthly wages for eight years. Other dependents, such as children and dependent parents, are paid various percentags of such monthly wages according to the degree of their dependency. A widow, or child or children under 16 years old, residing in any foreign country except Canada, would receive a lump sum equal to one year's wages of the deceased employee in lieu of all other payments. No compensation would be paid to any other nonresident dependent.

[2] Disability: Permanent and total, 50 per cent of monthly wages during life (maximum, $50; minimum, $25); temporary total, same as permanent during its continuance; permanent partial, 50 per cent of wages in certain specified cases for varying periods from 4 months minimum to 72 months maximum. In unspecified cases of partial disability payments are to be proportionate to those established in the specified cases and for proportionate periods, in no case exceeding 72 months, the proper proportions to be established by agreement or litigation in accordance with the methods provided by the bill.

If a partially disabled employee secures work after his injury, his compensation shall be 50 per cent of the difference between his wages before he was injured and what he is able to earn after his injury, providing his wages after the injury are not 90 per cent or more of what he received before his injury, in which case he is paid nothing.

No payment is made for disability that does not continue for more than 14 calendar days.

If a disabled employee, while at work after his injury, should receive a second injury which of itself would only cause partial disability, but which combined with his previous injury does in fact cause permanent total disability, he is paid only for the partial disability.

(b) My bill:

[1] Death: Eight times the average annual earnings of deceased employee, but in no event less than $5,000 nor more than $7,500, to be paid the widow, children, parents, or other lineal heirs of deceased in monthly installments in proportion to their dependency, installments for the first six months to be paid the widow or children in the same amounts and at the same intervals as the employee received his wages while living; after six months payments to be made in monthly installments equal to 60 per cent of the monthly wages, but not less than $30 nor more than $75 per month until total amount due has been paid. Monthly payments may be computed to a lump sum upon proper order of a probate court after full hearing and determination that such commutation would be for the interest of the beneficiaries and not prejudicial to the public welfare. A widow and (or) children resident in any foreign country shall receive the whole amount of compensation due in a lump sum at once; other nonresident dependents to be paid compensation the same as though they were residents of this country, in lump sums proportionate to their dependency.

[2] Disability: Permanent, total. Sixty per cent of annual earnings for life, in no case less than $30 nor more than $75 per month, payments to be made monthly; temporary, total, 60 per cent of average weekly earnings as long as the disability lasts, payments to be made weekly, and not to be less than $10 nor more than $18 per week. If disability lasts more than seven days, compensation is to begin from the day of the injury; if less than seven days, no compensation other than medical attendance is to be paid. For partial disability compensation is to be paid at the rate of 60 per cent of the difference between what the employee earned before his injury and what he is earning or able to earn after the injury. If he is able to earn as much after as before the injury, compensation stops.

If a partially disabled employee who is drawing compensation for a previous injury receives a second injury which of itself would only cause partial disability, but which, combined with his previous injury, does in fact cause permanent total disability, he receives compensation for his total disability, and if the two injuries were received in the service of two employers the compensation payment is divided between them.

4. ADMINISTRATION.

(a) Commission bill: Compensation may be settled by agreement between the parties, agreements to be filed with officials, known as "adjusters," created by the bill. If not settled by agreement, proceedings are to be had before an adjuster, whose finding in the matter is subject to review by the district court, and to such further court proceedings as the parties may deem necessary for the protection of their rights. Appeals and writs of error may be taken from the district courts to the circuit courts of appeal and to the Supreme Court of the United States.

One adjuster is to be appointed by the district court in each judicial district of the United States, and additional adjusters may be appointed from time to time whenever the Attorney General of the United States shall deem necessary. These adjusters are to be paid not less than $1,800 nor more than $3,000 per year, and expenses. They are required to maintain offices at their places of residence.

(b) My bill: Compensation may be settled by agreement between the parties, agreements to be filed with the Interstate Commerce Commission. If not settled by agreement, compensation is to be settled by an examiner of the commission to be known as "arbitrator," whose finding in the matter, after approval by the commission, is to be final and conclusive, subject to appeal by either party to the commission, and to further appeal to the Court of Commerce.

Arbitrators are to be appointed by the commission as need requires. They are to be paid such salaries as the commission may determine, in the same manner as its special agents and examiners are employed and paid. The commission is empowered to make such rules and adopt such methods of administration as will best give effect to the declared purpose and intent of the law.

Provision is made for the payment of compensation to those whose employers default, by means of an excise tax to be levied and collected from those employers who fail to observe the terms of the compensation agreements or awards, or who do not elect to accept the terms of the bill. The amounts collected by this tax are turned into the Treasury and reappropriated for the purpose of paying compensation due and not otherwise provided for and meeting the expense of the administration.

It is declared to be the intent and purpose of the bill to place the financial burden of death and injury to employees upon the industries involved, and the Interstate Commerce Commission is directed to recognize and give effect to this policy in any proceedings before it affecting rates.

The commission bill, in my opinion, does not afford employees the relief they are entitled to and which in justice should be given them. Its scale of payments is unduly low, and it betrays great solicitude for the assumed rights of the employer and the protection of property, while almost entirely ignoring the rights of the employee and the protection of those rights of common humanity which should be the distinguishing mark of our advanced and advancing civilization. In the one instance where, by the provision in section 24 of the bill, a totally and permanently disabled employee is only permitted to draw compensation for partial disability, the harsh, cruel, and sordid character of the bill is admirably illustrated.

Neither is the commission bill, in my opinion, in any respect calculated to establish a correct public policy for this great country. By its palpable discrimination against foreigners it creates a motive for employers to discriminate against American citizens in the matter of employment, because it will be cheaper under the commission bill to kill and disable foreigners than it will be to kill and disable American citizens. The man who suffers the burden of disability or death in the industries of our country should be given all the benefits of every remedy allowed by law for such death or disability, irrespective of citizenship, and that is what I have attempted to give him in my bill.

If it was the purpose of the commission bill to avoid litigation and expense, that purpose will be wholly defeated by the operation of the bill.

The sections dealing with the adjusters and the court process growing out of their proceedings form an invitation to litigation, and there can be no doubt that the courts would be burdened with compensation litigation should that bill become law to a greater extent even than they are now burdened with personal-injury litigation.

The expense of administration by the method proposed by the commission bill would be enormous and out of all proportion to the results to be accomplished. An adjuster at a minimum salary of $1,800 per year is to be appointed in every judicial district of the United States and one in the District of Columbia. These appointments are required to be made whether they are needed or not. That means a minimum salary list of $138,600 per annum for the 77 districts, to say nothing of traveling, subsistence, and office expenses; and who is there so simple as to believe that all these appointments will be made at the minimum salary? The probability is that many of them will be made at the maximum of $3,000, and a fair estimate of the average salary of the lot would be $2,500. And the Attorney General is empowered to appoint additional adjusters in his discretion. If the commission had exhibited the same solicitude for the welfare of the employees who are the reputed beneficiaries of its proposed legislation as it has for these adjusters who are to furnish its administrative machinery, it would undoubtedly have presented a better bill.

My bill puts the work of administration upon the Interstate Commerce Commission, where it properly belongs. That is a body of known efficiency, having long experience with the affairs of interstate carriers, and having ample authority to obtain necessary information and enforce its orders. It will appoint arbitrators as they are needed, and will undoubtedly be able to accomplish the work with less than half the number of functionaries which the commission bill absolutely requires to be appointed.

Other features of the commission bill might be criticized at length, but this is not the place to enter into all of its bad features. To mention but one, namely, the virtual repeal of the Federal employers' liability law, is to condemn the measure.

The bill here inclosed is the result of long and careful study of this question. It is the eighth measure of the kind that has been introduced by me in Congress, and I firmly believe it to be a just, fair, practicable, and constitutional measure. I earnestly request you to give it careful consideration, and, if it meets with your approval, such support as you are able to render.

Very truly, yours,

A. J. SABATH,
Member of Congress, Fifth Illinois.

Mr. Speaker, during all these years I have worked faithfully for a principle and for a compensation bill that would give immediate relief to all those that are injured and their dependents. However, though at times I have met with the most determined opposition, little did I think that a measure purporting to accomplish this, and which in fact has directly the opposite effect from that intended, would be recommended to this House and seriously considered.

Some of my colleagues state that I should support this bill because it is legislation which I have advocated for these many years. Mr. Speaker, I admit that after I have fought for this legislation for such a long time it is disappointing indeed to be unable to support the bill now under consideration, but I would not be true to the principle for which I have battled, I would not be just to the people, were I to cast my vote for this bill simply because it is termed the "workmen's compensation bill."

Mr. FLOYD of Arkansas. Mr. Speaker, I yield the remainder of my time to the gentleman from Georgia [Mr. HARDWICK].

Mr. HARDWICK. Mr. Speaker, instead of being called the "workmen's compensation bill" the pending measure ought to be entitled "A bill for the relief of the great railroads of the United States." Instead of being supported on the idea that it is giving something new and desirable to the American workingman engaged in railroad work of an interstate character, it ought to be opposed because it repeals the most generous and complete system of laws for the protection and compensation of these men that the world has ever known—our present Federal employer's liability law, and the amending statutes—and takes from these men, with one hand, rights far greater and benefits far more valuable than those it professes to confer with the other hand. If the men who propose this legislation and support it on this floor and elsewhere really want to help the workingman, really wish to enlarge his rights, really wish to better his condition, why do they not give him legislation of this character, in addition to what he already has? Why do they insist that before they will enact this legislation they must and will repeal every Federal law that with years of labor, of toil, and of conflict, in Congress and in the courts, we have given to these men?

And let me say, in answer to my friend from Maryland [Mr. LEWIS], that if he were correct in his statement that the substitution of this legislation for existing law will cost the railroads from forty-eight to sixty million dollars per year, instead of fifteen millions, the railroad lawyers and lobbyists would be here in opposition to this bill as thick as blackberries in summer time, whereas we all know that in fact they are supporting this bill instead of opposing it.

The situation that we face to-night is this: Many Members on both sides of the Chamber are committed to the principle of workmen's compensation. All of the political parties have indorsed it; no one that I know of opposes it. But, outside of a very few men, who knows anything about the provisions of this particular bill, what its real purpose is, or what its real effect would be if it became a law? And yet, without the slightest opportunity for amendment, with only 40 minutes of debate, we are asked to swallow this bill in one dose, without opportunity for amendment or real debate, so far as this House is concerned, although the proponents of the measure have already found it necessary to amend it elsewhere about 150 times within its short legislative life. Consequently, many Members whose duties have not allowed them time to examine into the merits of this particular bill may support it simply because they favor the general principle and do not like to be put in the attitude of having voted against "a compensation bill," to use the very skillful phraseology of Mr. Gompers.

The bill applies, of course, only to employees of railroad companies while such employees are themselves actually engaged in interstate business. Following the rule in the Howard case, it could go no further. It has no application to an employee of an intrastate railroad company or of an interstate railroad company unless such employee is himself engaged in interstate transportation. Let us consider the principle upon which it rests. It is this: When a workingman is engaged in a quasi public industry and is injured or killed while so engaged, he ought to be compensated, or his family ought to be compensated if he is killed, regardless of whether he was at fault, unless willfully reckless or drunk, or whether the master or his fellow servants were at fault. Why? Because the enterprise in which he is engaged is quasi public in its character, is conducted for the benefit of the public, and is necessary for the public comfort, safety, or prosperity. Therefore, the risks incident to the enterprise or industry ought not, in fairness, to be borne by the relatively small number of wage earners engaged therein, upon whose shoulders it is a most grievous burden, but ought to be borne by the general public, for whose benefit the industry is conducted, and upon whom the burden will be comparatively light, because so widely distributed. I submit to the House and to the country that I have stated the doctrine accurately and fairly. It is a great principle, based on solid foundations of humanitarian statesmanship and of sound political economy. It is progressive, and yet really conservative, because it is even-handed justice, too long delayed. It was this doctrine that Mr. Roosevelt stood for in his great message to Congress when he urged its application to our interstate railroads. It was this doctrine that Woodrow Wilson stood for in the recent campaign. But I propose to show you that from the fundamental principles that underlie this doctrine Mr. Taft, his late commission, and this bill have woefully departed, presenting, as a result of that departure, a proposition so twisted and warped that both the object to be achieved and its means of accomplishment seem to be ignored and forgotten.

It must be remembered that the idea of this legislation is that the burden of assuming the risk incident to the employment was to be transferred from the employee to the general public. As I have already stated, that is the basic principle upon which this legislation rests. No one recognizes that better than the distinguished gentlemen who propose this bill, the Senator from Utah [Mr. SUTHERLAND] and my own colleague, the gentleman from Georgia [Mr. BRANTLEY], for in both of their bills as originally introduced there was a section providing that, in fixing both freight and passenger rates, the Interstate Commerce Commssion should make ample allowance to the railroads for the expense that would be put upon them by the passage of this legislation. This section they struck out of the bill in committee because of its utter inconsistency with another section, to wit, section 3, which makes the remedies proposed in this bill the sole and exclusive remedy of the workingman, and repeals in one sweeping stroke the splendid legislation that this Congress has spent years in perfecting, and which, after the most stubborn and protracted litigation, was only about a year ago completely upheld and sustained by the Supreme Court of the United States. (Mondou *v.* New York, New Haven & Hartford Railroad Co., 223 U. S., p. 1.)

The effect of this proposed radical and sweeping change would be most terrific and most unjust. In the first place, instead of transferring the burden of carrying the risk incident to the employment from the backs of all workingmen engaged in interstate railroad work to the general public, it would transfer that burden to the shoulders of an even smaller class than it now rests upon, namely, to the most careful and diligent of the workingmen, who have been injured under circumstances that entitle them to recover much larger sums from the railroads than any compensation they could ever receive under the pending bill. The remedy is worse, is more unjust than the evil it seeks to cure. A smaller class would bear the burden that humanitarian statesmanship would seek to place upon the general public than the class that bears it now under existing law. The doors of the court—the sacred right of the Anglo-Saxon to have a jury of the vicinage assess the amount of the damages

against the man who has wronged him would be denied, and no matter how free from fault the servant or how negligent the master, the careful and prudent workingman who has been diligent and cautious, and who has been injured by the negligence of the master, would be told by this law that no matter what his actual financial loss was; no matter how much pain and suffering he had endured; no matter how badly he was disfigured; no matter how prudent, thoughtful, and cautious he had been in the performance of his duty; and no matter how gross the carelessness that had caused his injury, he could only make the railroad pay a mere pittance of what he would be entitled to recover under the law of master and servant in every civilized country on earth. And why? Because other men whose legal rights were not so great, whose financial loss was not so heavy, whose suffering was not so keen, whose prospects were not so bright, whose earning capacity was not so large ought, in the name of humanity and public policy, to have something, and, as neither the master, who is chafing under the liberalizing tendency of our statutes to broaden the rights of the workingman in the courts, nor the general public, in whose behalf the service is rendered and in whose name the propaganda proceeds, can afford to pay, therefore the careful, the diligent, the prudent must give up something and strike an average far below his legal rights so that all may receive something.

To my mind the proposition is indefensible. Indeed, it seems infamous to me. It is neither more nor less than shutting the courthouse door in the face of the man who wishes to insist upon his rights rather than take the beneficent charity that humanitarian policy provides. It puts a premium on carelessness. It offers no reward to diligence. Under this bill the charity of the law falls alike upon the just and the unjust; upon the diligent and the careless; upon the young man with a life of usefulness and of long and increasing earning capacity in front of him, and with a young and growing family dependent upon him; and, on the other hand, upon the old man, whose earning days are almost over, whose capacity to earn money is decreasing, whose family is grown up and no longer really dependent upon him. The man who ought, under the law, to be allowed to recover his full financial loss, and for his pain, his suffering, his disfigurement, must give up his rights because neither the railroad nor the public is willing to pay for the injury of the man who could not recover under the rules of law, but who ought, as a matter of public policy, to receive some compensation for injury. I do not object to these men who have no legal rights against the master being allowed compensation, and far more reasonable compensation than this bill provides, at that. On the contrary, I earnestly favor it. But if we do it as a matter of humanity, of sound public policy, and do it because the public in whose interest the service is performed ought to bear the risk incident to the service, then, in the name of heaven, why should not the railroads primarily and the public ultimately foot the bill? Why should it be shoved off on the careful, prudent, diligent workingman who has been injured through no fault of his own and because of the negligence of the master? Such an idea, to my mind, is both intolerable and indefensible, and I denounce it here and now as a scheme born of railroad desire to escape the full measure of liability under the employers' liability law.

So far as the attempt to stir up prejudice against the lawyers who represent the plaintiffs in these suits is concerned, I scorn it as unworthy of either serious consideration or extended reply. "Ambulance chasers" the railroad crowd delights to call them. If they are half as nimble in that chase as some of the railroad lawyers and agents, they certainly deserve the title; but in behalf of the bar of my own State, I wish to say that so far as we are concerned, as a general rule at least, the members of our legal profession are not deserving of the stigma some gentlemen who favor this bill attempt to attach to their names. As a general rule, the lawyers of my State who are not representing the railroads take this character of cases when they come to them in the regular and legitimate course of business, and I do not believe that because they do so they ought rightfully to be held up to the public as pettifogging marplots who seek to stir up litigation and endeavor to drum up business, or as vampires who drain the poor laboring men who are so unfortunate as to become their clients of the last drop of blood. Nowhere in the Union is the general tone of the bar higher, its devotion to lofty ideals of professional conduct more striking, and its unselfish service to the public more noteworthy than in the State of Georgia; and while I have the highest regard and respect for many of the lawyers who represent our railroads, yet I am quite confident that they have not furnished all of the intelligence, integrity, patriotism, and courage that have glorified the past history of the Georgia bar and that contribute so largely to the present prosperity and greatness of our State. At least a fair proportion of these notable contributions have come from the rank and file of the lawyers of our State who hold no retainers from the railroads and often take cases against them.

But why dwell on this phase of the "argument" advanced by the proponents of this bill? If the standard of the bar is not as high as it might be in any State, if the practices and charges of the lawyers who represent the plaintiffs in this character of cases is wrong in any State, then that State has ample and plenary power to right the wrongs and correct the abuses, so far as intrastate business is concerned. If the practices of these lawyers are wrong or their charges exorbitant as to cases arising in interstate commerce, then Congress has ample and complete power to apply whatever remedy is needed—to correct whatever abuses may exist—to even limit the amount of fees that may be charged. It seems to me that this is a complete answer to the profound and weighty "arguments" advanced against "ambulance chasers."

The proponents of this bill insist that if it becomes a law it will cost the railroads of the country a much larger sum than they now have to pay under our liability laws. Evidently the railroads do not think so, for their earnest support of this measure is overwhelming proof to the contrary—far stronger, to my mind, than any of the statistics they have produced. Besides, their so-called statistics, admittedly furnished by the railroad claim agents, are all taken before our Federal liability law of 1910 had gone into practical operation and while the enforcement of that law was being held up everywhere by the constitutional attacks that the railroads were making upon it, which did not finally fail until January 15, 1912, when the Supreme Court decided the Mondou case (223 U. S., p. 1). I venture the assertion that when impartial statistics are taken from the date of that decision and careful account is taken of the settlements that our liability law will force out of the railroads, a very different state of facts will be shown to exist, and the real reason why the railroads so earnestly desire the pending bill will then be known of all men.

Mr. Speaker, there is no English-speaking people on this earth, no spot in all the world where the spirit and substance of Anglo-Saxon jurisprudence exists, where individual rights have been so wantonly ignored, the doors of the courthouse so rudely and unjustly closed upon the man who demands justice instead of mercy, as is proposed in this bill.

In the sheep's clothing of humanitarian philanthropy the railroad wolves are proposing to crucify justice between master and man, while they save their own skins and work a great "reform" at the expense of the diligent and cautious and prudent workingman, calling upon him to pay the bill which ought to be a charge upon the whole public. A real reform can be worked on this great question, a great humane policy can be inaugurated, and ought to be; but for one I enter my solemn protest against the attempt made by this bill to deny justice to a portion of our workingmen in order to confer largess upon others.

At no time, in no country, have people of our blood and race who have exalted individual rights and enthroned personal liberty as yet committed themselves to the monstrous doctrine that a servant ought to be denied full legal redress for whatever wrong his master inflicts upon him so that the master might be better able to make presents to all his servants. And yet that is the bald and unvarnished doctrine upon which this bill rests. Justice before generosity is as firmly embedded in Anglo-Saxon jurisprudence as it is in Holy Writ.

My friend from Arkansas [Mr. FLOYD] has given you the long list of English-speaking countries in which the principle of compensation to injured workmen, irrespective of diligence, has been adopted. It is a noteworthy fact that in every one of them the compensation provided was merely supplementary to existing liability laws and in no case superseded those liability laws. Is this a mere coincidence? Is it not more? Is it not the very spirit and essence of Anglo-Saxon justice throughout the world speaking to us to-night in solemn warning, "Be just before you are generous"?

In my judgment we ought to have a compensation law, but it should be given to the workingman in addition to what he already has and not in lieu of it, and he ought to have the option which he will take.

Able gentlemen who support this bill venture to assert that if we undertake to do that it will be both unjust to the employer and unconstitutional. How unjust to the employer? Is not the public and not the railroad the ultimate paymaster? Even now we all know that every railroad rate, interstate and intrastate, freight and passenger, is based in part on the operating expenses of the railroads, and that "operating expenses" in-

clude the damage claims the railroads pay. Who, then, pays the bill—the railroad or the public?

How unconstitutional? Have not the gentlemen who propose the bill submitted elaborate and, I think, unanswerable briefs to show that under the doctrine laid down by the Supreme Court in the Mondou case—and their briefs go far back of that case—the power of Congress under the interstate-commerce clause of the Constitution is plenary for the complete regulation of all civil relations between the master and servant while engaged in such commerce? Have they not shown us that under that power the rights of the servant can be altered or abridged in any way that seems good to Congress? Have they not shown us, and do they not by pressing this bill assert, that the servant has no inviolable, no constitutional right to sue his master, and that the very doors of the courthouse may be closed in his face—as to the future, at least—by the bald statement that Congress has completely abolished by statute his right to recover from the master for wrongful injury?

Can these gentlemen be heard to contend that the rule will not work both ways; that the power is ample only when directed against the servant? Can they successfully contend that while under the commerce clause Congress may entirely abolish the right of the servant to recover of his master for wrongful injury, yet that the commerce clause does not confer on Congress the right to deprive the master of any or all defenses against the servant?

Does "due process of law" protect capital while impotent to protect labor? Is it all powerful when leveled upon the servant and absolutely powerless when it is leveled upon the master? It seems to me that a simple statement of this remarkable contention carries with it the answer.

We can enact this legislation and make it optional with the employee, and, in my judgment, that is what we ought to do and will do when we come to really pass legislation of this character.

Mr. Speaker, I will not now undertake to dissect this bill section by section and point out what I regard as its most glaring injustices, its most notable inequalities. I have endeavored so far to confine my argument to the great questions of principle that are involved—to the substantial denial of justice to many, to the twisted and warped application of a doctrine that we all favor, to the tremendous assault on the very principles of Anglo-Saxon jurisprudence that are all involved in this most dangerous bill. At a later time, possibly in another Congress, I may endeavor to discuss the details of this bill, but for the present I am content to stand, as I think every other Democrat on this floor ought to be, with our President-elect, Gov. Woodrow Wilson.

On October 10, 1912, while the recent campaign was in progress, Mr. Wilson wrote a letter about this bill to Mr. W. L. Hall, of Chicago, Ill. It was his construction of the Democratic platform on this question, and as such is entitled to both consideration and weight, at least with members of his own party. It was published and widely circulated, and, in my opinion, exerted a potent influence in behalf of Mr. Wilson among the railroad workingmen. The letter is as follows:

> I am sorry I have not had an opportunity to study the pending workingmen's compensation bill, but I gave the whole matter very careful and extended consideration in connection with similar legislation in New Jersey. The New Jersey statute is not compulsory, but optional. It sets up a plan of compensation which has proved very satisfactory, and it also greatly simplified and facilitates recovery in cases where compensation is not adopted. I take the liberty of referring to the New Jersey statute as an embodiment of my views in this important matter. The only part of statute which seems to me to be open to difference of opinion is the scale of compensation, but that must always be a matter of adjustment to be altered according to the equities of the different classes of cases. As I see the matter now, it does not seem to me just that the existing rights of workingmen under the Federal law should in any way be curtailed.

Mr. Speaker, and gentlemen, I beg you note especially the concluding sentence of that letter, for therein lies the crux of this entire matter. Gov. Wilson said: "As I see the matter now, it does not seem to me that the existing rights of the workingmen under the Federal law should in any way be curtailed."

To that I agree most heartily, and therefore I am unalterably opposed to this bill, which not only proposes to curtail but to absolutely destroy every existing right of the workingmen under the Federal law.

The SPEAKER. The gentleman from Georgia [Mr. BRANTLEY] has 17 minutes.

Mr. BRANTLEY. Mr. Speaker, the report of the Workmen's Compensation Commission was filed February 2 of last year and has been before the Members of this body for 13 months. The report of the Judiciary Committee on this bill was submitted on February 4. The proponents of the pending measure are in no degree responsible for the necessity that has come of passing it at this late hour of the session. I make profert of my friend from Arkansas [Mr. FLOYD], a member of the Judiciary Committee, who held this bill in the Judiciary Committee of the House from last May until February of this year.

I make profert of my friend the distinguished chairman of the Committee on Rules [Mr. HENRY] and of my distinguished colleague from Georgia [Mr. HARDWICK], a member of the Committee on Rules, who for two days have engaged in a filibuster here against the measure being considered, as a reason why we are not considering it under a rule with opportunity for full discussion and amendment. [Applause.]

Mr. Speaker, this is not a railroad bill. My friend from Arkansas [Mr. FLOYD] so described it, and yet in his minority report from the Judiciary Committee he asked the House to make this bill an optional bill, which is the one and only thing the committee of 21 railroad lawyers who appeared before the commission urged the commission to do. [Applause.]

The statement that the bill was framed by railroad claim agents is absolutely untrue. I helped draw every word of it as it came from the commission, and I never heard of a railroad claim agents' meeting until months after the bill had been completed and introduced in the House. [Applause.]

Now, Mr. Speaker, a word about compensation. In one of the reports of the Labor Bureau the statement was made that in the industrial pursuits of this country the death toll runs from 25,000 to 30,000 per year and the injured to more than 2,000,000. On the railroads of this country, according to statistics, one employee is killed every 2 hours and 15 minutes and one is injured every 6 minutes. There are over 4,000 killed and over 100,000 injured during each year.

Mr. W. G. Lee, president of the railroad trainmen's organization for 17 years, informed the commission that of these thousands killed and injured the railroads paid damages in not more than 10 per cent of the cases. Mr. Samuel Gompers informed us, and informed the Judiciary Committee, that of the 10 per cent who recovered damages not more than 35 per cent of what the railroads paid went to their pockets, but the balance went to the damage-suit lawyers and to expenses of litigation. [Applause.]

It has been ascertained that in all industrial pursuits there is a large percentage of accidents that are inherent in the industry, for which fault can not be placed on anyone.

In Germany, where statistics have been carefully kept for more than 30 years, it has been shown that 44 per cent of the accidents that occur are due solely to the inherent risk of the industry for which no one can be held responsible.

In this country the statistics, so far as they have been gathered, show that the percentage of accidents due to the inherent risk of the industry run from 52 to 70 per cent. Under the negligence liability law the burden of this 40 or 50 or 70 per cent of the accidents is carried by the laboring man. The difference between compensation and negligence liability in the cases of railroads and others is this: In negligence liability the railroad carries the burden wherever you can prove negligence against the railroad. But where you can not prove negligence the laboring man carries the burden, and statistics show that in not 50 per cent of the accidents that occur can responsibility be fixed upon the railroad. Consequently for those the entire burden is carried by the laboring man. Likewise the burden is carried by him and by his dependents when he is at fault.

Compensation proceeds upon the theory that for every death or every accident there is an economic loss that must be borne by some one. It proceeds upon the theory of dependency, and upon the theory that a man killed as a result of negligence is just as dead as the man killed who has committed no negligence. It proceeds on the theory that the widow and children of the dead man are just as helpless and dependent when he was with fault as when he was without fault. It proceeds on the theory that it is human to err and that no man is strong enough, either mentally or physically, to be immune from mistakes. Compensation proposes instead of decreasing the rights of labor, instead of saying to railroad employees you can only recover in the few cases where you can prove negligence, you shall recover every time there is an accident. It abolishes the doctrine of negligence. It makes the fact of injury and not the fact of negligence the basis of recovery. It lifts from the back of labor a large part of the great burden of economic loss it now carries and places it upon the industry in whose service the loss was incurred.

Mr. SABATH. Will the gentleman yield?

Mr. BRANTLEY. No; I decline to yield.

My friends in opposition here say they speak for labor. In answer to the appeal of my friend from Arkansas, my friend from Georgia, and my friend from Texas, who say they speak

in the interests of labor, and in reply to them I give them the name of other friends of labor who appeared before the commission and indorsed this bill and who appeared before the Committee on the Judiciary and urged the passage of this bill. I give them the name of Mr. Samuel Gompers, president of the American Federation of Labor.

I give them the name of Mr. Stone, grand chief of the Order of Locomotive Engineers; I give them the name of Mr. Garretson, chief of the Order of Railway Conductors; I give them the name of Mr. Lee, president of the Railroad Trainmen; and the name of Mr. H. E. Wills, the legislative representative of them all; and I ask you whether or not those men would be before the commission and the committee advocating a railroad bill. [Applause.] Mr. Gompers was quoted by my friend from Arkansas [Mr. FLOYD], but he read only a part of what Mr. Gompers said. Mr. Gompers said that he knew that a compensation law was not a thing that was sought by the employers of England nor by those of Germany nor by those of the United States. He further said:

If the railroad companies are agreed with me, I can not help it.

That is the answer that he made to the question of the gentleman from Arkansas [Mr. FLOYD].

Mr. Speaker, a compensation law is a simple thing to understand. All in the world that it does is to say that as a substitute for negligence liability, where recovery is permitted only in a few cases, a recovery shall be permitted in every case of accidental death or injury.

It fixes that amount of recovery, and carries that amount to the widow in her hour of distress and when her need is greatest. It carries the money to the injured man when he is flat on his back, and not at the end of one or two or three years of litigation. [Applause.] And it carries all of it, and not a fourth or a third, as under negligence-liability laws. The Supreme Court of the State of Wisconsin, on November 14, 1911, in upholding the validity of a compensation law in that State, said:

Legislate as we may in the line of stringent requirements for safety devices or the abolition of employers' common-law defenses, the army of the injured will still increase and the price of our manufacturing greatness will still have to be paid in human blood and tears. To speak of the common-law personal-injury action as a remedy for this problem is to jest with serious subjects, to give a stone to one who asks for bread. The terrible economic waste and overwhelming temptation to the commission of perjury and the relatively small proportion of the sums recovered which comes to the injured parties in such actions condemn them as wholly inadequate to meet the difficulty.

Compensation is the remedy proposed for the condition described by the Wisconsin court. It is a remedy that every great civilized nation of the earth save the United States has adopted. Fourteen States of the Union have already adopted it and eight more have named commissions to prepare compensation measures for adoption.

The gentleman from Illinois [Mr. SABATH] can not defend his position of opposition to this bill while declaring in favor of the principle of compensation, for this bill does the vital and all-important thing of establishing the principle of compensation. All else is but matter of detail that can be altered, changed, or modified hereafter as experience may show to be desirable.

Mr. Speaker, we made this law a compulsory law, and we made it an exclusive law. My friend from Arkansas [Mr. FLOYD] says that it ought to be optional. If it were made an optional law, you would allow each railroad of this country to say whether or not that railroad wanted to come under its operation. You would find under such a law that in those States where the railroad thought it more to its interest to come under the law the employee would refuse to come under it, and that in those States where the railroad refused to come under it the employee would want to come under it. The result would be that we would have a regulation of commerce enacted by Congress that no railroad in this country would observe. The theory of the commission was that the regulation proposed by this bill is a regulation of commerce, and that Congress can not delegate its power to regulate commerce to any railroad in this country, and that Congress must declare the rule to be observed and compel obedience to it. Therefore, we made the law compulsory. Otherwise it would not be a regulation of commerce by Congress.

We then made it exclusive. My friend from Georgia [Mr. HARDWICK] talks about the New Jersey law. I beg to inform him that that law is an exclusive law. Under its provisions when a man is injured he has but one remedy. He has the privilege, however, in advance of his injury to declare that if hurt he will not claim compensation, but will claim his right to sue. The employer likewise has the right in advance of the happening of an accident to one of his employees to say that he will not pay compensation.

The law is thus an optional law, but at the same time it is an exclusive law, for when an accident occurs but one remedy can be invoked. The New Jersey law was enacted under the police power of that State. This bill, if enacted into law, must be enacted under the power of the commerce clause of the Constitution. To be a valid exercise of that power it must declare a rule of conduct that shall be observed. To make a national compensation law optional in form would be the same thing as making the safety-appliance law, the boiler-inspection law, the hours of service law, optional in form. It would be to declare a legislative absurdity.

We have made this bill exclusive in form. This of necessity resulted from abolishing the law of negligence. I think there are but few in this advanced age of enlightenment and civilization who would have a compensation law otherwise than exclusive in form. To enact a law under which the railroad would be forced to pay unlimited damages in cases of negligence and fixed damages when free of fault would be the height of injustice. To give the injured employee after his injury the option to sue for damages or to claim compensation accordingly as he had a case for damages or not would be to accomplish no reform. It would be simply to create an injustice. It would preserve all the iniquities, the extravagant waste, and the strife-breeding qualities of negligence liability. There would never be an accident when the fact of negligence would not have to be ascertained. There would never be an accident without a contest between the damage-suit lawyer and the claim agent over the question of whether the injured man should sue for damages or accept compensation.

In addition to these considerations the commission was of the opinion that the law must be exclusive in order to be constitutional. A regulation of commerce in order to be valid must be reasonable, and a regulation giving the employee an election of remedies, giving him the right to sue for damages, or to claim compensation just as he preferred would not be a reasonable regulation. It would be but the arbitrary adding of an additional burden to existing burdens without any compensating advantage. Able lawyers appeared before the commission to urge that a compensation law would be violative of the due process clause of the Constitution. They said that to compel the railroad to pay where it had committed no fault, had been guilty of no negligence, had violated no duty, and had entered into no contract to pay would be the taking of its property without due process of law. Clearly this would be true if that was all compensation did, and equally clear it is that that is all compensation would do if the employee should be given an election of remedies.

The Supreme Court has held that the relations of master and servant engaged in interstate commerce are so related to such commerce as to be within the regulating power of Congress. This bill is but a regulation of these relations. It is a regulation reasonable in form, for as an offset against the arbitrary taking that it authorizes it relieves from unlimited damages and from suits to recover same. It observes the due process clause of the Constitution. It is a scheme of mutuality under which each party both gives and takes, and all for the benefit of each and of the public.

Some gentlemen who have not seriously studied the question while admitting that compensation is a good thing for the man who can not prove negligence, say that the benefits given to this man are given at the expense of the man who has a case for damages. But not so. Compensation is absolutely fair. It treats all alike. Unlike negligence liability, it makes no discriminations. This bill is for the man who has not been injured. If it becomes a law, it can not affect the man who at that time has been injured or who has a case for damages. Railroad employees are engaged in a hazardous occupation. They are liable to be injured or to be killed. They may be injured or killed in a way whereby damages can be obtained or in a way whereby they can not be claimed. No man can foresee in advance the manner in which he will be injured, and, therefore, in advance of any injury compensation says to all, treating all alike, that if anyone is injured, regardless of the question of negligence, he shall be compensated. There could be nothing fairer, nothing more humane, and nothing that ultimately can prove of more benefit to both employer and employee and to the public. The freedom from the irritation and friction of constant litigation between railroad and employee must mean better and more harmonious relations between them resulting in better and safer service of the public.

The penalizing of every accident must reduce the number of accidents. The elimination of any reason for obscuring the cause of accidents must make the ascertainment and removal of such cause easier of attainment. The unclogging of the dockets of the courts by striking therefrom personal-injury litigation will prove a boon to other litigants and to taxpayers.

There is but one class of our people that the passage of this bill will hurt, and that is the class of damage-suit lawyers and their retainers in and out of railroad service. The commission found that the railroads now pay something more than $10,000,000 per year for injuries to and deaths of their employees, and that of this enormous amount full $5,000,000 goes to waste in that it never reaches those for whose benefit it is paid. Lawyer fees and expenses of litigation consume it. No good citizen, it seems to me, can commend a system that in practice results in so much waste.

I want to remind my lawyer friends here and elsewhere that the practice of law is more than a trade. It is a glorious profession in which there is a high duty to government and society as well as to client and pocket. The fact that our Government is one of law and not of men explains why the lawyer has been given more honor and more prominence under it than under any other Government of the world. The lawyer of America has been true to high ideals throughout the past. He must be true to these ideals throughout the future if justice between man and man is to be preserved. He must ever strive for wiser and better laws and for the establishment of exact and equal justice if he would justify the confidence heretofore reposed in the priests of the law.

In my judgment, the lawyer can no more stand in the way of laws that eliminate strife, that destroy litigation, that make justice easier and quicker to be had, because strife and litigation and injustice mean fees to him, than the medical profession can stand in the way of health and sanitation laws because that profession thrives on disease and death. I commend this thought to my lawyer friends who oppose this bill.

[By unanimous consent, leave was granted to the following Members to extend their remarks in the RECORD: Mr. SABATH, Mr. HARDWICK, Mr. LANGLEY, Mr. RAKER, Mr. TAGGART, and Mr. HOWLAND.]

The SPEAKER. The question is on suspending the rules and passing the bill S. 5382, with the amendments as read:

Mr. HARDWICK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—ayes 218, nays 81, answered "present" 2, not voting 80, as follows:

YEAS—218.

Adair	Driscoll, M. E.	Kent	Pray
Ainey	Dupré	Knowland	Prouty
Akin, N. Y.	Dwight	Kopp	Ransdell, La.
Allen	Dyer	Lafean	Rauch
Anderson	Ellerbe	La Follette	Rees
Anthony	Esch	Langham	Roberts, Mass.
Ashbrook	Estopinal	Langley	Roberts, Nev.
Austin	Fairchild	Lawrence	Rodenberg
Barchfeld	Farr	Lee, Pa.	Rothermel
Barnhart	Fitzgerald	Lenroot	Rubey
Bartholdt	Flood, Va.	Levy	Rucker, Colo.
Bathrick	Focht	Lewis	Scott
Berger	Fornes	Lindbergh	Scully
Blackmon	Foster	Linthicum	Sharp
Boehne	Fowler	Littlepage	Sherley
Borland	Francis	Longworth	Sherwood
Brantley	French	Loud	Simmons
Broussard	Gardner, Mass.	McCall	Slemp
Browning	Gardner, N. J.	McCoy	Sloan
Bulkley	Gill	McDermott	Smith, Saml. W.
Burke, Pa.	Gillett	McGuire, Okla.	Smith, N. Y.
Burke, S. Dak.	Goeke	McKellar	Sparkman
Burke, Wis.	Goldfogle	McKenzie	Speer
Burnett	Good	McKinley	Stanley
Butler	Graham	McLaughlin	Steenerson
Calder	Gray	McMorran	Stephens, Cal.
Cannon	Green, Iowa	Maguire, Nebr.	Stephens, Nebr.
Cantrill	Greene, Mass.	Mann	Sterling
Carlin	Gregg, Pa.	Martin, Colo.	Stevens, Minn.
Carter	Griest	Matthews	Stone
Cary	Guernsey	Mays	Switzer
Claypool	Hamill	Miller	Talcott, N. Y.
Clayton	Hamilton, Mich.	Mondell	Taylor, Ala.
Conry	Hamilton, W. Va.	Moore, Pa.	Taylor, Colo.
Cooper	Hammond	Morrison	Taylor, Ohio
Copley	Harrison, N. Y.	Moss, Ind.	Thistlewood
Covington	Hawley	Mott	Thomas
Cox	Hay	Murdock	Tilson
Crago	Hayes	Murray	Towner
Crumpacker	Heald	Needham	Townsend
Cullop	Heflin	Neeley	Turnbull
Curley	Helgesen	Nelson	Tuttle
Dalzell	Hensley	Norris	Underhill
Daugherty	Higgins	Nye	Underwood
Davidson	Hill	Olmsted	Vare
Davis, Minn.	Hinds	O'Shaunessy	Volstead
Davis, W. Va.	Holland	Palmer	Warburton
De Forest	Howland	Patton, Pa.	White
Denver	Humphrey, Wash.	Payne	Willis
Difenderfer	Humphreys, Miss.	Pepper	Wilson, Ill.
Dixon, Ind.	Jackson	Peters	Woods, Iowa
Dodds	James	Pickett	Young, Kans.
Donohoe	Kahn	Plumley	Young, Mich.
Doremus	Kendall	Porter	
Driscoll, D. A.	Kennedy	Post	

NAYS—81.

Adamson	Faison	Jacoway	Rucker, Mo.
Aiken, S. C.	Fergusson	Johnson, Ky.	Russell
Alexander	Fields	Johnson, S. C.	Sabath
Bartlett	Floyd, Ark.	Jones	Sims
Beall, Tex.	Gallagher	Kinkaid, Nebr.	Sisson
Bell, Ga.	Garner	Kitchin	Small
Booher	Garrett	Konop	Smith, Tex.
Burgess	Godwin, N. C.	Lloyd	Stedman
Burleson	Goodwin, Ark.	Lobeck	Stephens, Miss.
Byrnes, S. C.	Gregg, Tex.	Macon	Stephens, Tex.
Byrns, Tenn.	Gudger	Moon, Tenn.	Taggart
Callaway	Hamlin	Morgan, La.	Taylor, Ark.
Campbell	Hardwick	Oldfield	Thayer
Candler	Harrison, Miss.	Padgett	Tribble
Cline	Hayden	Page	Watkins
Collier	Henry, Tex.	Pou	Webb
Cravens	Hobson	Rainey	Witherspoon
Dickinson	Houston	Raker	Young, Tex.
Dies	Howard	Randell, Tex.	
Doughton	Hughes, Ga.	Roddenbery	
Edwards	Hull	Rouse	

ANSWERED "PRESENT"—2.

Clark, Fla.		Shackleford	

NOT VOTING—80.

Ames	Fuller	Lee, Ga.	Redfield
Andrus	George	Lever	Reilly
Ansberry	Glass	Lindsay	Reyburn
Ayres	Gould	Littleton	Richardson
Bates	Greene, Vt.	McCreary	Riordan
Bradley	Hardy	McGillicuddy	Saunders
Brown	Harris	McKinney	Seils
Buchanan	Hart	Madden	Slayden
Currier	Hartman	Maher	Smith, J. M. C.
Curry	Haugen	Martin, S. Dak.	Stack
Danforth	Helm	Merritt	Sulloway
Davenport	Henry, Conn.	Moon, Pa.	Sweet
Dent	Howell	Moore, Tex.	Talbott, Md.
Dickson, Miss.	Hughes, W. Va.	Morgan, Okla.	Vreeland
Draper	Kindred	Morse, Wis.	Weeks
Evans	Kinkead, N. J.	Parran	Whitacre
Ferris	Konig	Patten, N. Y.	Wilder
Finley	Korbly	Powers	Wilson, N. Y.
Fordney	Lafferty	Prince	Wilson, Pa.
Foss	Lamb	Pujo	Wood, N. J.

So (two-thirds having voted in the affirmative) the rules were suspended and the bill was passed.

The Clerk announced the following additional pairs:

On this vote:

Mr. GLASS (for workmen's compensation bill) with Mr. McCREARY (against).

Mr. MARTIN of South Dakota (for workmen's compensation bill) with Mr. RICHARDSON (against).

Until further notice:

Mr. DENT with Mr. FORDNEY.

Mr. EVANS with Mr. MERRITT.

Mr. GOULD with Mr. HAUGEN.

Mr. HARDY with Mr. HOWELL.

Mr. HELM with Mr. HUGHES of West Virginia.

Mr. KORBLY with Mr. PRINCE.

Mr. LAMB with Mr. WEEKS.

Mr. PATTEN of New York with Mr. WILDER.

Mr. BUCHANAN with Mr. DRAPER.

Mr. DAVENPORT with Mr. SULLOWAY.

Mr. KINKEAD of New Jersey with Mr. WOOD of New Jersey.

Mr. CLARK of Florida. Mr. Speaker, I wish to know how I am recorded.

The SPEAKER. The gentleman is recorded in the negative.

Mr. CLARK of Florida. I have a general pair with the gentleman from New Mexico, Mr. CURRY, and I would like to know if he has voted or not.

The SPEAKER. The gentleman is not recorded.

Mr. CLARK of Florida. I desire to withdraw my vote and answer "present."

The SPEAKER. Call the gentleman's name.

The name of Mr. CLARK of Florida was called, and he answered "Present."

The result of the vote was announced as above recorded.

Mr. CLAYTON. Mr. Speaker, there are three typographical errors in the bill which I ask unanimous consent to correct.

The SPEAKER. The gentleman from Alabama asks unanimous consent to correct three typographical errors in the bill. Is there objection?

Mr. SABATH. What are they?

Mr. CLAYTON. I wish to state them. On page 42, line 13, the word "of" was stricken out by the committee, but does not appear in the print, and on page 46——

The SPEAKER. The gentleman will restate his correction.

Mr. CLAYTON. On page 42, line 13, the word "of" should be stricken out. The second amendment is on page 46, line 24, where the word "employer" should be "employee." The third one is——

Mr. RUCKER of Missouri. Mr. Speaker, there are thousands of errors in this bill, and I object.

The SPEAKER. The gentleman from Missouri and the gentleman——

Mr. RUCKER of Missouri. I withhold the objection for a moment.

The SPEAKER. The gentleman from Missouri [Mr. RUCKER] objects.

Mr. CLAYTON. I would like to state the other one.

Mr. RUCKER of Missouri. I will withhold my objection for a moment.

Mr. CLAYTON. On page 47, line 8, the word "employer" should be "employee." The context shows that these are typographical errors, without a doubt.

Mr. HENRY of Texas. Reserving the right to object, I want to say that if this bill has been so carefully prepared that it can be put through in 40 minutes, I shall object to any correction.

Mr. SABATH. A parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. SABATH. Will it be in order to recommit with instructions?

Mr. HENRY of Texas. Mr. Speaker, I object.

The SPEAKER. The stage to recommit has passed.

Mr. CLAYTON. No particular harm is done. It can be corrected hereafter, if necessary. But I think the text shows they are typographical errors. The committee prepared it right, but it was the fault of the printer.

Mr. RUCKER of Missouri. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman from Missouri rise?

Mr. RUCKER of Missouri. For a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. RUCKER of Missouri. The Speaker never submitted the request of the gentleman from Alabama [Mr. CLAYTON] to the House.

The SPEAKER. The gentleman from Missouri [Mr. RUCKER] and the gentleman from Texas [Mr. HENRY] objected.

DISTRICT OF COLUMBIA APPROPRIATION BILL.

Mr. BURLESON. Mr. Speaker, I offer the following motion which I send to the Clerk's desk, and I desire to inform the Members of the House that the amendment which is a part of the motion has been printed and can be obtained at the Doorkeeper's desk.

The SPEAKER. The Chair will take the liberty of ordering the assistants of the Doorkeeper to distribute the amendment.

Mr. BARTHOLDT. Mr. Speaker, I demand a second.

The SPEAKER. The gentleman from Texas has not made the motion as yet. The Clerk will report it.

The Clerk read as follows:

Mr. BURLESON moves to suspend the rules and discharge the Committee on Appropriations from further consideration of the bill (H. R. 28499) "making appropriations to provide for the expenses of the government for the District of Columbia" and the amendments of the Senate thereto, and that the House disagree to all of the amendments of the Senate except the amendment numbered 132, that the House agree to the amendment of the Senate numbered 132 with an amendment as follows: "That the House ask for a conference and that the Speaker shall, upon the adoption of this motion, appoint the conferees without intervening motion."

Mr. BURLESON. Mr. Speaker, I ask unanimous consent that the reading of the amendment be dispensed with.

The SPEAKER. The gentleman from Texas [Mr. BURLESON] asks unanimous consent to dispense with the reading of the amendment.

Mr. MANN. Mr. Speaker, I think the amendment ought to be read.

The SPEAKER. The gentleman from Illinois [Mr. MANN] objects, and the Clerk will read.

The Clerk read as follows:

In lieu of the matter inserted by said amendment, insert the following:

EXCISE.

SEC. 9. PARAGRAPH 1. That no person, company, copartnership, association, club, or corporation shall manufacture, sell, offer for sale, keep for sale, traffic in, barter, exchange for goods, give away, or otherwise furnish, in the District of Columbia, any intoxicating liquors, except as hereinafter provided. Wherever the term "intoxicating liquors" is used in this section it shall be deemed to include whisky, brandy, gin, wine, cordials, rum, ale, porter, beer, hard or fermented cider, and all other fermented, distilled, spirituous, vinous, and malt liquors, and every mixture of liquors which shall contain more than 2 per cent, by weight, of alcohol, and any mixture of liquor which shall contain less than 2 per cent of alcohol, if the same shall be intoxicating.

PAR. 2. That there shall be, and is hereby, constituted an excise board for the District of Columbia, which shall be composed of three members, to be appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall serve for a term of three years, and until their successors are appointed and qualified, except that the members first appointed shall serve for one, two, and three years, respectively, as may be designated by the President, or until their successors are appointed and qualified. The salary of said commissioners shall be at the rate of $2,400 per annum.

Hereafter no license shall be issued to a hotel having less than 50 bedrooms for guests, nor to any hotel the character of which, or the character of the proprietor or manager of which, is shown to be objectionable to said board.

Not more than three saloons or barrooms other than in hotels or clubs shall be permitted on one side of a street between intersecting streets, nor more than four on both sides of a street between intersecting streets.

No saloon, barroom, or other place where intoxicating liquor is sold at retail shall be licensed, allowed, or maintained within 300 feet of any alleyway occupied for residences or of places commonly called slums, except upon the unanimous vote of all three members of said excise board.

No saloon, barroom, or other place wherein intoxicating liquor is sold at retail or wholesale, other than hotels and clubs, shall be licensed, allowed, or maintained within 600 feet of any public schoolhouse, or a now located and established college, or university, or within 400 feet of any now established house of religious worship, measured between the nearest entrances to each by the shortest course of travel between such places of business and such public schoolhouse, college, or university, or established house of religious worship.

No license shall be granted to sell intoxicating liquors in the waiting room of any station or depot of any steam or electric railroad or other carrier for the transportation of passengers within the District of Columbia.

Hereafter no license shall be granted for the establishment or maintenance of a barroom or other place for the sale of intoxicating liquors, otherwise than in sealed packages and not to be drunk on the premises, in any residence portion of the District of Columbia; and it shall be the duty of the excise board to determine in the case of each application for license whether the location where the barroom is to be located is or is not within the business portion of the District, and if not the license shall be denied; and the excise board is hereby authorized and required to determine in each case what is so far devoted to business as to constitute it a business street or section: *Provided*, That no license shall be granted for any saloon or barroom on any side of any square, block, or tract of land where less than 50 per cent of the foot frontage, not including saloons or hotels and clubs having barroom licenses under this section, is used for business purposes; nor shall intoxicating liquors be sold at wholesale outside of the business districts as above provided.

No saloon, barroom, or wholesale liquor business shall be licensed, maintained, or allowed in the territory west of the following lines: The westerly line of the fire limits as now established from its southerly limits to where the same intersects with the mile limit of the Soldiers' Home; thence westerly and northerly along the said mile limit until the same intersects with Kansas Avenue; thence along Kansas Avenue to its intersection with the northern boundary of the District of Columbia.

Said board shall consider and act upon all applications for license to sell intoxicating liquors, and may require a report thereon by the chief of police, and the action of said board shall be final and conclusive. In the issuing of licenses for barrooms it shall be the duty of the excise board to adopt such a policy as will reduce the number of barrooms, including those in hotels and clubs, to not exceeding 300 by November 1, 1914, but no licensee who shall conduct his business within the law shall be deprived of his license or required to change his location before November 1, 1914. On the granting by said board of a license to sell intoxicating liquors, the assessor shall issue a license to the applicant. Said board shall make such rules and regulations for carrying into effect this section as it may deem requisite and proper. It shall make an annual report to Congress setting forth the number of applications for license, whether favorably or unfavorably acted upon, the number of persons convicted for violation of this statute, and the number and amount of fines collected and uncollected; and said excise board is hereby authorized and empowered to summon any person before it to give testimony, under oath or affirmation, as to any matter affecting the operation of the laws regulating the sale of intoxicating liquors in the District of Columbia; and any member of the board shall have the power to administer oaths or affirmations for all purposes of administering said laws. Such summons may be served by any member of the Metropolitan police force, and the refusal or neglect of a witness to appear before the said board or to testify when required may be punished in the same manner as a refusal to appear before the Commissioners of the District of Columbia, as provided for in the acts of February 20, 1896, entitled "An act to amend an act entitled 'An act to punish false swearing before trial boards of the Metropolitan police force and fire department of the District of Columbia, and for other purposes,' approved May 11, 1892," and July 1, 1902, entitled "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1903, and for other purposes." Witnesses so summoned shall be entitled to a fee of $1.25 for each day's attendance before the said board, payable out of the contingent fund of the Commissioners of the District of Columbia; and any witness knowingly making a false statement to the said board on any material matter shall be guilty of perjury and punishable accordingly.

PAR. 3. That the said board shall appoint a clerk at a salary of $1,500 per annum and an inspector with police powers at a salary of $1,500 per annum. Said inspector shall make inspections as may be required by this section, under the orders of the board, and make full report of such inspections to the board. He shall wear a badge indicating that he is such inspector of the excise board. The board shall keep a full record of all applications for license, of all recommendations for and remonstrances against the granting of licenses, and the actions taken thereon.

PAR. 4. That every person applying for a license to sell intoxicating liquors in said District shall file with the said board a petition for such license, and such petition shall be considered and acted upon by the board in the order in which such petition is filed and numbered. Said petition shall contain—

First. A statement giving the name and residence of the applicant and the time he has resided in the District of Columbia.

Second. A statement describing the particular place for which a license is desired, designating the same by street and number, if practicable, and if not, by such other apt description as will definitely locate it, and how long said applicant has been engaged in business at said place.

Third. The full name and residence of the owner of the premises upon which the business is to be carried on.

Fourth. A statement that the applicant is a citizen of the United States and a bona fide resident of the District of Columbia, and not less than 21 years of age, and whether such applicant has, since March 3, 1893, been adjudged guilty of violating the laws governing the sale of intoxicating liquors or for the prevention of gambling in the District of Columbia.

Fifth. A statement that he intends to, and if licensed will, carry on such business for himself and not as the agent of any other person, company, copartnership, or corporation.

Sixth. A statement that he intends to superintend in person the management of the business for which he asks a license, and that if licensed he will so superintend the management of the business so licensed.

Said petition must be sworn to by the petitioner before a notary public or other person duly authorized to administer oaths and affirmations. If any false material statement is knowingly made in any part of said petition, the petitioner making said affidavit shall be deemed guilty of perjury, and on conviction thereof shall be subject to the penalty now provided by law for that offense; and in case a license has been issued to said petitioner the same shall be immediately revoked by said board. Notice of the filing of said petition shall be given by the applicant in such manner as may be prescribed by general rules and regulations adopted by the excise board; and if protests against the granting of such license are filed no final action shall be taken by the excise board until the protestants shall have had an opportunity to be heard, under rules and regulations prescribed by said board.

PAR. 5. That the licenses authorized and provided for by this section shall be of two classes, wholesale liquor licenses and barroom licenses. The fee for a wholesale liquor license until November 1, 1914, shall be $500 per annum, and for a barroom license $1,000 per annum until November 1, 1914; and thereafter the fee for a wholesale liquor license shall be $800, and the fee for a barroom license shall be $1,500 per annum. Every applicant for a liquor license shall deposit the amount of the license fee with the collector of taxes of the District of Columbia at the time of filing the application with the excise board. If, upon consideration of the application for license by the board as provided for in this section, the board shall decide to grant the license prayed for it shall notify the assessor, and the applicant shall thereupon receive his license; and only on the granting by said board of a license to any applicant to sell intoxicating liquor shall the assessor issue a license to such applicant. Whenever a license shall be refused by said board, the collector of taxes shall forthwith refund the deposit aforesaid. A barroom license shall be required for every hotel, tavern, barroom, club, or other place in which intoxicating liquors are sold or dispensed at retail. A wholesale liquor license shall authorize the licensee to sell intoxicating liquors in sealed packages only and in quantities not less than 1 quart in the aggregate, except in sealed original or bonded package in quantity not less than approximately a pint, and not to be drunk on the premises where sold; and no wholesale license shall be granted until it is satisfactorily shown that the place where it is intended to carry on such business is properly arranged for selling such liquors as merchandise. Every place where intoxicating liquors are sold to be drunk on the premises or in quantities less than one quart, except in sealed original or bonded packages as aforesaid whether drunk on the premises or not, shall be regarded as a barroom; and the possession of intoxicating liquors, with the means and appliances for carrying on the business of dispensing the same to be drunk where sold, shall be prima facie evidence of a barroom within the meaning of this section, and the license therefor shall be known as a barroom license. All makers, brewers, and distillers of intoxicating liquors in the District of Columbia shall be required to take out the wholesale license provided for in this section: *Provided,* That when such business is carried on at more than one place a license shall be required for each place. Before the excise board may grant a license to a club it must be satisfactorily shown that such club is duly incorporated; that its membership is bona fide, all being on an equal status with equal privileges and responsibilities; that its purposes are legitimate; and that the sale of liquor intended is no more than an incident, and is not a prime source of revenue. A license to a club may be issued in the name of its president, and in case of violation of the provisions of this section in such club, he and the secretary, the treasurer, and the manager of the club shall be proceeded against collectively or severally in their individual capacities and, if convicted, be subject to the penalties prescribed in paragraph 14 of this section, and the license of said club shall be immediately revoked by the excise board: *Provided further,* That after November 1, 1914, there shall not be granted licenses to more than 25 clubs, including those now licensed.

PAR. 6. That under the license issued in accordance with this section no intoxicating liquors shall be sold, given away, or in any way disposed of to any minor, intoxicated person, or habitual drunkard, and ignorance of the age of any such minor shall not be a defense to any action instituted under this section; and no licensee under this section shall sell, give away, or dispense any intoxicating liquors to any person between the hours of midnight and 7 o'clock in the morning, nor on Sundays or Inauguration Day, and between said hours, and on Sundays and Inauguration Day every barroom and other place where intoxicating liquors are sold shall be kept closed; that no minor under the age of 18 years shall be allowed to enter or be permitted to remain in any place where intoxicating liquors are sold, other than a hotel or club; that the interior of every barroom shall at all times when selling is prohibited be exposed to full view from the street, without obstruction by screens, blinds, curtains, stained glass, bottles, boxes, signs, or other material, except in the case of clubs licensed under this section and hotels having only an interior barroom, which shall be exposed to full view from the corridors or passageways leading to the entrance or entrances to such barroom.

PAR. 7. That any minor who falsely represents his age for the purpose of procuring intoxicating liquors shall be deemed guilty of a misdemeanor, and be fined for each offense not more than $50, and in default in the payment of such fine shall be imprisoned in the reformatory or workhouse of said District not exceeding 30 days.

PAR. 8. That no license under this section shall be issued for a longer period than one year, and the year shall begin on the first day of November and end on the last day of October following; and no license shall be transferred by the licensee to any other person or to any other place, except with the written consent of the excise board upon a regular application therefor in writing and after notice and hearing as in this section provided upon an original application for a license; and the fee to be paid by the party applying for such transfer shall be $2, which shall be paid to the collector of taxes of the District before such transfer is made: *Provided,* That the excise board shall not allow the transfer of the license of any person against whom there are pending in the courts or before the excise board charges of keeping a disorderly house or violating the excise laws or the laws against gambling in the District of Columbia.

PAR. 9. That every person receiving a license to sell liquor under this section shall frame the same under glass and place it in a conspicuous place in his place of business, so that anyone entering such place may easily read such license.

PAR. 10. That all applicants for license and persons holding licenses under this section shall allow any member of the excise board or the duly authorized inspector of the said board full opportunity and every facility to examine, at any time during business hours, the premises where intoxicating liquor is manufactured, sold, or for which a license is asked or has been granted; and the same opportunity and facility shall be afforded, by the licensee or some person acting in his stead, any member of the Metropolitan police force, who has reasonable belief that the law is being violated, to enter and examine at all times such licensed places, and no person or persons shall obstruct, hinder, or in any manner molest such inspector or officer, provided such inspector or officer exhibits a badge showing he is such inspector or officer.

PAR. 11. That regularly licensed druggists or pharmacists shall not be required to obtain license under the provisions of this section, but they shall not sell intoxicating liquors, nor compound, nor mix any composition thereof, nor sell any malt extract, or other proprietary medicines containing more than 2 per cent of alcohol, except such compounds, compositions, malt extracts, or proprietary medicines be so medicated as to be medicinal preparations or compounds unfit for use as beverages, except upon a written and bona fide prescription of a duly licensed and regularly practicing physician in the District of Columbia, whose name shall be signed thereto. Such prescription shall contain a statement that the disease of the patient required such a prescription, shall be numbered in the order of receiving, and shall be canceled by writing on it the word "canceled" and the date on which it was presented and filled, and kept on file in consecutive order, subject to public inspection at all times during business hours. No such prescription shall be filled more than once. Every druggist or pharmacist selling intoxicating liquors as herein provided shall keep a book provided for the purpose, and shall enter therein at the time of every sale a true record of the date of the sale, the name of the purchaser, who shall sign his name in said book as a part of the entry, his residence (giving the street and house number, if there be such), the kind and quantity and price of such liquor, the purpose for which it was sold, and the name of the physician giving the prescription therefor. Such book shall be open to public inspection during business hours, and shall be in form substantially as follows:

Date.	Name of purchaser.	Residence.	Kind and quantity.	Purpose of use.	Price.	Name of physician.	Signature of purchaser.

Said book shall be produced before the excise board or the courts when required: *Provided,* That pure grain alcohol may be sold without a physician's prescription for mechanical, medicinal, and scientific purposes by registered druggists or pharmacists, who shall keep a book for the purpose of registering such sales in a similar manner or form as required for the sale of intoxicating liquors as provided in this section: *Provided further,* That any person who shall make any false statement as to the purpose or use of alcohol purchased under the provisions of this section shall be deemed guilty of a misdemeanor and be fined for each offense not more than $50, and in default of the payment of such fine shall be imprisoned in the workhouse of said District not exceeding 30 days.

Any druggist or pharmacist who shall sell or dispense any intoxicating liquors, except in such manner as provided in this section, or who shall fail or refuse to keep the record herein required, or who shall refill any prescription, or who shall violate any other provisions of this paragraph, shall be guilty of illegal selling, and upon conviction thereof shall be subject to the penalties prescribed in paragraph 12 of this section. Upon a second conviction for said offense, in addition to the penalties prescribed in said paragraph 12, it shall be a part of the judgment of conviction that the license of such druggist or pharmacist to practice pharmacy shall be revoked, and the court before which such person is tried and convicted shall cause a certified copy of such judgment of conviction to be certified to the board having authority to issue licenses to practice pharmacy in the District of Columbia.

Any physician who shall prescribe any intoxicating liquor except for treatment of disease which, after his own personal diagnosis, he shall deem to require such treatment, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $50 nor more than $200, and in default of payment of said fine shall be imprisoned in the District Jail or workhouse for not less than 30 nor more than 90 days, and upon a second conviction for said offense, in addition to the penalty above provided, it shall be a part of the judgment of conviction that the license of such physician to practice medicine be revoked, and the court before which such physician is tried and convicted shall cause a certified copy of such judgment of conviction to be certified to the board having authority to issue licenses to practice medicine in the District of Columbia.

PAR. 12. That any person, company, copartnership, corporation, club, or association manufacturing, selling, offering for sale, keeping for sale, trafficking in, bartering, exchanging for goods, or otherwise furnishing any intoxicating liquors in the District of Columbia, without first having obtained a license as herein provided, or shall manufacture, sell, offer for sale, keep for sale, traffic in, barter, exchange for goods, or give away intoxicating liquors in any part, section, or district of the District of Columbia wherein the same is prohibited by law, upon conviction thereof shall be fined not less than $250 nor more than $800, and in default in the payment of such fine be imprisoned in the District jail or workhouse for not less than two months nor more than six months; and upon every subsequent conviction for such offense shall, in addition to the penalty named, to wit, a fine of not less than $250 nor more than $800, be imprisoned in the workhouse of the District of Columbia not less than three months nor more than one year.

PAR. 13. That any person, company, copartnership, corporation, or club having obtained a license under this section, who shall violate any of its provisions shall, upon conviction of such violation, be fined not less than $100 nor more than $500, and the excise board may, in its discretion, revoke the license; and upon a second conviction of such violation such licensee shall be fined not less than $200 nor more than $500, and in addition to such fine the excise board shall immediately revoke the license. That upon the conviction of any licensee of keeping a disorderly or disreputable place, it shall be the duty of the excise board to immediately revoke the license of such convicted licensee, and after such revocation no license shall again be granted to him for said place or elsewhere, nor shall a license be granted to anyone else for

said place for a period of three years from the date of said revocation of license.

PAR. 14. That no licensee under this section shall allow any female or any minor or any person convicted of crime, to sell, give, furnish, or distribute any intoxicating liquors, or any admixture thereof, to any person or persons, or except in the case of hotels, restaurants, and clubs shall permit the playing of pool or billiards, or any other games whatever, in the room where such liquors are sold or drunk, or in any adjoining or intercommunicating room; nor shall he, except in the case of hotels, restaurants, and clubs, permit the playing of music or theatricals of any kind, or provide other amusements in his place of business or in connection therewith. Nor shall any barroom licensee establish more than one bar under his license, and the sale or dispensing of liquors, except in case of hotels, restaurants, and clubs, shall be confined to the room in which said bar is located; nor provide or permit to be used more than one entrance to said barroom from the street, which entrance shall be the one mentioned in his application for license, unless the excise board shall especially permit an extra entrance; nor shall any barroom licensee sell, give, furnish, or distribute any intoxicating liquors to any female, nor permit any female to enter or remain in his barroom: *Provided*, That bona fide guests of hotels, restaurants, and clubs having a license to sell intoxicating liquors may be served with liquors at meals in such hotels and clubs during the time liquor may be sold: *Provided further*, That no place shall be deemed a restaurant within the meaning of this paragraph until the same shall have been so declared such by action of the excise board.

PAR. 15. That all applicants who have had a license during the preceding year who so desire shall apply for a renewal of such license on or before the first day of September of each license year: *Provided*, That in the event of the death of a person having a license under this section during a license year there shall be refunded to the personal representative of the deceased such amount of the license fee in proportion to the unexpired part of the license year: *Provided further*, That the minimum portion of said license fee to be retained for any portion of the license year, irrespective of its proportion to the entire year, shall be $200 in the case of barroom licenses and $100 in the case of wholesale licenses: *Provided further*, That the personal representative of any deceased licensee may within 30 days after the death of such licensee transfer said license in accordance with the provisions of this law, touching transfers of licenses.

PAR. 16. That no license, either wholesale or barroom, shall be issued to any person or for any place located within 1,000 feet of the grounds of the marine barracks, the War College, and engineer barracks, or of the navy yard, in the District of Columbia.

PAR. 17. That any person assisting in or aiding and abetting the violation of any of the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than $50 nor more than $100 or be imprisoned in the District jail or workhouse for not more than three months for each and every offense: *Provided*, That no witness shall be excused from testifying in any case brought under this section on the ground that his answers may tend to incriminate him in connection with any violation of this section, and such witness so testifying shall not thereafter be prosecuted for violation of any provision of this section concerning which such witness may have testified.

PAR. 18. That prosecutions for violations of the provisions of this section shall be on information filed in the police court by the corporation counsel of the District of Columbia or any of his assistants duly authorized to act for him, and said corporation counsel or his assistants shall file such information upon the presentation to him or his assistants of sworn information that the law has been violated; and such corporation counsel and his assistants shall have power to administer oaths to such informant or informants, and such others as present themselves, and anyone making a false oath to any material fact shall be deemed guilty of perjury and subject to the same penalties as now provided by law for such offense.

PAR. 19. That if one or more persons who are competent witnesses shall charge on oath or affirmation before the corporation counsel of the District of Columbia or any of his assistants duly authorized to act for him, representing that any person, company, copartnership, association, club, or corporation has or have violated or is violating the provisions of this section, by manufacturing, selling, offering for sale, keeping for sale, trafficking in, bartering, exchanging for goods, giving away, or otherwise furnishing intoxicating liquor without license, and shall request said corporation counsel or any of his assistants duly authorized to act for him, to issue a warrant, said attorney or any of his assistants shall issue such warrant in which warrant the room, house, building, or other place in which the violation is alleged to have occurred or is occurring shall be specifically described, and said warrant shall be placed in the hands of the captain or acting captain of the police precinct in which the room, house, building, or other place above referred to is located, commanding him at once to thoroughly search said described room, house, building, or other place and the appurtenances thereof, and if any such shall be found, to take into his possession and safely keep, to be produced as evidence when required, all intoxicating liquors (if the same shall be found in quantities and in condition to suggest that it is kept for sale), and all the means of dispensing same, also all the paraphernalia or part of the paraphernalia of a barroom or other intoxicating-liquor establishment, and any United States internal-revenue tax receipt or certificate for the manufacture or sale of intoxicating liquor effective for the period of time covering the alleged offense, and forthwith report all the facts to the corporation counsel of the District of Columbia, and such intoxicating liquor or the means for dispensing same, or the paraphernalia of a barroom or other intoxicating-liquor establishment, or any United States internal-revenue tax receipt or certificate for the sale of intoxicating liquor effective as aforesaid, shall be prima facie evidence of the violation of the provisions of paragraph 1 of this section as charged or presented. If the accused shall be found guilty, the intoxicating liquor so seized shall, after the trial and time for writ of error, if no writ of error is taken, be destroyed by the police department; if the accused be found not guilty, the whole shall be held as his, its, or their property, or the property of the real owner.

PAR. 20. That it shall not be necessary in order to convict any person, company, association, club, or corporation, his, its, or their agents, officers, clerks, or servants, of manufacturing or selling intoxicating liquors without license, or in any section of the District of Columbia where the manufacture and sale is prohibited, to prove the actual sale, delivery of, or payment for any intoxicating liquors, but the evidence of having or keeping them in hand and offering to sell or barter, exchanging for goods or merchandise, shall be sufficient to convict; nor shall it be necessary in a warrant or in information to specify the particular kind of liquor manufactured, sold, offered for sale, kept for sale, trafficked in, bartered, or exchanged for goods or merchandise, but it shall be sufficient to allege in the warrant or information that the accused manufactured, sold, offered for sale, kept for sale, trafficked in, bartered or exchanged for goods or merchandise, or kept it deposited to sell or barter.

PAR. 21. That every person who shall, within the District of Columbia, directly or indirectly, keep or maintain, by himself or by associating or combining with others, or who shall in any manner aid, abet, or assist in keeping or maintaining any clubroom or other place in which any intoxicating liquors, the sale of which without a license is prohibited by this section, is received or kept for the purpose of use, sale, barter, giving away, or otherwise furnishing, or for distribution or division among the members of any club or association by any means whatever, without first having a license so to do, or in sections of the District wherein the sale of intoxicating liquor is prohibited, and every person who shall use, sell, barter, give away, or otherwise furnish, distribute, or divide any such liquors so received or kept shall be guilty of a misdemeanor and subject to the penalties prescribed in paragraph 12 of this section.

PAR. 22. That any person who shall, in the District of Columbia, in any street or alley, in any public place, or in or upon any street car, or in or upon any other vehicle commonly used for the transportation of passengers, or in or about any depot, platform, or waiting station, drink any intoxicating liquor of any kind, or if any person shall be drunk or intoxicated in any street, alley, or public or private road or in any passenger coach, street car, or any public place or building, or at any public gathering, or if any person shall be drunk or intoxicated and shall disturb the peace of any person, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $10 nor more than $100, or by imprisonment for not less than 5 days nor more than 30 days in the workhouse or jail of the District of Columbia, or by both such fine and imprisonment.

PAR. 23. That the issuance of an internal-revenue special-tax receipt or certificate by the United States to any person as a wholesale or retail dealer in distilled liquors or in malt liquors at any place within the District of Columbia shall be prima facie evidence of the sale of intoxicating liquors by such person at such place, or at any other place of business of such person in the District where such special-tax receipt is posted and at the time charged in any prosecution under this section, but such time must be within the life of such receipt or certificate.

PAR. 24. That in the interpretation of this section words of singular number shall be deemed to include their plurals, and words of masculine gender shall be deemed to include the feminine, as the case may be.

PAR. 25. That this section shall be in full force and effect from and after July 1, 1913, and shall be in lieu of and as a substitute for all existing laws and regulations in the District of Columbia in relation to the sale of intoxicating liquors in said District, except such laws as prohibit the sale of intoxicating liquors in certain defined sections or parts of the District and laws of Congress pertaining to persons, premises, and territory over which the Federal Government exercises jurisdiction; and all laws and parts of laws inconsistent with this section, except such laws above referred to, be, and they are hereby, repealed.

Mr. BURLESON. Mr. Speaker, I desire to modify the motion in one particular. There is a typographical error on page 4, line 3. I want the word "six" stricken out at the end of line 3 and the word "four" inserted.

The SPEAKER. The gentleman from Texas [Mr. BURLESON] asks to modify a word in line 3, page 4.

Mr. BURLESON. To strike out the word "six" and insert the word "four."

The SPEAKER. Without objection, the modification will be made.

There was no objection.

Mr. BARTHOLDT. Mr. Speaker, I demand a second.

The SPEAKER. The Chair will recognize the gentleman from Missouri [Mr. BARTHOLDT] in a moment.

Mr. RAKER. Mr. Speaker, will the gentleman permit a question?

Mr. BURLESON. I will.

Mr. RAKER. I want to call the gentleman's attention to line 9, on page 29, and see if he does not intend that to be "act" instead of "section"—"That this section shall be in full force and effect," and so forth?

Mr. BURLESON. No.

Mr. TAYLOR of Ohio. It means section of the bill.

Mr. BARTHOLDT. I demand a second, Mr. Speaker.

The SPEAKER. If the gentleman will wait until the Chair can put the motion, the Chair will recognize him to demand a second. The gentleman from Texas [Mr. BURLESON] moves to suspend the rules and discharge the Committee on Appropriations from further consideration of the bill (H. R. 28499) making appropriations to provide for the expenses of the Government of the District of Columbia, and the amendments of the Senate thereto, and that the House disagree to all of the amendments of the Senate except the amendment No. 132; that the House agree to the amendment No. 132 with an amendment; that the House ask for a conference, and that the Speaker shall, on the adoption of this motion, appoint the conferees without an intervening motion. Is a second demanded?

Mr. BARTHOLDT. I demand a second, Mr. Speaker.

Mr. BURLESON. I ask unanimous consent, Mr. Speaker, that a second be considered as ordered.

Mr. RUCKER of Missouri. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. RUCKER of Missouri. I understood the gentleman from Texas [Mr. BURLESON] to couple with his request a suggestion that some language be amended.

Mr. BURLESON. I modified my motion to that extent.

Mr. RUCKER of Missouri. I will ask the gentleman, in this connection, if he will not further modify his motion by striking out the words "waiting room," on line 12 of page 4?

Mr. BURLESON. I would be very glad to do that, but I am afraid that there will be innumerable objections if I do.

Mr. RUCKER of Missouri. Would this law prohibit the sale of whisky in the Union Station?

Mr. BURLESON. This amendment prohibits it.

Mr. RUCKER of Missouri. It does not; I beg the gentleman's pardon. The waiting room is not the whole station. It is not so now, and it will not be so after this law passes. The language is "waiting room."

I want to say, Mr. Speaker, if it is the purpose to permit the sale of whisky in the station, why not say so?

Mr. WEBB. Mr. Speaker, will the gentleman permit an interruption?

SEVERAL MEMBERS. Regular order!

The SPEAKER. The regular order is demanded. The regular order is that the gentleman from Texas [Mr. BURLESON] asks that a second be considered as ordered. Is there objection? [After a pause.] The Chair hears none.

ENROLLED BILLS SIGNED.

Mr. CRAVENS, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles, when the Speaker signed the same:

H. R. 28730. An act making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June 30, 1914, and for other purposes; and

H. R. 27941. An act making appropriations for the support of the Army for the fiscal year ending June 30, 1914.

SENATE BILL REFERRED.

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

S. 6062. An act for the preparation of a plan and the erection of a foundation and pedestal on ground belonging to the United States Government, in the city of Washington, upon which to place a memorial or statue, to be furnished by the State of Pennsylvania, of Maj. Gen. George Gordon Meade; to the Committee on the Library.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Stuart, one of its clerks, announced that the Senate had passed the following resolutions:

Resolved, That the Senate expresses its profound sorrow on account of the death of the Hon. HENRY C. LOUDENSLAGER, late a Member of the House of Representatives from the State of New Jersey.

Resolved, That the business of the Senate be now suspended in order that fitting tribute may be paid his high character and distinguished public services.

Resolved, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

Also:

Resolved, That the Senate expresses its profound sorrow on account of the death of the Hon. DAVID J. FOSTER, late a Member of the House of Representatives from the State of Vermont.

Resolved, That the business of the Senate be now suspended in order that fitting tribute may be paid his high character and distinguished public services.

Resolved, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

Also:

Resolved, That the Senate expresses its profound sorrow on account of the death of the Hon. JAMES P. LATTA, late a Member of the House of Representatives from the State of Nebraska.

Resolved, That the business of the Senate be now suspended in order that fitting tribute may be paid his high character and distinguished public services.

Resolved, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

Also:

Resolved, That the Senate has heard with deep sorrow of the death of Hon. ELBERT HAMILTON HUBBARD, late a Member of the House of Representatives from the State of Iowa.

Resolved, That as a mark of respect to the memory of the deceased the business of the Senate be suspended in order that proper tribute may be paid his high character and distinguished public services.

Resolved, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

Also:

Resolved, That the Senate expresses its profound sorrow on account of the death of the Hon. GEORGE S. LEGARE, late a Member of the House of Representatives from the State of South Carolina.

Resolved, That the business of the Senate be now suspended in order that fitting tribute may be paid his high character and distinguished public services.

Resolved, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

Also:

Resolved, That the Senate has heard with deep sorrow of the death of the Hon. SYLVESTER CLARK SMITH, late a Member of the House of Representatives from the State of California.

Resolved, That as a mark of respect to the memory of the deceased the business of the Senate be suspended in order that proper tribute may be paid his high character and distinguished public services.

Resolved, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

Also:

Resolved, That the Senate has heard with profound sorrow of the death of the Hon. WELDON BRINTON HEYBURN, late a Senator from the State of Idaho.

Resolved, That as a mark of respect to the memory of the deceased the business of the Senate be now suspended to enable his associates to pay proper tribute to his high character and distinguished public services.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit a copy thereof to the family of the deceased.

Also:

Resolved, That the Senate has heard with deep sorrow of the death of the Hon. JEFF DAVIS, late a Senator from the State of Arkansas.

Resolved, That as a mark of respect to the memory of the deceased the business of the Senate be now suspended, to enable his associates to pay proper tribute to his high character and distinguished public services.

Resolved, That the Secretary communicate a copy of these resolutions to the House of Representatives and transmit a copy thereof to the family of the deceased.

The message also announced that the Senate had insisted upon its amendments to the bill (H. R. 18787) relating to the limitation of the hours of daily service of laborers and mechanics employed upon a public work of the United States and of the District of Columbia, and of all persons employed in constructing, maintaining, or improving a river or harbor of the United States and of the District of Columbia, disagreed to by the House of Representatives, had agreed to the conference asked by the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. BORAH, Mr. PENROSE, and Mr. SHIVELY as the conferees on the part of the Senate.

INDIAN APPROPRIATION BILL.

Mr. STEPHENS of Texas. Mr. Speaker, I submit for printing under the rule the conference report and accompanying statement on the bill (H. R. 26874) 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.

The SPEAKER. The conference report and accompanying statement will be printed in the RECORD under the rule.

The conference report and accompanying statement are as follows:

CONFERENCE REPORT (NO. 1605).

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (H. R. 26874) making appropriations for the current and contingent expenses for 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, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate numbered 5, 9, 10, 18, 19, 20, 21, 27, 29, 30, 31, 39, 40, 42, 45, 46, 50, 57, 59, 60, 61, 71, 74, 77, 83, 84, 86, 88, 89, 90, 92, 93, 94, 95, 96, 97, 99, 101, 103, 104, 106, 108, 110, 112, 128, 129.

That the Senate recede from its amendments numbered 6, 7, 13, 14, 22, 24, 25, 26, 28, 33, 35, 36, 37, 38, 41, 44, 47, 52, 53, 56, 58, 62, 63, 64, 65, 66, 69, 70, 76, 78, 79, 82, 85, 87, 100, 107, 111, 113, 114, 116, 119, 120, 121, and agree to the same.

Amendment numbered 1: That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$220,000"; and the Senate agree to the same.

Amendment numbered 2: That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$335,000"; and the Senate agree to the same.

Amendment numbered 3: That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$345,700"; and the Senate agree to the same.

Amendment numbered 4: That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment as follows: In lieu of the amendment proposed insert the following:

"For the suppression of the traffic in intoxicating liquors and peyote among Indians, $75,000."

And the Senate agree to the same.

Amendment numbered 8: That the House recede from its disagreement to the amendment of the Senate numbered 8, and agree to the same with an amendment as follows: Strike out the following: "$480,000, to remain available until expended," and insert in lieu thereof the following: "$400,000: *Provided*, That out of the above amount the following expenditures shall be made, to wit, for the construction of employees' quarters at the Pine Ridge Agency in South Dakota, $10,000, and for repair and improvement of agency buildings at Pine Ridge Agency in South Dakota, $5,000"; and after the word "*Provided*," in line 1 of the Senate amendment, insert the word "*further*"; and the Senate agree to the same.

Amendment numbered 11: That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment as follows: In lieu of the amendment proposed insert the following: "$400,000"; and the Senate agree to the same.

Amendment numbered 12: That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment as follows: At the beginning of the amendment strike out the figures "$325,000" and insert in lieu thereof "$300,000"; and the Senate agree to the same.

Amendment numbered 15: That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment as follows: In lieu of the amendment proposed insert the following: "$105,000; $20,000 to be immediately available"; and the Senate agree to the same.

Amendment numbered 16: That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment as follows: At the end of the amendment proposed, after the word "Interior," strike out the figures "$100,000" and insert in lieu thereof the following: "$50,000"; and the Senate agree to the same.

Amendment numbered 17: That the House recede from its disagreement to the amendment of the Senate numbered 17, and agree to the same with an amendment as follows: In line 3 of the amendment proposed, after the word "crops," strike out the figures "$250,000" and insert in lieu thereof the following: "$100,000"; and the Senate agree to the same.

Amendment numbered 23: That the House recede from its disagreement to the amendment of the Senate numbered 23, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$146,000"; and the Senate agree to the same.

Amendment numbered 32: That the House recede from its disagreement to the amendment of the Senate numbered 32, and agree to the same with an amendment as follows: In line 8 of the amendment proposed, after the word "of," strike out the figures "150,000" and insert in lieu thereof the following: "$100,000"; and the Senate agree to the same.

Amendment numbered 34: That the House recede from its disagreement to the amendment of the Senate numbered 34, and agree to the same with an amendment as follows: In line 2 of the amendment proposed, after the word "Indians," strike out the figures "$100,000" and insert the following: "$15,000"; and the Senate agree to the same.

Amendment numbered 43: That the House recede from its disagreement to the amendment of the Senate numbered 43, and agree to the same with an amendment as follows: In lieu of the amendment proposed insert the following:

"SEC. 8. For support and education of 325 Indian pupils at the Indian school, Mount Pleasant, Mich., and for pay of superintendent, $56,275; for general repairs and improvements, including equipment of two lavatories, and for changing and improving heating system, including purchase of new 100 horsepower steam boiler, $15,000; in all, $71,275."

And the Senate agree to the same.

Amendment numbered 48: That the House recede from its disagreement to the amendment of the Senate numbered 48, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$12,000"; and the Senate agree to the same.

Amendment numbered 49: That the House recede from its disagreement to the amendment of the Senate numbered 49, and agree to the same with an amendment as follows: At the end of line 2 of the amendment, after the word "employees," strike out the figures "$20,000" and insert in lieu thereof the figures "$15,000"; and the Senate agree to the same.

Amendment numbered 51: That the House recede from its disagreement to the amendment of the Senate numbered 51, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$275,000"; and the Senate agree to the same.

Amendment numbered 54: That the House recede from its disagreement to the amendment of the Senate numbered 54, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$150,000"; and the Senate agree to the same.

Amendment numbered 55: That the House recede from its disagreement to the amendment of the Senate numbered 55, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$150,000"; and the Senate agree to the same.

Amendment numbered 67: That the House recede from its disagreement to the amendment of the Senate numbered 67, and agree to the same with an amendment as follows: After the word "buildings" in the amendment strike out the figures "$25,000" and insert in lieu thereof "$15,000"; and the Senate agree to the same.

Amendment numbered 68: That the House recede from its disagreement to the amendment of the Senate numbered 68, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$69,900"; and the Senate agree to the same.

Amendment numbered 72: That the House recede from its disagreement to the amendment of the Senate numbered 72, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$75,500"; and the Senate agree to the same.

Amendment numbered 73: That the House recede from its disagreement to the amendment of the Senate numbered 73, and agree to the same with an amendment as follows: In lieu of the matter stricken out by the Senate insert a comma and the following: "which said sum shall be reimbursed to the United States by the Navajo Indians, and shall remain a charge and lien upon the lands, property, and funds belonging to said Navajo Indians until paid in full"; and the Senate agree to the same.

Amendment numbered 75: That the House recede from its disagreement to the amendment of the Senate numbered 75, and agree to the same with an amendment as follows: In lieu of the amendment insert the following:

"For support and education of 150 Indian pupils at the Indian school, Wahpeton, N. Dak., and pay of superintendent, $26,500; for general repairs and improvements, $5,000; for addition to barn, $2,500; for dairy cows, $1,000; in all, $35,000."

And the Senate agree to the same.

Amendment numbered 80: That the House recede from its disagreement to the amendment of the Senate numbered 80, and agree to the same with an amendment as follows: In line 16 of the amendment proposed, after the word "twelve," strike out the colon and insert in lieu thereof a period, and strike out the remainder of the amendment; and the Senate agree to the same.

Amendment numbered 81: That the House recede from its disagreement to the amendment of the Senate numbered 81, and agree to the same with an amendment as follows: In line 3 of the amendment proposed, after the word "lands," insert the following: "In Oklahoma"; and in line 7 of the amendment proposed, after the word "available," strike out the following: "and to remain available until expended"; and the Senate agree to the same.

Amendment numbered 91: That the House recede from its disagreement to the amendment of the Senate numbered 91, and agree to the same with an amendment as follows: At the end of the amendment proposed, after the word "act," strike out the period and insert in lieu thereof a colon and the following: "*Provided*, That not to exceed $3,000 may be used from funds belonging to the Seminole Tribe for the purpose of defraying the expenses of such payments"; and the Senate agree to the same.

Amendment numbered 98: That the House recede from its disagreement to the amendment of the Senate numbered 98, and agree to the same with an amendment as follows: At the end of the amendment proposed, after the word "court," strike out the period and insert in lieu thereof a colon and the following: "*Provided*, That this shall not apply to contracts with tribal attorneys for said tribes entered into and approved by the President in accordance with existing law"; and the Senate agree to the same.

Amendment numbered 102: That the House recede from its disagreement to the amendment of the Senate numbered 102, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$162,000"; and the Senate agree to the same.

Amendment numbered 105: That the House recede from its disagreement to the amendment of the Senate numbered 105,

and agree to the same with an amendment as follows: In lieu of the amendment proposed insert the following:

"That the Secretary of the Treasury be, and he is hereby, authorized to pay to the attorneys of record in the case entitled 'Mary Sully and others against the United States and John H. Scriven, allotting agent,' and in the case entitled 'Narcissus Drapeau and others against the United States and John H. Scriven, allotting agent,' in the United States Circuit Court for the District of South Dakota, the sum of $780.70 to reimburse said attorneys for costs paid and disbursements in the above-named cases: *Provided*, That before said amount is paid the said attorneys shall file with the Secretary of the Treasury a receipt in full for the costs so paid and disbursements in said cases and in full of all claims."

And the Senate agree to the same.

Amendment numbered 109: That the House recede from its disagreement to the amendment of the Senate numbered 109, and agree to the same with an amendment as follows: In line 4 of the amendment proposed, after the word "their," strike out the word "private"; and the Senate agree to the same.

Amendment numbered 115: That the House recede from its disagreement to the amendment of the Senate numbered 115, and agree to the same with an amendment as follows: After the last word in the amendment proposed, to wit, the word "twelve," strike out the period and insert in lieu thereof a colon and the following: "*Provided*, That before said payment is made a recept for said sum and in full of all claims on or against said minor Indian children shall be filed with the Secretary of the Treasury, signed by the party designated in the award hereinbefore mentioned"; and the Senate agree to the same.

Amendment numbered 117: That the House recede from its disagreement to the amendment of the Senate numbered 117, and agree to the same with an amendment as follows: In lieu of the amendment proposed insert the following:

"For a commission to investigate the necessity and feasibility of procuring impounded waters for the Yakima Indian Reservation or the construction of an irrigation system on the Yakima Indian Reservation to impound the waters of the Yakima River, Wash., for the reclamation of the lands on said reservation and for the use and benefit of the Indians of said reservation, such an amount as may be necessary, to be paid as hereinafter directed: *Provided*, That said commission shall consist of two members of the Senate Committee on Indian Affairs to be appointed by the chairman of said committee and two members of the House of Representatives to be appointed by the Speaker of the House of Representatives, and said commission shall have full power to make the investigation herein provided for and shall have authority to administer oaths, take testimony, incur expenses, and do and perform all acts necessary to determine upon a definite plan for the construction of said proposed irrigation system and shall report to Congress thereon on or before the first Monday in December, 1913: *Provided further*, That one-half of all necessary expenses incident to and in connection with the making of the investigation herein provided for, including traveling expenses of the members of this commission, shall be paid one-half from the contingent fund of the House of Representatives and one-half from the contingent fund of the Senate on vouchers therefor signed by the chairman of the said commission, who shall be designated by the members of the said commission."

And the Senate agree to the same.

Amendment numbered 118: That the House recede from its disagreement to the amendment of the Senate numbered 118, and agree to the same with an amendment as follows: In line 29 of the proposed amendment, after the word "thirty-five," strike out all the remainder of said amendment; and the Senate agree to the same.

Amendment numbered 122: That the House recede from its disagreement to the amendment of the Senate numbered 122, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$4,000"; and the Senate agree to the same.

Amendment numbered 123: That the House recede from its disagreement to the amendment of the Senate numbered 123, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$40,670"; and the Senate agree to the same.

Amendment numbered 124: That the House recede from its disagreement to the amendment of the Senate numbered 124, and agree to the same with an amendment as follows: In lieu of the amendment proposed insert the following: "For heating plant, $10,000"; and the Senate agree to the same.

Amendment numbered 125: That the House recede from its disagreement to the amendment of the Senate numbered 125, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$63,450"; and the Senate agree to the same.

Amendment numbered 126: That the House recede from its disagreement to the amendment of the Senate numbered 126, and agree to the same with an amendment as follows: At the end of the proposed amendment, after the word "allotments," strike out the period and insert a colon and the following: "*Provided*, That before said per capita distribution is made the Secretary of the Interior shall, and he is hereby authorized and directed to, make a roll of the names of the Indians who are entitled to receive allotments on the Bad River Reservation, Wis., and said per capita payments shall be made in accordance with the roll herein provided for after the same has been approved by the Secretary of the Interior"; and the Senate agree to the same.

Amendment numbered 127: That the House recede from its disagreement to the amendment of the Senate numbered 127, and agree to the same with an amendment as follows: In lieu of the amendment proposed insert the following:

"For the purchase of allotments for the individual members of that portion of the Wisconsin Band of Pottawatomie Indians now residing in the States of Wisconsin and Michigan, $150,000, said sum to be reimbursed to the United States out of the appropriation, when made, of $447,339, the said sum last named being the proportionate share of the said Indians in annuities and moneys of the Pottawatomie Tribe in which they have not shared, as set forth in House Document No. 830, Sixtieth Congress, first session, and the Secretary of the Interior is hereby authorized to expend the said sum of $150,000 in the purchase of land within the States of Wisconsin and Michigan, the title to such land to be taken in trust by the Government for the use and benefit of said Indians, said land to be situated in organized school districts, and to be purchased in bodies of not more than one section, which said bodies shall not adjoin each other: *Provided*, That the land so purchased, except such part thereof as may be necessary for administrative purposes, shall be divided equitably among the Indians entitled thereto, and patents therefor shall be issued in accordance with the general allotment laws of the United States: *Provided further*, That the Secretary of the Interior may, in his discretion, withhold allotments from any Indian or Indians belonging to this band who, owing to advanced age or other infirmities, are deemed by him incapable of making beneficial use thereof, and in lieu of formal allotments to Indians falling within this class, tentative allotments of land may be made to such Indians for occupancy and use during the remainder of their natural life time."

And the Senate agree to the same.

Amendment numbered 130: That the House recede from its disagreement to the amendment of the Senate numbered 130, and agree to the same with an amendment as follows: In line 5 of the amendment proposed, after the word "reappropriated," insert a period and strike out the remainder of the amendment; and the Senate agree to the same.

Amendment numbered 131: That the House recede from its disagreement to the amendment of the Senate numbered 131, and agree to the same with an amendment as follows: In lieu of the amendment proposed insert the following:

"For repairs at the old abandoned military post of Fort Washakie, on the Wind River Reservation, Wyo., $1,427, from the amount heretofore collected as rentals of the buildings at said post."

And the Senate agree to the same.

JNO. H. STEPHENS,
CHAS. D. CARTER,
CHAS. H. BURKE,
Managers on the part of the House.

ROBERT J. GAMBLE,
MOSES E. CLAPP,
WM. J. STONE,
Managers on the part of the Senate.

STATEMENT.

The department estimates for the fiscal year ending June 30, 1914, amounted to $11,303,316.53.

The bill as it passed the House carried appropriations as follows:

Gratuity	$6,302,493.28
Reimbursable	931,800.00
Treaty	540,560.00
Trust funds	488,075.07
	8,262,928.35

The bill as it passed the Senate carried appropriations as follows:

Gratuity	$8,810,687.23
Reimbursable	3,637,200.00
Treaty	740,560.00
Trust funds	562,075.07
	13,751,522.30

The bill as agreed on in conference carries appropriations as follows:

Gratuity	$7,098,369.98
Reimbursable	1,547,200.00
Treaty	890,560.00
Trust funds	543,075.07
	10,079,205.05

The Senate conferees have receded on the following amendments: 6, 7, 13, 14, 22, 24, 25, 26, 28, 33, 35, 36, 37, 38, 41, 44, 47, 52, 53, 56, 58, 62, 63, 64, 65, 66, 69, 70, 76, 78, 79, 82, 85, 87, 100, 107, 111, 113, 114, 116, 119, 120, 121.

The House conferees have receded unqualifiedly on the following amendments: 5, 9, 10, 18, 19, 20, 21, 27, 29, 30, 31, 39, 40, 42, 45, 46, 50, 57, 59, 60, 61, 71, 74, 77, 83, 84, 86, 88, 89, 90, 92, 93, 94, 95, 96, 97, 99, 101, 103, 104, 106, 108, 110, 112, 128, 129.

The effect of the recession of the House conferees on the amendments on which they have unqualifiedly receded is as follows:

No. 5: To correct the sanitary defects in Indian homes and relieve infectious diseases.

No. 9: Pay traveling expenses in bringing Indians to industrial schools and aid Indian youths in securing remunerative employment.

No. 10: This amendment merely adds the words "and supplies" in making experiments on agency and school farms.

No. 18: Makes no new appropriation; merely permits the Commissioner of Indian Affairs to receive the difference in salary as commissioner in lieu of that he received before his appointment as commissioner.

No. 19: Adds $500 for much-needed repairs at the Fort Mojave School.

No. 20: Merely changes the total to correspond with the above increase.

No. 21: Provides for an industrial building for girls which is badly needed at this school.

No. 27: Permits the Secretary of War to investigate and determine the reasonability and practicability for the construction of a dam and reservoir at or in the vicinity of Box Canyon on the San Carlos Indian Reservation.

No. 29: Strikes out the interest clause in the item to build a bridge across the Gila River and the San Carlos River in Arizona.

No. 30: Strikes out the principal and interest but leaves the appropriation reimbursable, merely relieving the Indians from paying interest.

No. 31: Is for the construction of a bridge across the Colorado River on the Yuma Reservation, and provides that before the appropriation made is available each of the States of Arizona and California must contribute a like amount, and said States to keep said bridge in repair.

No. 39: Makes specific appropriation for the Fort Bidwell School instead of carrying same in the lump-sum appropriation for day and industrial schools.

No. 40: Makes specific appropriation for the Greenville Indian School instead of caring for same in the lump-sum appropriation for this purpose.

No. 42: To pay Mr. D. C. Tillotson for services and expenses incurred by him in carrying out the provisions of a treaty with the Pottawatomie Indians. Said work performed under contract with Secretary of Interior.

No. 45: Merely makes an unexpended balance of an appropriation heretofore made immediately available.

No. 46: Is to permit the United States district court in Minnesota to appoint a commission of two persons to make a roll of the Chippewa Indians allotted within the White Earth Reservation, also to determine the quantum of Indian blood of said Indians.

No. 50: The purpose of the amendment is to include lands that have been disposed of, as well as those to be disposed of, to come under this irrigation project.

No. 57: Merely reappropriates an unexpended balance heretofore appropriated for Chief Rocky Boy's Band of Chippewa Indians.

No. 59: Provides for the building of a cottage for the superintendent of the Genoa (Nebr.) Indian School, and which is badly needed.

No. 60: Merely changes the total to correspond with above amendment.

No. 61: For repairing the Government bridge across the Niobrara River in Knox County, Nebr.

No. 71: Provides for the building of a girls' dormitory at the Santa Fe (N. Mex.) Indian School. Reports show the building is badly needed.

No. 74: Provides for the purchase of some dairy cows, poultry, and live stock and for some new equipment at the Bismarck Indian School in North Dakota.

No. 77: Provides for an extension of time on some deferred payments due from the sale of certain town lots in Lawton, Okla. The same rate of interest is charged and no title passes until all deferred payments are made.

No. 83: To properly administer the affairs of the Five Civilized Tribes in Oklahoma, and to permit the Secretary of the Interior to employ, in his discretion, attorneys in connection with probate matters, and to prohibit the use of tribal funds, with some exceptions, without specific appropriation of Congress.

No. 84: To prevent increase in salaries of employees.

No. 86: Is to extend the time of appraisement and classification of the coal and asphalt lands in the Choctaw and Chickasaw Nations.

No. 88: Takes from the bill the $300,000 school item for Oklahoma that was left in the bill as it passed the House by mistake, and it should have been left off in reporting same to the Senate.

No. 89: For support and continuance of the Cherokee Orphan Training School at Tahlequah, Okla.

No. 90: Provides that the Secretary of the Interior may expand said appropriation to aid in the common schools of the Cherokee, Creek, Choctaw, Chickasaw, and Seminole Nations in Oklahoma.

No. 92: For expenses incident to and in connection with collection of rents of unallotted lands and tribal buildings and limits this cost to not exceed 10 per cent.

No. 93: To authorize the Secretary of the Interior to transfer to the proper party, association, or corporation lands now used and to be used, not exceeding 20 acres, for cemetery purposes.

No. 94: This is a reimbursable appropriation and for the payment of salaries and other expenses of advertisement in connection with the disposition of the unallotted and other tribal property of the Five Tribes.

No. 95: Authorizing the Commissioner of Indian Affairs to withhold annuities of Osage Indian children within the scholastic age for school purposes unless their parents keep them in schools.

No. 96: Authorizing the Secretary of the Interior to pay out of the funds of Creek, Cherokee, Choctaw, Chickasaw, and Seminole Nations now on deposit in the Treasury to pay the proportionate cost of street paving and construction of sidewalks as may be properly chargeable against unsold town lots belonging to said tribes.

No. 97: To remove the restrictions from the lands of R. S. Kariho, an Indian, and who is in very bad health and needs the proceeds from the sale of said property to properly care for him.

No. 99: Authorizing the Secretary to approve if, in his discretion, the assessment, together with maps showing definite right of way and location of proposed draining ditches made under the laws of Oklahoma upon the allotment of restricted Creek Indians in Oklahoma.

No. 101: For improving lavatories and bathing facilities at Carlisle Indian School.

No. 103: For the construction of employees' quarters at the Pierre, S. Dak., Indian School.

No. 104: Change the total to correspond with above amendment.

No. 106: For support and maintenance of day and industrial schools among the Sioux Indians.

No. 108: To authorize the Secretary of the Interior to approve voucher No. 53 for the second quarter of the fiscal year ending June 30, 1911, for the payment of benefits to the Pine Ridge Indians of South Dakota.

No. 110: For the reimbursement of Frank Philbrick for property destroyed by fire while he was guarding a prisoner.

No. 112: For cash payment to the Confederated Band of Ute Indians for their benefit, said amount to be reimbursed out of the appropriation when made to cover the amount of the judgment rendered by the Court of Claims in favor of said Indians.

No. 128: For the construction of roads and bridges on the Red Cliff Reservation in Wisconsin.

No. 129: Is a small but needed increase in the amount for the support and civilization of the Shoshone Indians in Wyoming.

On the following amendments the House conferees receded with modifying or substitute amendments, to wit:

No. 1: To better enable the department to complete the survey, appraisement, and allotment of Indian lands.

No. 2: For construction, repair, drainage, and maintenance of irrigated lands.

No. 3: To correct total in accordance with above amendment.

No. 4: So as to include peyote in the class of intoxicants, as it is a deleterious herb.

No. 8: A much needed increase for repairs and improvements for school and agency buildings.

No. 11: A much needed increase to conduct experiments on Indian school and agency farms, also to teach Indian women the art of keeping house and to instruct Indians how to farm and become self-supporting.

No. 12: For the purchase of goods, supplies, and inspection of same for the Indian service, also to provide for the wagon transportation from the point of delivery by the last common carrier to the agency, school, or elsewhere.

No. 15: For the pay and traveling expenses of special agents and other employees not otherwise provided for use in the field or elsewhere.

No. 16: To conduct hearings, take testimony to determine the heirs of deceased Indian allottees.

No. 17: This is a decrease in the Senate amendment and for the purpose of encouraging industry among Indians.

No. 23: Is to correct the total in the allowance made for an industrial building at the school at Phoenix, Ariz.

No. 32: This is a decrease from one hundred and fifty to one hundred thousand dollars to be used to carry out the treaty provisions in furnishing schools for the Navajo Indians.

No. 34: This is a decrease from $100,000 to $15,000 for the development of a water supply for the Navajo Indians.

No. 43: This is needed for the improvement of lavatories and improving the heating system at the Indian school at Mount Pleasant, Mich.

No. 48: For the support and civilization at the Flathead Agency, Mont.

No. 49: This is a decrease from $20,000 to $15,000 for support and civilization of the Indians at Blackfeet Agency, Mont.

No. 51: To continue the construction, including the necessary plans, surveys, and estimates to irrigate the allotted and unallotted irrigable lands on the Flathead Reservation in Montana, and which is reimbursable.

No. 54: To continue the construction, including the necessary plans, surveys, and estimate to irrigate the allotted and unallotted lands on the Blackfeet Indian Reservation in Montana, and which is reimbursable.

No. 55: To continue the construction, including the necessary plans, surveys, and estimates to irrigate the allotted lands on the Fort Peck Indian Reservation in Montana, the same being reimbursable.

No. 67: This is a decrease from $25,000 to $15,000 for new buildings at the Indian school at Albuquerque, N. Mex.

No. 68: Is to correct the total to correspond with above amendment.

No. 72: Is to correct the total for the allowance of the dormitory building at the Indian school at Santa Fe, N. Mex.

No. 73: Is to strike out the interest for the money advanced but reimbursable in building the bridge across the San Juan River at Shiprock, N. Mex.

No. 75: This is to allow for some much-needed improvements at the Indian school at Wahpeton, N. Dak.

No. 80: This is to permit the Secretary of the Interior to withdraw from the tribal funds now on deposit in the Treasury to the credit of the Choctaw Indians of Oklahoma, for the use and benefit of the old Goodland Indian Industrial School at Hugo, Okla.

No. 81: This is for the purpose of buying deceased Indian allotments and place thereon the Apache Indians who may have been prisoners of war at Fort Sill, Okla., so that they may be released as prisoners and be started to become self-supporting.

No. 91: This is to make a per capita payment out of the funds to their credit on deposit in the Treasury to the Seminole Indians in Oklahoma.

No. 98: This is to make void any and all contracts entered into by Indian tribes or any member or members thereof without the approval of the Secretary of the Interior and Congress except their regular attorneys, who are employed with the consent and approval of the President.

No. 102: Is to correct the total for the allowance made for lavatories and bathing facilities at the Carlisle Indian School.

No. 105: For the payment of the attorney of record in the case of Mary Sully and others against the United States and John H. Scriven, allotting agent.

No. 109: For the reimbursement of certain Indian farmers for repairs on their automobiles while used on public business pertaining to the Rosebud Indian Reservation during the years 1909, 1910, 1911, and 1912.

No. 115: To pay an award of $1,900 made by the Secretary of the Interior, under date of December 31, 1912, pursuant to the authority contained in the act approved July 6, 1912 (Private, No. 49), and to be reimbursable out of the first money collected from the leasing or sale of the lands of these minor Indian children.

No. 117: This amendment asked for an appropriation (reimbursable) of $1,800,000 for irrigation work on the Yakima Reservation in Washington. This amendment provides that two Members of each House shall visit said reservation and look over the matter and report to the next Congress.

No. 118: Directs and authorizes the Secretary of the Interior to allot, in accordance with the provisions of the act of July 4, 1884 (23 Stat. L., p. 79), of not more than 200 acres of land within the diminished Colville Indian Reservation, in the State of Washington, to the heirs of Que-lock-us-soma.

No. 122: This is for some much-needed general repairs and improvements at the Indian school at Hayward, Wis.

No. 123: To correct the totals in accordance with above amendment.

No. 124: This is a reduction from twenty to ten thousand dollars for a heating plant at the Indian school at Tomah, Wis.

No. 125: Is to correct the total in accordance with the above amendment.

No. 126: This is to permit the Secretary of the Interior to sell the merchantable timber on the unallotted lands within the Bad River Reservation, Wis., and after he makes a complete and approves a roll of said Indians to make a per capita payment of said proceeds.

No. 127: For the purchase of allotments for the individual members of that portion of the Wisconsin Band of Pottawatomie Indians, said amount to be reimbursed to the United States out of the appropriation when made, of $447,339, the last-named sum being the proportionate share of the said Indians in annuities and moneys of the Pottawatomies in which they have not shared and as set forth in House Document 830, Sixtieth Congress, first session.

No. 130: Making an unexpended balance heretofore appropriated available for the construction of a road and bridge on the Shoshone Indian Reservation in Wyoming.

No. 131: Appropriating $1,427 collected as rents and placed in the Treasury for repairs on the abandoned military post at Fort Washakie, Wyo.

JNO. H. STEPHENS,
C. D. CARTER,
CHAS. H. BURKE,
Managers on the part of the House.

DISTRICT OF COLUMBIA APPROPRIATION BILL.

The SPEAKER. The gentleman from Texas [Mr. BURLESON] has 20 minutes, and the gentleman from Missouri [Mr. BARTHOLDT] 20 minutes.

Mr. BURLESON. Mr. Speaker, I yield five minutes to the gentleman from Virginia [Mr. SAUNDERS].

Mr. SAUNDERS. Mr. Speaker, the members of the Appropriations Committee have put in a good deal of time over this measure, in order to work out a result which would satisfy reasonable men, whether they might belong to the wet, or dry persuasion. I think the proposed amendment is one that will stand any reasonable test to which it may be subjected. The Members of this body who believe in the Jones-Works bill will be astonished to find that this amendment has not departed in any material degree from the essential features of that measure. It preserves the strong regulative features of that bill, and at the same time has eliminated certain features of hardship of the same, provisions that would operate to do injustice, and mechanically force out certain reputable licensees now operating and doing business within the District of Columbia. As a result of the provisions that have been retained in this bill relating to the distances of saloons from established schools and churches, coupled with certain other provisions relating to the number of saloons that may be maintained upon the streets, the necessary effect of this bill will diminish the number of saloons in the city of Washington, without at the same time excluding the reputable people now engaged in that business, or leaving so inadequate a supply of saloons that those who are of a thirsty habit will not be able to quench their thirst within the city of Washington.

I would very much prefer, if possible, to use whatever time I have in answering questions that may be directed to the items of the proposed amendment.

Mr. COOPER. Will the gentleman give us his idea as to how many saloons will be put out of business?

Mr. SAUNDERS. It would be impossible to form any idea in that respect. The commissioners are clothed with large powers

with respect to the establishment of saloons. In addition the bill provides that saloons can not be established within 400 feet of established churches, and public schools.

Mr. COOPER. Does the gentleman understand that there are about 586 saloons in the District of Columbia now?

Mr. SAUNDERS. Yes.

Mr. COOPER. Does the gentleman think it is true, or approximately true, that the number will be diminished to 300?

Mr. SAUNDERS. I think that is altogether likely.

Mr. BURLESON. The maximum number is actually fixed at 300.

Mr. RUCKER of Missouri. Does the gentleman think the language of this proposed amendment would take the saloon out of the Union Station?

Mr. SAUNDERS. I do.

Mr. RUCKER of Missouri. Will the gentleman kindly turn to the pages on which that provision appears? I call the gentleman's attention to page 4, line 12, to see if that is the language he refers to.

Mr. SAUNDERS. Yes.

Mr. RUCKER of Missouri. Let me read:

No license shall be granted to sell intoxicating liquors in the waiting room of any station or depot of any steam or electric railroad or other carrier for the transportation of passengers within the District of Columbia.

Is it not the purpose to prohibit the sale of intoxicating drinks in the depot?

Mr. SAUNDERS. Yes.

Mr. RUCKER of Missouri. Why not strike out the words:

The waiting room of—

So that it will cover the entire depot?

Mr. SAUNDERS. I will say to the gentleman from Missouri that I would be perfectly willing to accept that amendment.

Mr. RUCKER of Missouri. Who is opposed to it?

Mr. SAUNDERS. I do not know that anybody is opposed to it.

Mr. RUCKER of Missouri. I think we are all in favor of it.

The SPEAKER. The time of the gentleman has expired.

Mr. SAUNDERS. Permit me to conclude my sentence.

Mr. BURLESON. I yield to the gentleman two minutes in which to conclude.

Mr. SAUNDERS. Not only will that language reasonably construed be sufficient to eliminate the sale of liquor from the depot, but later in the bill it is provided that it shall be unlawful to take a drink in or about the Union Station. Consider the two provisions in connection, and it will be apparent, that there will be no sale of liquor in the station of the Terminal Co.

Mr. RUCKER of Missouri. I do not think it is clear at all. The trouble is, you will be prosecuting the wrong man all the time.

Mr. SAUNDERS. Speaking for myself I am perfectly willing to accept the amendment suggested by the gentleman. But who will be willing to take out a license for that place when the goods that he will sell can not be drunk either in or about the Union Station?

Mr. RUCKER of Missouri. To strike out the words "the waiting room of."

Mr. SAUNDERS. I am agreeable to that amendment.

Mr. RUCKER of Missouri. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. RUCKER of Missouri. Is it in order now to move an amendment?

The SPEAKER. It can only be done by unanimous consent.

Mr. BURLESON. I now yield five minutes to the gentleman from North Carolina [Mr. WEBB].

Mr. WEBB. Mr. Speaker, the bill as agreed upon by the Appropriations Committee I shall support, because it is the Jones-Works bill in all of its substantial, virile features. There are a few amendments which have been conceded, which in fairness and justice should have been conceded. The first is the prohibition of 150 feet between barrooms. Instead of that four barrooms are allowed between two blocks if they face each other, or three on one side and one on the other, or two on each side in two immediately opposite blocks.

Another is, we strike out the "private school," because we saw how easy it might be for the private school, by establishing one near a barroom, to put that barroom out of business. Congress ought to put barrooms out of business and not let it be done by indirection or by any means that might smack of unfairness.

Another, we required more than 50 per cent of the frontage of a block to determine what is a business block instead of 50 per cent of the buildings. We struck out the provision that the chief of police shall obstruct a license, because it might lead to graft or private revenge.

We extend the time for the reduction of the number of saloons to 300 to November, 1914. That gives the present barkeepers 18 months to sell out and close up business.

The next is that after November 1, 1914, there shall be no more than 25 clubs licensed under this bill. At the present time there are 17, and at no time can there be more than 25. We struck out "11 o'clock" as the closing hour and put in 12 o'clock, in fairness to those who sell whisky and to those who want to drink it. It was thought that they ought to have until 12 o'clock in which to drink it if they wished. We struck out paragraph 7, which we thought might result in a good deal of vexatious litigation and unjust harassment of the barkeepers who had furnished certain persons with whisky.

We struck out the provision which prohibits giving free food. Some Members of Congress said they liked the free-food feature and wanted onions and meat now and then, and we thought in deference to them we would strike that out, though I do not like the free-food practice in barrooms.

Mr. RUCKER of Missouri. Will the gentleman yield?

Mr. WEBB. Yes; although I have but a minute.

Mr. RUCKER of Missouri. Who does the gentleman mean by "we"?

Mr. WEBB. I mean that a number of us got together with the Appropriations Committee this afternoon and went over the bill with the hope that we could reach a compromise on the amendments.

Mr. RUCKER of Missouri. I just wanted to find out who was responsible for these late hours.

Mr. WEBB. I think those who want to drink whisky, when the sale is authorized by law, ought to have a reasonable time in which to do so and allow those who want a nightcap to take it.

Mr. RUCKER of Missouri. They might go home and get their nightcap.

Mr. WEBB. The slums and alleys are taken care of in that no saloon shall be established within the slums or near alleys except upon the unanimous consent of the excise board. The bill as it stands protects minors and women, and it does not go into effect until July 1, 1913. With these amendments we think we have got as good a bill as it is possible to get under the present circumstances. I therefore hope you will all vote for the pending measure.

The SPEAKER. The time of the gentleman from North Carolina has expired.

Mr. BARTHOLDT. Mr. Speaker, this bill is distinctly a rich man's bill, and in its operation will be a hardship on the middle and laboring classes of the city of Washington. In order to establish absolute justice and equality between all classes and to test the sincerity of the House, I propose to offer an amendment, if I can get unanimous consent, providing that the sale, possession, and use of intoxicating liquor in the District of Columbia shall be prohibited. [Applause.] That would be the honest way, instead of the roundabout and hypocritical way, to accomplish one and the same purpose. In other words, it will not make so very much difference whether my amendment is adopted or this bill is passed. The bill provides that there shall be no saloon within 400 feet of a church or schoolhouse. The effect of this provision will be to wipe out more than 200 retail stores and to deprive the same number of citizens and their families of their means of subsistence. It is nothing more or less than confiscation of property, and there is nothing contained in the bill providing for compensation of the losses.

Mr. Speaker, a few years ago, when the Government of Switzerland decided to prohibit the sale of absinthe, a commission was established for the purposes of ascertaining the losses and assessing the damages. That commission went to work and reported to the legislature the amount of the losses resulting from the prohibition of that drink, and every dollar thus ascertained was paid by the Government before prohibition went into effect. That, gentlemen, is the civilized way of doing that kind of business, while here we propose to unceremoniously confiscate property legally acquired. You prohibitionists may laugh, but to the 250 men who have their all invested in a little place of business, and who built up a legitimate trade under the laws of this country, such a loss, I assure you, is a very serious matter.

The distance fixed in this bill to be maintained between retail stores and schools really covers an area of 240,000 square feet in each case, and this practically means prohibition everywhere except in one or two of the business streets of the city. The result is that the business of dispensing beverages will be practically monopolized by the large hotels and the aristocratic clubs. As far as the plain people are concerned you might as well make the Capital City altogether dry, and in order to

carry your real purpose to a logical conclusion I am offering the amendment above mentioned.

Mr. Speaker, I also find that the hotels and the clubs here can do what they please under this bill. They can keep their doors open and sell liquor all day and all night, and no police and no excise commissioner will disturb them. But the poor man, the laboring man, who has been in the shop and the factory all day, when he tries to secure for himself a glass of beer, will be compelled to travel 2 miles to reach the business section of the city in order to obtain it. You must remember that the saloon is the poor man's club, but instead of shaping your laws to make it respectable, you rob it of its redeeming features. Hotels and clubs are allowed, under this bill, to keep pool and billiard tables, their patrons can enjoy music or a game of cards, but all these things are expressly prohibited in the ordinary saloon. Why? Are hotel guests and club members better than the other people? Is this the new American theory? If I had my way, Mr. Speaker, I would make a saloon so respectable that no man need hesitate to take his wife and daughter into it. That is the way it is in Germany, why can not we do it? Are we not as capable of regulating and controlling the traffic as the Germans are? If not, why not? I am afraid, Mr. Speaker, we have never seriously attempted it.

Mr. Speaker, I also find that when a physician writes a prescription in which whisky is an ingredient, the prescription can be filled but once by the druggist. There is not a physician in the city of Washington or in the country who will not tell you that prescriptions are very frequently repeated, but under this bill it can not be done. The patient will have to pay for a second or a third prescription, and if he happens to be a poor man you can appreciate what a hardship this legislation entails on him. There are some other provisions in the section relating to drug stores which I commend to the careful perusal of Members.

Mr. ADAIR. Mr. Speaker, will the gentleman yield?

Mr. BARTHOLDT. Certainly.

Mr. ADAIR. Does not the gentleman think that the patient would get well sooner if he could get the prescription filled only once?

Mr. BARTHOLDT. That may be the gentleman's idea. I leave this to his imagination.

Mr. RUCKER of Missouri. Mr. Speaker, will the gentleman yield?

The SPEAKER. Does the gentleman from Missouri yield to his colleague?

Mr. BARTHOLDT. In a moment. Mr. Speaker, I also find in the section relating to clubs that 12 o'clock is the closing hour. We have in this city a Press Club, to which all the members of the press gallery belong. [Laughter.] It is well known that these gentlemen do not finish their business until about midnight, and then is the time when they need the accommodations of the club. [Laughter and applause.] The gentlemen who are applauding evidently know for what purpose. [Laughter.] A strict enforcement of this provision would of course cause a very great inconvenience to that club, and I do believe it would wipe it out of existence.

As to the suggestion made by my colleague from Missouri [Mr. RUCKER] about the Union Station, I will say that even if the whole city of Washington were placed under the ban of prohibition there should be left one place where liquid refreshments should be permitted to be sold, and that is Union Station. I would leave one barroom at the main station of the city, because there is where a traveler needs such accommodations most. That is where all of the strangers and the foreigners arrive, and if a foreigner arriving from England or France or Germany were told that in the Capital of the United States he could not obtain a glass of wine or beer with his meal he probably would not believe it possible, or if he did he would surely herald it abroad, and in a very short time we would be the laughingstock of the world.

Mr. RUCKER of Missouri. Mr. Speaker, when is the gentleman going to yield?

The SPEAKER. Does the gentleman yield?

Mr. BARTHOLDT. Yes.

Mr. RUCKER of Missouri. Mr. Speaker, did I understand the gentleman to say that he was going to ask unanimous consent to offer an amendment prohibiting the sale of liquor in this town?

Mr. BARTHOLDT. Yes. I want to test your sincerity.

Mr. RUCKER of Missouri. Well, there is no objection to it.

Mr. BARTHOLDT. How does the gentleman know? Mr. Speaker, I yield two minutes to the gentleman from Tennessee [Mr. SIMS].

Mr. SIMS. Mr. Speaker, I want to thank my kind friend, the gentleman from Missouri, Dr. BARTHOLDT, for yielding me this time. Some people may think it strange that the doctor would yield me this time, for about four years ago, I believe it was, at the request of nearly all of the churches in this city and all of the temperance organizations, I introduced a prohibition bill. But, Mr. Speaker, I never dreamed at that time that Dr. BARTHOLDT, without request, wholly upon his own motion, would ever try to pass a prohibition bill for the District of Columbia or any other place. Verily, Mr. Speaker, the world does move. I thank him for his kindness, and I am sorry that there will be men here who are cruel enough to deprive him of the opportunity and the great pleasure of offering his amendment providing for absolute prohibition in this District.

Mr. Speaker, I think that the gentlemen connected with this measure—Mr. BURLESON, who has had the direct management on the part of the Committee on Appropriations, and Mr. WEBB and Mr. WILLIS and Mr. GARRETT, and many other gentlemen—ought to be congratulated on bringing about a happy solution of a difficult situation. We have obtained legislation that we ought to have, and I do not believe these gentlemen would agree to any joker legislation. Like my friend from Missouri [Mr. BARTHOLDT], I think if we want a prohibition bill passed that we should call it such. I believe this measure is regulation and reduction and restriction, and here on Sunday morning, at 25 minutes after 12 o'clock, following the speech of my distinguished and beloved friend, Dr. BARTHOLDT, I hope everybody will vote for this measure and end our trouble.

Mr. Speaker, something has been said in the press as to this legislation being opposed by labor organizations and leaders of such organizations. As shedding light on the attitude of such organizations, I beg to read the following letter I received a few days ago:

3924 EIGHTH STREET,
Petworth, D. C., February 27, 1913.

Hon. T. W. SIMS,
House of Representatives.

DEAR SIR: Referring to the full-page advertisement inserted in all the city papers of the 25th instant by the Mercantile (liquor dealers') Association of Washington, I desire to call your attention to the following paragraph in said advertisement:

"The Central Labor Union, representing 22,000 workingmen, passed a resolution against any change in the present laws."

The Central Labor Union is composed of five delegates from each of the trades-unions, large and small, of the District, and Columbia Typographical Union, No. 101, composed of about 1,750 men and 50 women, has only the same number of delegates in the central body as organizations having not one-tenth as many members.

There is no doubt that the Central Labor Union passed a resolution protesting against any change whatever in the present excise laws, but I most emphatically deny that said resolution represents the honest sentiments of a majority of the 22,000 members of the local unions, to whom that question has never been submitted for a referendum vote.

On March 17, 1912, at the first meeting of Columbia Typographical Union after the hearings on the Jones-Works bill before the Senate Committee on the District of Columbia, the inclosed resolutions, repudiating the action of the Central Labor Union, were adopted with but two dissenting votes. The Machinists' Union, about 1,400 strong, and the Carpenters' Union, about as strong numerically, adopted similar resolutions.

I do not wish to be understood as saying that a majority of the members of the local trades-unions are in favor of prohibition in the District of Columbia or in favor of all the provisions of the Jones-Works bill as it passed the Senate, but I know that a considerable number of them are in favor of prohibiting the liquor traffic entirely, that a larger number of them are in favor of the Jones-Works bill, and I firmly believe that a large majority of them are in favor of much more stringent regulations than now exist for the control of the liquor traffic in the District.

Of this I am absolutely certain: That the trades-unionists of the District of Columbia do not intend that a whisky bottle and a beer keg shall be made the emblems of organized labor by the saloon-keepers of Washington, by the Central Labor Union, or by anybody else.

I take pleasure in referring you to statements made by prominent members of organized labor, as printed in the Senate hearings on the Jones-Works bill, pages 30–32, 211, and 388–392, as more nearly representing the true sentiments of the workingmen and women of Washington in regard to the alcoholic liquor traffic than the action taken by the Central Labor Union on this question in connection with the Jones-Works bill.

I have been a member in good standing of Columbia Typographical Union, No. 101, of this city, for more than 40 years, and have taken a very active and somewhat prominent part in movements for the good and welfare of the workingmen and women of the District of Columbia and of the United States. (See inclosed pamphlet which fully corroborates this statement.)

I was president of the Federation of Labor Unions of the District of Columbia for four years, and later was chairman of its committee on legislation for three years.

Among the measures advocated by that body and adopted by Congress while I served in it as a delegate are the following:

Bill to prohibit the importation of Chinese coolies.
Bill to prohibit the importation of European labor under contract.
Bill for the establishment of a labor bureau.
Bill for a mechanics' lien law for the District.
Bill to prohibit the employment of convicts in competition with free labor on public work.
Bill to make eight hours a legal day's work for mechanics and laborers employed by the Government.
Bill making the first Monday in September of each year a legal holiday to be known as Labor Day.
Free textbooks for all children in the public schools of the District.

In view of the fact that thousands of organized workingmen have been placed in a false position before the people of the District of Columbia and of the country by the Liquor Dealers Association, I respectfully request that the inclosed account of a mass meeting held in Toronto, Canada, under the auspices of the Presbyterian department

of church and labor, in November, 1909, while the American Federation of Labor was in session in that city, be printed in the CONGRESSIONAL RECORD as an appendix to this letter.

Very respectfully, E. W. OYSTER.

Mr. SPEAKER, I read also the following extracts from the hearings before the Senate committee when considering the Jones-Works bill, bearing on the attitude of labor leaders on temperance legislation:

LABOR UNIONS AND LABOR LEADERS OPPOSE THE SALOON.

NEW YORK CITY, *December 8, 1909.*

The Very Rev. JAMES E. CASSIDY,
Fall River, Mass.

DEAR AND REVEREND SIR: I have read with great interest the report of the sermon delivered by you on the subject "The saloon against the labor union." I have no hesitation in saying that you have correctly interpreted the relative positions of the saloon and the labor unions, and to all you have said on the subject I subscribe most heartily.

In various ways and on many occasions the evil influence of the saloon has been recognized and pointed out by the labor unions of the United States. While the liquor interests have sought to convey the impression that there was some common interest between trades-unionism and the manufacture and sale of intoxicants, this suggestion is repelled on every occasion when the matter is presented to the labor men in its true light and when the malign purpose of the liquor interests is exposed to view.

I have no sympathy with the statement, so often made, that the manufacture and sale of liquor has contributed to the industrial development of the Nation. On the contrary, I believe that liquor has contributed more to the moral, intellectual, and material deterioration of the people and has brought more misery to defenseless women and children than has any other agency in the history of mankind.

I wish to congratulate you for the magnificent presentation you have made of this question, and I thank you for your defense and advocacy of the true principles of trade-unionism.

I am, with respect,

Yours, very truly, JOHN MITCHELL.

LABOR NO ALLY OF THE SALOON, SAYS MORRISON—BARROOMS FORCED INTO WAGE-EARNERS' QUARTERS.

The impression that the saloon and the labor element are in close alliance is erroneous and largely caused by the attitude of the wealthy toward the saloon was an argument advanced yesterday by Frank Morrison, secretary of the American Federation of Labor, who addressed a large audience at the Young Men's Christian Association men's meeting on "Labor's interpretation."

FORCE SALOON ON WORKERS.

"In great cities like New York, Chicago, and Pittsburgh, where people of great wealth reside," said Mr. Morrison, "they do not permit the saloon among their residences, but force it back into the quarters where the wage earners live, thus creating the impression that the laboring man and the saloon keeper are working hand in hand.

"Nothing is further from the truth," exclaimed Mr. Morrison, "for there never was a more powerful and effective medium to fight intemperance than organized labor, whose effort it is to secure for its members and their children a decent wage and workday."

In closing, the speaker said:

"Organized labor has done much for the cause of temperance among workingmen. There probably is no purely philanthropic organization which has done more in this direction. In many instances there is a prohibition clause in the contract with the employer. The rules of the union declare that an injured man will not receive the weekly sick benefit if the injury was suffered while he was intoxicated. More and more labor-union meetings are being held in halls which are free from saloons."

Mr. BURLESON. I yield five minutes to the gentleman from Kentucky [Mr. SHERLEY].

Mr. SHERLEY. Mr. Speaker, there is no subject that comes before a legislative body concerning which it is as difficult to get calm and unprejudiced judgment as that relating to the regulation or sale of intoxicating liquors. This bill came to the Committee on Appropriations by virtue of having been tacked on an appropriation bill, and it ought not to have been on an appropriation bill.

Mr. MOORE of Pennsylvania. That is right.

Mr. SHERLEY. It ought to have come here in such form as to enable the House to consider it in detail, but it did not. I for one was unwilling that that great committee should rest under any sort of suspicion of trying to prevent action upon this subject and with my colleagues on the committee labored five hours going over this bill section by section in order that we might report something for the action of this House. The bill is a much more drastic bill than I as an individual drawing an original bill would have drawn, but it is, in my judgment, a vast improvement in its equities over the bill that it supersedes. It gives 18 months to men now in the saloon business to accommodate themselves to the new conditions. It does regulate by eventually reducing the number of saloons to 300, and included in that number are the clubs, which are limited to 25; and in answer to the gentleman from Missouri [Mr. BARTHOLDT] I desire to say that there is not a single privilege given to a club that is not given to a saloon, and there ought not to be. [Applause.] I believe that the poor man is entitled to just as many rights in the saloon as the rich man is in the club, and I for one have seen to it that this bill applies in its closing hours in its restrictions to the clubs the same as it does to the saloons. The hour of closing has been changed from 11 to midnight because in my judgment midnight is a very much more reasonable hour for a great metropolitan city than 11 o'clock. Midnight here is no later than 10 o'clock in many cities of smaller size.

There was also a change made in the distance from schools and from churches. The original provision might have permitted an unfair advantage being taken under the law by the establishment of nominal places of worship or private schools for the purpose of interfering with saloons. In other words, while we have undertaken to restrict within proper bounds the traffic in alcoholic liquors, we have undertaken to strip the bill of all its hypocrisy and cant by dealing in the open and on the level with the public and with the licensed saloon keeper. [Applause.] I believe when you act on these matters you should act in candor. Men differ as to whether there should be sale of alcoholic liquor or not. Men differ as to the number of saloons there should be, but no honest man ought to differ as to the desirability of making the law plain, so it can not be evaded either by the licensee or by those who are undertaking to deprive him of the rights which the law presumably has given him, and the labor of the committee was expended to accomplish that end. That the law will meet with the entire approval of every extreme prohibitionist or extreme liquor man I do not for a moment believe. I have had protests brought to me by the dozen from both classes here within the last few hours, when it was known this matter was to come up, but I think that the Congress or the United States is big enough and intelligent enough to determine what ought to be done touching the sale of liquor in the Capital of the Nation without receiving the volunteer advice of either the extreme prohibitionist or the extreme saloon man. Of them we may well say, with Mecutio, "A plague on both your houses."

Mr. Speaker, as representing what I believe to be the intelligent judgment of the Committee on Appropriations, which endeavored to deal conscientiously in the short time given it with an intricate subject, I ask of this House its approval of this measure. [Applause.] [Cries of "Vote!"]

The SPEAKER. The gentleman from Missouri [Mr. BARTHOLDT] has two minutes.

Mr. BARTHOLDT. Only two minutes.

The SPEAKER. Only two, and the gentleman from Texas [Mr. BURLESON] has two.

Mr. BARTHOLDT. Mr. Speaker, I ask unanimous consent to offer this amendment——

Mr. SHERLEY. Mr. Speaker, I object.

The SPEAKER. The gentleman objects, and that ends it.

Mr. BARTHOLDT. I want the amendment read, if you please.

The SPEAKER. But the gentleman objects.

Mr. MANN. Can not he have it read in his own time?

The SPEAKER. The gentleman can have it read in his own time, if he wants it.

Mr. BARTHOLDT. I want it read in my time. That is my proposition.

The SPEAKER. The gentleman sent it up here for amendment. The Clerk will report the amendment.

The Clerk read as follows:

The sale, possession, and use of intoxicating liquors in the District of Columbia is hereby prohibited.

Mr. BURLESON. Mr. Speaker, just one minute. The Committee on Appropriations has endeavored to make the Jones-Works excise bill mean just what it pretended on its face. By the substitute amendment we limit the number of saloons to 300, and at the same time make it possible to establish 300 saloons within certain prescribed limits in the District of Columbia. The substitute strips the Jones-Works excise bill of all its evasive, misleading, and unreasonable provisions and makes it impossible for those who might endeavor to prevent the establishment of the number of saloons the bill pretends to allow being conducted within the District.

The amendment embodied in the motion that I offered yesterday in some particulars was much more drastic than the amendment now offered that you are going to vote on. It contained every essential provision of a sane, regulatory character that is embodied in the pending amendment. In some particulars I think it would prove much more beneficial to the people of the District than the Jones-Works excise bill. It provided that a saloon could not be established less than 500 feet from a school, while under this amendment 400 feet is fixed as the limit; under the amendment I offered yesterday a saloon could not be located within 600 feet of a church; under this the distance is fixed at 400 feet. There is this essential difference between this amendment and the Jones-Works excise bill: This amendment as we now offer it can be easily understood. It is not a deception, a delusion, and a snare. It is not hypocritical. It is not a prohibition bill in disguise. I am gratified that the extreme

prohibition element upon this floor have accepted this amendment in the spirit in which it is offered. I will not say it is satisfactory to me, but it is better than existing conditions; it is infinitely better than the Jones-Works bill, and I believe that it will prove a wholesome measure for the District. In order to get the bill to conference, I hope it will be adopted.

Mr. Speaker, I ask unanimous consent, on page 22, line 8, to insert the word "restaurants" after the word "hotels." It was left out by mistake. It corresponds with what has gone before.

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Page 22, line 8, after the word "hotels" insert the word "restaurants."

The SPEAKER. The gentleman from Texas [Mr. BURLESON] asks unanimous consent to modify his motion in the manner reported by the Clerk. Is there objection? [After a pause.] The Chair hears none.

The gentleman from Texas [Mr. BURLESON] moves to suspend the rules and discharge the Committee on Appropriations from further consideration of the bill (H. R. 28499) making appropriations to provide for the expenses of the District of Columbia, and the amendments of the Senate thereto, and that the House disagree to all the amendments of the Senate except amendment No. 132, and that the House agree to the amendment of the Senate No. 132 with an amendment; that the House ask for a conference, and that the Speaker shall, upon the adoption of this motion, appoint the conferees without intervening motion. The question is on the motion of the gentleman from Texas [Mr. BURLESON].

The question was taken; and (two-thirds having voted in the affirmative) the rules were suspended and the motion was agreed to.

The SPEAKER appointed the following conferees: Mr. BURLESON, Mr. SAUNDERS, and Mr. TAYLOR of Ohio.

EXTENSION OF NEW HAMPSHIRE AVENUE.

Mr. JOHNSON of Kentucky. Mr. Speaker, I move to suspend the rules and take up the bill S. 2504 and pass the same. It is a bill relating to the extension of New Hampshire Avenue.

The SPEAKER. The Clerk will report the title.

The Clerk read as follows:

S. 2504. An act to provide for the extension of New Hampshire Avenue, in the District of Columbia, on a straight line, and for other purposes.

The SPEAKER. Is a second demanded? [After a pause.] The Chair hears no demand for a second. The Clerk will report the bill.

The Clerk read as follows:

An act (S. 2504) to provide for the extension of New Hampshire Avenue, in the District of Columbia, on a straight line, and for other purposes.

Be it enacted, etc., That within six months after the passage of this act the Commissioners of the District of Columbia be, and they are hereby, authorized and directed to institute in the Supreme Court of the District of Columbia, sitting as a district court, under and in accordance with the provisions of subchapter 1 of chapter 15 of the Code of Law for the District of Columbia, a proceeding in rem to condemn the land that may be necessary for the extension of New Hampshire Avenue on a straight extension of the lines thereof as now established in the city of Washington from its present terminus north of Buchanan Street to the District line, with a uniform width of 120 feet: *Provided, however*, That the entire amount found to be due and awarded by the jury in said proceedings as damages, for and in respect of the land to be condemned for said extension, plus the costs and expenses of said proceeding, shall be assessed by the jury as benefits: *And provided further*, That nothing in said subchapter 1 of chapter 15 of said code shall be construed to authorize the jury to assess less than the aggregate amount of the damages awarded for and in respect of the land to be condemned and the costs and expenses of the proceedings hereunder.

SEC. 2. That there is hereby appropriated, out of the revenues of the District of Columbia, an amount sufficient to pay the necessary costs and expenses of the condemnation proceedings taken pursuant hereto and for the payment of amounts awarded as damages, to be repaid to the District of Columbia from assessments for benefits and covered into the Treasury to the credit of the revenues of the District of Columbia.

SEC. 3. That the Commissioners of the District of Columbia are hereby directed to change the plans for a permanent system of highways outside the city of Washington so as to abandon the extension of New Hampshire Avenue from Buchanan Street northward to the District line, as at present laid down on said plans.

The SPEAKER. The question is on suspending the rules and passing Senate bill 2504.

Mr. SABATH. Mr. Speaker, will it be proper for me to inquire of the gentleman who has charge of this bill as to who is to bear the cost, and whether the property that is to be benefited is to pay part of the cost of this extension?

Mr. SCHACKLEFORD. It is to pay all of it.

Mr. CAMPBELL. I assure the gentleman that it is all right.

The SPEAKER. The question is on suspending the rules and passing the bill.

The question was taken; and (two-thirds having voted in the affirmative) the rules were suspended, and the bill was passed.

AMENDMENT TO FOOD AND DRUGS ACT.

Mr. COVINGTON. Mr. Speaker, I call up the conference report and accompanying statement on the bill (H. R. 22526) to amend section 8 of an act entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," approved June 30, 1906, and ask unanimous consent that the statement be read in lieu of the report.

The SPEAKER. Without objection, the Clerk will read the statement in lieu of the report.

There was no objection.

The statement was read.

The conference report is as follows:

CONFERENCE REPORT (NO. 1606).

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 22526) to amend section 8 of an act entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," approved June 30, 1906, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate numbered 2 and agree to the same.

Amendment numbered 1: That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment as follows: In lieu of the matter stricken out and the insertions made by said amendment insert the following:

"That reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations made in accordance with the provisions of section 3 of this act."

And the Senate agree to the same.

W. C. ADAMSON,
J. HARRY COVINGTON,
F. C. STEVENS,
Managers on the part of the House.

GEORGE T. OLIVER,
R. M. LA FOLLETTE,
E. H. SMITH,
Managers on the part of the Senate.

The SPEAKER. The question is on agreeing to the conference report.

The conference report was agreed to.

FOOTBRIDGE ACROSS THE OKANOGAN RIVER, WASH.

The SPEAKER. The Chair lays before the House the Senate bill 8575, which the Clerk will report, a similar House bill being on the calendar.

The Clerk read as follows:

A bill (S. 8575) to authorize the town of Okanogan, Wash., to construct and maintain a footbridge across the Okanogan River.

Be it enacted, etc., That the town of Okanogan, a municipal corporation of the State of Washington, its successors and assigns, be, and is hereby, authorized to construct, maintain, and operate a footbridge, with approaches thereto, across the Okanogan River, from the lower or easterly end of Pine Street, in said town, to a point directly opposite on the Colville Indian Reservation.

SEC. 2. That the bridge authorized by this act shall be constructed in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906.

SEC. 3. That the right to alter, amend, or repeal this act is hereby expressly reserved.

The SPEAKER. The question is on the third reading of the Senate bill.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

On motion of Mr. LA FOLLETTE, a motion to reconsider the vote whereby the bill was passed was laid on the table.

PUBLICITY IN TAKING EVIDENCE.

Mr. NORRIS. Mr. Speaker, I move to suspend the rules and pass Senate bill 8000, providing for publicity in taking evidence under the act of July 2, 1890.

The SPEAKER. In a parliamentary sense, where is that bill?

Mr. NORRIS. It is No. 359 on the House Calendar. It has been reported.

The SPEAKER. The Clerk will report the bill.

The Clerk read as follows:

An act (S. 8000) providing for publicity in taking evidence under act of July 2, 1890.

Be it enacted, etc., That in the taking of depositions of witnesses for use in any suit in equity brought by the United States under the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and in the hearings before any examiner or special master appointed to take testimony therein, the proceedings shall be open to the public as freely as are trials in open court; and no order excluding the public from attendance on any such proceedings shall be valid or enforceable.

The SPEAKER. Is a second demanded?

Mr. KAHN. Mr. Speaker, I demand a second.

Mr. NORRIS. Mr. Speaker, I ask unanimous consent that a second be considered as ordered.

The SPEAKER. The gentleman from Nebraska [Mr. NORRIS] asks unanimous consent that a second be considered as ordered. Is there objection? [After a pause.] The Chair hears none.

Mr. BURKE of Pennsylvania. Mr. Speaker, will the gentleman yield to an inquiry?

Mr. NORRIS. I will.

Mr. BURKE of Pennsylvania. Is that the bill that was up the other day?

Mr. NORRIS. That was the same bill that was on the Unanimous Consent Calendar and was objected to.

Mr. BURKE of Pennsylvania. Mr. Speaker, I make the point of order that there is no quorum present.

RECESS.

Mr. UNDERWOOD. Mr. Speaker, I move that the House take a recess until 2.30 p. m. to-day.

The motion was agreed to; accordingly (at 12 o'clock and 50 minutes a. m.) the House stood in recess until 2.30 o'clock this afternoon, March 2, 1913.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1. A letter from the Secretary of the Interior, transmitting a report from the Superintendent of the Capitol Building and Grounds of the apparatus, appliances, equipment, etc., transferred by him to a branch of the government of the District of Columbia (S. Doc. No. 1125); to the Committee on Appropriations and ordered to be printed.

2. A letter from the Secretary of Commerce and Labor, transmitting a report relating to the recent increases in the prices of anthracite coal following the wage agreement of May 20, 1912, between the coal operators and the mine owners, in compliance with a resolution of the House of Representatives passed July 29, 1912 (H. Doc. No. 1442); to the Committee on Interstate and Foreign Commerce and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the several calendars therein named, as follows:

Mr. McCOY, from the Committee on Expenditures in the Post Office Department, submitted a report (No. 1600) on canceling machines, etc., which report was referred to the House Calendar.

Mr. ASHBROOK, from the Committee on Expenditures in the Post Office Department, submitted a report (No. 1601) on the Lewis Publishing Co. and various Lewis enterprises, which was referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, private bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the Committee of the Whole House, as follows:

Mr. RICHARDSON, from the Committee on Pensions, to which was referred the bill (S. 8540) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and of wars other than the Civil War, and to certain widows and dependent relatives of such soldiers and sailors, reported the same with amendment, accompanied by a report (No. 1595), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill (S. 8399) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and of wars other than the Civil War, and to certain widows and dependent relatives of such soldiers and sailors, reported the same with amendment, accompanied by a report (No. 1596), which said bill and report were referred to the Private Calendar.

Mr. RUSSELL, from the Committee on Invalid Pensions, to which was referred the bill (S. 8541) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, reported the same with amendment, accompanied by a report (No. 1597), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill (S. 8576) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, reported the same with amendment, accompanied by a report (No. 1598), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill (S. 8400) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, reported the same with amendment, accompanied by a report (No. 1599), which said bill and report were referred to the Private Calendar.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. DAVIS of West Virginia: A bill (H. R. 28868) to authorize the building of dams across the South Branch of the Potomac River; to the Committee on Interstate and Foreign Commerce.

By Mr. PUJO: Resolution (H. Res. 874) to print additional copies of the report of the Money Trust investigation; to the Committee on Printing.

By Mr. BYRNES of South Carolina: Joint resolution (H. J. Res. 408) extending the provisions of paragraph 1 of chapter 355 of the Statutes at Large, in so far as they relate to the reorganization of the customs service, for a period of two years; to the Committee on Ways and Means.

By Mr. LAFFERTY: Memorial of the Legislature of the State of Oregon, favoring House bill 2981, to create Saddle Mountain National Park; to the Committee on the Public Lands.

Also, a memorial of the Legislature of the State of Oregon, favoring the passage of the Asiatic-exclusion act; to the Committee on Immigration and Naturalization.

Also, a memorial of the Legislature of the State of Oregon, favoring revision of patent and copyright laws; to the Committee on Patents.

By Mr. NELSON: Joint resolution of the Legislature of Wisconsin, urging the protection of game and migratory birds; to the Committee on Agriculture.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. ANDERSON: Petition of business men of Spring Grove, Minn., favoring the passage of legislation to compel concerns selling goods direct to the consumer by mail to contribute their portion of the funds for the development of the local community, county, and State; to the Committee on Interstate and Foreign Commerce.

By Mr. ASHBROOK: Petition of C. E. Raymond and 70 other citizens of Tuscarawas County, Ohio, asking for an investigation of the alleged persecution of the editors of the Appeal to Reason; to the Committee on Expenditures in the Post Office Department.

By Mr. AYRES: Petition of the General Executive Committee of the Railway Business Association, favoring the passage of an act to establish a national budget as a method of regulating the receipts and expenditures of the Government; to the Committee on Ways and Means.

By Mr. BARTHOLDT: Petition of H. Lippert, St. Louis, Mo., protesting against the passage of House bill 28579, to provide uniform regulations for boats engaged in the towing service; to the Committee on the Merchant Marine and Fisheries.

Also, petition of the Machine Tool Co., St. Louis, Mo., protesting against the passage of the legislation to extend the parcel post to include third-class mail; to the Committee on the Post Office and Post Roads.

Also, petition of William Huke Rattan and Willow Ware Manufacturing Co., St. Louis, Mo., protesting against the passage of any legislation changing the present tariff on willow ware; to the Committee on Ways and Means.

By Mr. CARY: Petition of the Indian Rights Association, Philadelphia, Pa., favoring the passage of the amendment to the Indian appropriation bill providing for the irrigation of the allotted lands of the Yakima Indians, Washington; to the Committee on Indian Affairs.

By Mr. DYER: Petition of International Typographical Union, Cleveland, Ohio, favoring the passage of legislation to make it unlawful to circulate any malicious statement, printed or oral, for cash consideration or for gain, that can not be substantiated; to the Committee on Labor.

Also, petition of the United Commercial Travelers of America, Carthage, Mo., favoring the passage of House bill 27567, for 1-cent letter-postage rate; to the Committee on the Post Office and Post Roads.

Also, petition of the Railway Business Association, New York, N. Y., favoring the passage of legislation to establish a national budget as a method of regulating the receipts and expenditures of the Government; to the Committee on Ways and Means.

Also, petition of the Million Population Club, St. Louis, Mo., favoring the passage of legislation extending the pneumatic-tube service to the subpostal station of St. Louis; to the Committee on the Post Office and Post Roads.

Also, petition of the Washington Club, St. Louis, Mo., protesting against the passage of the Root bill to repeal the free-tolls portion of the Panama Canal act; to the Committee on Interstate and Foreign Commerce.

Also, petition of the Southwestern Interstate Coal Operators' Association, Kansas City, Mo., favoring the passage of Senate bill 3, for Federal aid for vocational education; to the Committee on Agriculture.

By Mr. ESCH: Petition of the general executive committee of the Railway Business Association, favoring the passage of legislation for the creation of a national budget to regulate the receipts and expenditures of the National Government; to the Committee on Ways and Means.

By Mr. FORNES: Petition of the Associated Chambers of Commerce of the Pacific Coast, San Francisco, Cal., favoring the passage of legislation to make investigations to prevent unnecessary losses to the fruit growers; to the Committee on Agriculture.

Also, petition of the Railway Business Association, of New York, favoring the passage of legislation for the creation of a national budget to regulate the receipts and expenditures of the National Government; to the Committee on Ways and Means.

By Mr. FULLER: Petition of the Railway Business Association, of New York, favoring the passage of legislation for the creation of a national budget to regulate the receipts and expenditures of the National Government; to the Committee on Ways and Means.

By Mr. LEWIS: Petition of Henry R. Anderson and 82 voters of Brunswick, Md., favoring the passage of legislation for an investigation to be made of the prosecution of the editors of the Appeal to Reason; to the Committee on Expenditures in the Post Office Department.

By Mr. LINDSAY: Petition of the general executive committee of the Railway Business Association, New York, favoring the passage of legislation for the adoption of the national budget to regulate the receipts and expenditures of the National Government; to the Committee on Ways and Means.

Also, petition of the Abraham Lincoln Branch of the American Continental League, Brooklyn, N. Y., protesting against the passage of the Root bill, to repeal the free-tolls part of the Panama Canal act; to the Committee on Interstate and Foreign Commerce.

By Mr. TALCOTT of New York: Petition of the Associated Chambers of Commerce of the Pacific Coast, favoring the passage of legislation to make investigations for preventing unnecessary losses to the fruit growers; to the Committee on Agriculture.

Also, petition of the joint session of the boards of directors of the Board of Commerce, Commercial Club, Manufacturers and Producers' Association, and Traffic Bureau, Knoxville, Tenn., all protesting against the passage of any legislation for the reduction of tariff on aluminum; to the Committee on Ways and Means.

Also, petition of the general executive committee of the Railway Business Association, favoring the passage of legislation for the creation of a national budget to regulate the receipts and expenditures of the National Government; to the Committee on Ways and Means.

SENATE.

SUNDAY, *March 2, 1913.*

(Legislative day of Saturday, March 1, 1913.)

AFTER THE RECESS.

The Senate reassembled at 2 o'clock p. m., Sunday, March 2, 1913, on the expiration of the recess.

The PRESIDENT pro tempore (Mr. GALLINGER). The Secretary will read the unanimous-consent agreement formerly agreed to.

The Secretary read as follows:

It is agreed by unanimous consent that at not later than 2.30 a. m., March 2, 1913, the Senate will vote, without further debate, upon the motion to agree to the conference report upon H. R. 28180, the rivers and harbors bill; and, further, that at not later than 8 o'clock p. m., on said day, the Senate will proceed to vote, without further debate, upon any amendment that may be pending, and amendments that may be offered, and upon the bill H. R. 23673, the seamen's bill, so called—through the regular parliamentary stages—to its final disposition; the time for debate to be divided equally between the proponents and opponents of the bill.

Mr. SMOOT. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Utah suggests the absence of a quorum. The roll will be called.

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

Brandegee	Curtis	Martine, N. J.	Sheppard
Bristow	Dixon	Nelson	Simmons
Bryan	du Pont	O'Gorman	Smoot
Burton	Fall	Oliver	Stephenson
Catron	Gallinger	Overman	Sutherland
Chamberlain	Gronna	Owen	Swanson
Chilton	Hitchcock	Page	Thomas
Clarke, Ark.	Johnson, Me.	Percy	Townsend
Crawford	Johnston, Ala.	Perkins	Wetmore
Culberson	Jones	Pittman	Works
Cummins	Kenyon	Root	

The PRESIDENT pro tempore. Forty-three Senators have answered to their names—not a quorum. The names of the absentees will be called.

The Secretary called the names of absent Senators and Mr. ASHURST, Mr. GARDNER, Mr. PAYNTER, and Mr. PENROSE answered to their names when called.

Mr. TILLMAN, Mr. WARREN, Mr. SMITH of Michigan, Mr. LODGE, and Mr. SMITH of Arizona entered the Chamber and answered to their names.

The PRESIDENT pro tempore. Fifty-two Senators have answered to their names. A quorum of the Senate is present. The Senate will receive a message from the House of Representatives.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by D. K. Hempstead, its enrolling clerk, announced that the House had passed the following bills:

S. 2504. An act to provide for the extension of New Hampshire Avenue, in the District of Columbia, on a straight line, and for other purposes; and

S. 8575. An act to authorize the town of Okanogan to construct and maintain a bridge across the Okanogan River.

The message also announced that the House had passed the bill (S. 5382) to provide an exclusive remedy and compensation for accidental injuries, resulting in disability or death, to employees of common carriers by railroads engaged in interstate or foreign commerce, or in the District of Columbia, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 22526) to amend section 8 of an act entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," approved June 30, 1906.

The message also announced that the House had agreed to the amendment of the Senate No. 132 to the bill (H. R. 28499) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1914, and for other purposes, with an amendment, in which it requests the concurrence of the Senate, disagrees to the residue of the amendments of the Senate to the said bill, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. BURLESON, Mr. SAUNDERS, and Mr. TAYLOR of Ohio managers at the conference on the part of the House.